

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ANA MARLEN MEMBRENO JIMENEZ,

Plaintiff,

- versus -

WILLIAM DEGEL and CYNTHIA DEGEL,

Defendants.

Case No.:

**COMPLAINT
JURY DEMANDED**

PRELIMINARY STATEMENT

1. This action seeks to recover owed wages and other damages as a result of Defendants' violations of the Fair Labor Standards Act and New York Labor Law. Defendants William Degel and Cynthia Degel employed Plaintiff Ana Marlen Membreno Jimenez as a domestic worker in their mansions in the Hamptons and in Old Brookville, Long Island. For over three years, she worked long hours, cleaning their homes and serving the needs of their family.

2. However, Defendants paid Plaintiff a flat weekly salary that provided less than minimum wage for the long hours she worked. They never paid her overtime, although she worked more than 40 hours per week; never paid her "spread of hours" compensation, although she worked more than 10 hours per day; and never provided her with written notices about her wages, hours, and other terms of employment as required by law.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216 and 28 U.S.C. § 1331.

4. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 (b) and (c), because the events and omissions giving rise to the claims occurred in this District, Plaintiff resides in this District, and all Defendants reside in this District.

THE PARTIES

Plaintiff

6. At all times relevant to this action, Plaintiff was a domestic service employee employed by Defendants to work in their homes, including their primary residence located at 80 McCouns Lane, Old Brookville, NY 11545 and their summer home in the Hamptons at 54 Quogue Riverhead Road, Quogue, NY 11959.

7. As a domestic worker, Plaintiff was personally engaged in commerce or in the production of goods for commerce between states, within the meaning of the Fair Labor Standards Act and its implementing regulations.

Defendants

8. At all times relevant to this action, Defendant William Degel was a resident of New York, residing at 80 McCouns Lane, Old Brookville, NY 11545, and upon information and belief, currently resides at that address.

9. At all times relevant to this action, Defendant Cynthia Degel was a resident of New York, residing at 80 McCouns Lane, Old Brookville, NY 11545, and upon information and belief, currently resides at that address.

10. At all times relevant to this action, Defendant William Degel and Defendant Cynthia Degel were spouses, and upon information and belief, currently maintain that status.

11. At all times relevant to this action, Defendant William Degel had the power to hire and fire Plaintiff, establish her wages, set her work schedule, assign her job duties, and maintain records of her employment.

12. At all times relevant to this action, Defendant Cynthia Degel had the power to hire and fire Plaintiff, establish her wages, set her work schedule, assign her job duties, and maintain records of her employment.

13. At all times relevant to this action, Defendant William Degel was Plaintiff's employer within the meaning of the Fair Labor Standards Act and the New York Labor Law.

14. At all times relevant to this action, Defendant Cynthia Degel was Plaintiff's employer within the meaning of the Fair Labor Standards Act and the New York Labor Law.

FACTS

15. From February 2, 2010 to February 10, 2013, Plaintiff Ana Marlen Membreno Jimenez worked for Defendants William and Cynthia Degel as a domestic worker in their mansions in Old Brookville, Long Island and in the Hamptons.

16. Plaintiff worked long hours, five and sometimes six days per week, doing extensive housework and cleaning, preparing meals, caring for the Defendants' young children, washing and ironing clothing, and caring for and cleaning up after the family's three dogs.

17. She worked approximately 70 hours per week, for which the Defendants paid her a flat weekly salary with no premium for overtime or spread of hours.

18. Plaintiff was initially told she would start out earning \$450 per week, and begin earning \$500 per week after three months. However, for approximately the first year, Defendants paid her only \$400 per week.

19. In 2011, Plaintiff's weekly salary increased to \$450, and in 2012, it increased to \$500.

20. While Plaintiff's precise schedule varied based on the demands of Defendants, she worked approximately 70 hours per week from the time she started working in February 2010 until approximately October 2012.

21. In October 2012, Plaintiff fell in the bathroom of Defendants' Hamptons home while bleaching the floor, injuring herself. She suffered injuries to her back, leg, and foot.

22. The chronic pain from her injuries necessitated that she rest for approximately one hour during the workday, so in October 2012, Plaintiff began to work a "relaxed" schedule of approximately 65 hours per week.

