

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
DEPARTMENT OF
THE TRIAL COURT

VINCENT BURGOS,

Plaintiff,

v.

LOWER MILLS RESTAURANT
GROUP, LLC d/b/a PAT’S PIZZA,
BRENDAN NEWELL, and
PATRICK NEWELL,

Defendants.

C.A. No.

4/11/2022

COMPLAINT

The Plaintiff, Vincent Burgos, brings this action against his former employer, Lower Mills Restaurant Group, LLC d/b/a Pat’s Pizza, its manager, Brendan Newell, and its co-owner Patrick Newell for the non-payment of earned wages, including intra-day travel expenses, overtime pay and delivery charges, all in violation of state law.

PARTIES

1. Plaintiff Vincent Burgos resides in Dorchester, Massachusetts.
2. Defendant Lower Mills Restaurant Group, LLC d/b/a/ Pat’s Pizza (hereinafter, “Pat’s Pizza”) is a limited liability company organized under the laws of the Commonwealth of Massachusetts with a usual place of business located at 2254 Dorchester Avenue, Dorchester Center, Massachusetts 02124.

3. At all relevant times, Defendant Brendan Newell served as manager of Pat's Pizza and, on information and belief, has controlled, directed, and participated to a substantial degree in formulating and determining the policies of the company.

4. On information and belief, Defendant Brendan Newell resides at 383 Adams Street, Milton, Massachusetts 02186.

5. At all relevant times, Defendant Patrick Newell served as co-owner of Pat's Pizza and, on information and belief, has controlled, directed, and participated to a substantial degree in formulating and determining the policies of the company.

6. On information and belief, Defendant Patrick Newell resides at 61 Mingo Street, Milton, Massachusetts 02186.

7. The Defendants employed the Plaintiff.

JURISDICTION AND VENUE

8. This court has jurisdiction to address this matter pursuant to, *inter alia*, M.G.L. c. 149, § 150; M.G.L. c. 151, § 1B, M.G.L. c. 151, § 20.

5. The Plaintiff has filed a complaint regarding this matter with the Massachusetts Attorney General pursuant to M.G.L. c. 149, § 150.

6. Venue is proper pursuant to M.G.L. c. 223 § 2 because Plaintiff resides in this judicial district.

FACTS

7. Pat's Pizza is a business that primarily serves pizza and Italian food in Dorchester, Massachusetts.

8. In or around September 2020, Pat's Pizza hired Plaintiff Vincent Burgos as a delivery driver.

9. As a delivery driver, Mr. Burgos' job duties included making multiple food deliveries to Pat's Pizza customers each workday.

10. Pat's Pizza agreed to compensate Mr. Burgos at a rate of \$10 per hour for each hour of work he performed for the company, plus tips.

11. On or around March 31, 2022, Mr. Burgos gave his two weeks' notice and Pat's Pizza terminated his employment that same day.

Unpaid Intra-Day Travel Expenses

12. Pat's Pizza required Mr. Burgos to travel during the workday to fulfil his job duties.

13. Mr. Burgos utilized his personal vehicle to complete deliveries for Pat's Pizza.

14. 454 Code Mass. Regs. § 27.04(d) required Pat's Pizza to reimburse Mr. Burgos for his work-related transportation expenses.

15. The federal mileage rate was 58 cents per mile in 2019, 57.5 cents per mile in 2020, 56 cents per mile in 2021, and 58.5 cents per mile as of January 1, 2022.

16. Throughout the course of his employment, Mr. Burgos often traveled around 40 to 100 miles per workday to fulfil his job duties for Pat's Pizza in his personal vehicle, but Pat's Pizza failed to reimburse him for those expenses.

17. In or around March 2022, Pat's Pizza began reimbursing Mr. Burgos for mileage.

18. From his hiring in September 2020 until in or around March 2022, Pat's Pizza passed on the travel expenses Mr. Burgos incurred in the performance of his job duties to Mr. Burgos.

19. Mr. Burgos traveled thousands of miles for Pat's Pizza in performing his work duties for which the company failed to reimburse him.

20. To date, Pat's Pizza owes Mr. Burgos a substantial amount of travel expense reimbursements.

Unpaid Overtime Wages

21. Throughout the course of his employment, Mr. Burgos worked more than 40 hours for Pat's Pizza in multiple workweeks.

22. In fact, Mr. Burgos often worked around 43 hours per week for Pat's Pizza.

23. Pat's Pizza knew or should have known that Mr. Burgos was working overtime hours.

24. The overtime hours Mr. Burgos worked, which he spent performing his job duties, were performed in plain sight on Pat's Pizza premises or in accordance with his assigned deliveries.

25. Mr. Burgos was a non-exempt employee entitled to overtime.

26. However, Pat's Pizza failed