23. Plaintiff's last day of work was February 10, 2013.

24. Throughout her employment, she worked over 40 hours on a weekly basis and a spread of hours exceeding 10 hours on at least five days per week.

25. Defendants never paid Plaintiff overtime or spread of hours pay.

26. Upon information and belief, Defendants kept no records of Plaintiff's work hours.

27. Defendants paid Plaintiff in cash on a weekly basis and never provided her with any written notices regarding her wages and hours or information about her workplace rights.

28. Defendants failed to post required notices of the federal minimum wage and overtime laws in Plaintiff's workplaces.

29. Defendants knew or should have known that they were required to pay Plaintiff minimum wages for all work they suffered or permitted and overtime wages for all work they suffered or permitted in excess of 40 hours per week.

30. At all times relevant to this action, Defendant William Degel owned and operated several restaurants in New York at which he employed employees. Prior to employing Plaintiff, he was named as a defendant in a lawsuit by his restaurant employees. Among other claims in that

lawsuit, filed in the U.S. District Court, Southern District of New York and styled Alonso et al. v. Uncle Jack's Steakhouse, Inc. et al. (Case No. 08-CV-7813), were claims by Mr. Degel's employees for unpaid overtime under the FLSA and NYLL, and spread of hours pay under the NYLL.

31. Defendants' violations of federal and New York law described above were willful and in bad faith. They had no reasonable grounds for believing that their failures to pay minimum wages, overtime wages, and spread of hours pay were consistent with the requirements of the Fair Labor Standards Act or the New York Labor Law.

FIRST CAUSE OF ACTION

Minimum Wages Under the Fair Labor Standards Act

32. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

33. At all times relevant to this action, Plaintiff was employed by the Defendants within the meaning of the FLSA, specifically 29 U.S.C. § 203.

34. At all times relevant to this action, Plaintiff was an employee covered under the Fair Labor Standards Act, as an employee engaged in domestic service.

35. Defendants failed to pay Plaintiff the minimum wage for all hours worked, in violation of 29 U.S.C. § 206.

36. Defendants' violations were willful.

37. Due to Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid minimum wages and an equal amount of damages, as well as reasonable attorneys' fees and costs of the action.

SECOND CAUSE OF ACTION

Overtime Wages Under the Fair Labor Standards Act

38. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

39. At all times relevant to this action, Plaintiff was employed by the Defendants within the meaning of the FLSA, specifically 29 U.S.C. § 203.

40. At all times relevant to this action, Plaintiff was an employee covered under the Fair Labor Standards Act, as an employee engaged in domestic service.

41. Throughout her employment with Defendants, Plaintiff worked more than 40 hours in a week.

42. Defendants failed to pay Plaintiff overtime wages at rates at least one-and-a-half times the regular rate of pay for each hour worked in excess of 40 hours per week, in violation of 29 U.S.C. § 207.

43. Defendants' violations were willful.

44. Due to Defendants' FLSA violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid overtime wages and an equal amount of damages, as well as reasonable attorneys' fees and costs of the action.

THIRD CAUSE OF ACTION

Minimum and Regular Wages Under the New York Labor Law

45. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

46. At all times relevant to this action, Plaintiff was employed by Defendants as a domestic worker within the meaning of N.Y. Labor Law §§ 2(16) and 651.

47. Defendants failed to pay Plaintiff the minimum wage or her regular hourly rate for all hours worked, in violation of New York Labor Law § 652.

48. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid regular wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

FOURTH CAUSE OF ACTION

Overtime Wages Under the New York Labor Law

49. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

50. At all times relevant to this action, Plaintiff was employed by Defendants as a domestic worker within the meaning of N.Y. Labor Law §§ 2(16) and 651.

51. Throughout her employment, Plaintiff worked more than 40 hours per week, and Defendants never paid her overtime.

52. Defendants failed to pay Plaintiff overtime wages at a rate of at least one-and-a-half times her normal wage rate for each hour worked in excess of 40 hours per week, in violation of New York Labor Law § 170.

53. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, her unpaid overtime wages and an equal amount in the form of liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

FIFTH CAUSE OF ACTION

Spread of Hours Payments Under New York Labor Law

54. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

55. At all times relevant to this action, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

56. Throughout her employment, Plaintiff worked a spread of hours in excess of 10 hours per day, at least five days per week.

57. Defendants never paid Plaintiff an additional hour of pay at the minimum wage for each day Plaintiff worked a spread of hours in excess of 10 hours per day, in violation of the New York Labor Law.

58. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from the Defendants, jointly and severally, her unpaid spread of hours wages and an equal amount of liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

SIXTH CAUSE OF ACTION

Failure to Provide Notice at Hiring Under New York Labor Law

59. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

60. Defendants never provided Plaintiff, at the time she was hired or at any time thereafter, a written notice containing the information required by New York Labor Law § 195(1)(a).

61. Defendants' violations continued throughout Plaintiff's employment.

62. Due to Defendants' violations, Plaintiff is entitled to recover statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the court deems necessary and appropriate.

SEVENTH CAUSE OF ACTION

Failure to Provide Notice of Change in Terms Under New York Labor Law

63. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

64. Defendants never provided Plaintiff with written notice of changes in her terms of employment, prior to the times they changed her weekly salary or other terms of employment set forth in New York Labor Law § 195(1) or at any time thereafter, in violation of New York Labor Law § 195(2).

65. Defendants' violations continued throughout Plaintiff's employment.

EIGHTH CAUSE OF ACTION

Failure to Provide Notice at Payment Under New York Labor Law

66. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

67. Defendants never provided Plaintiff, with each payment of wages or at any time thereafter, a written statement containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate(s) of pay and basis thereof; gross wages; deductions; allowances, if any; net wages; regular hourly rate of pay; overtime rate of pay; number of regular hours worked; and number of overtime hours worked, in violation of New York Labor Law § 195(3).

68. Defendants' violations continued throughout Plaintiff's employment.

69. Due to Defendants' violations, Plaintiff is entitled to recover statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the court deems necessary and appropriate.

NINTH CAUSE OF ACTION

Failure to Provide Annual Notice Under New York Labor Law

70. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs as if fully set forth herein.

71. Defendants never provided Plaintiff, on or before February 1, 2012 nor on or before February 1, 2013, written notice containing the information required by New York Labor Law § 195(1)(a).

72. Defendants' violations continued throughout Plaintiff's employment.

73. Due to Defendants' violations, Plaintiff is entitled to recover statutory damages for each work week that the violations occurred or continued to occur, together with costs and reasonable attorney's fees, and any other relief that the court deems necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE Plaintiff respectfully requests that this Court enter an Order:

1. Declaring that Defendants violated the FLSA and the NYLL;
2. Declaring that Defendants' violations of the FLSA were willful;
3. Granting judgment to Plaintiff for her claims of unpaid wages as secured by the FLSA, as well as an equal amount in liquidated damages, interest, and costs and reasonable attorneys' fees;
4. Granting judgment to Plaintiff for her claims of unpaid wages as secured by the NYLL, as well as liquidated damages, interest, and her costs and reasonable attorneys' fees;
5. Awarding Plaintiff damages due to notice violations under the NYLL;
6. Awarding Plaintiff pre-judgment and post-judgment interest, as provided by law;
7. Awarding Plaintiff attorneys' fees and costs;
8. Any such further relief as may be just and proper.

Dated: Queens, New York
July 26, 2013

Respectfully submitted,
CATHOLIC MIGRATION SERVICES

By: _____/s/

Robert McCreanor, Esq.
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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Ana Marlen Membreno Jimenez
(b) County of Residence of First Listed Plaintiff Queens County
(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert McCreanor, Catholic Migration Services
47-01 Queens Blvd, Ste. 203B Sunnyside, NY 11104
(347) 472-3500

DEFENDANTS
William Degel and Cynthia Degel
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation
PTF DEF
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 U.S.C. § 201 et seq.
Brief description of cause:
Unpaid wages and related claims.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/26/2013 SIGNATURE OF ATTORNEY OF RECORD Robert McCreanor

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, _____, counsel for _____, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

RELATED CASE STATEMENT (Section VIII on the Front of this Form)

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
 - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? Yes
 - b) Did the events of omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

BAR ADMISSION

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain) No

I certify the accuracy of all information provided above.

Signature: _____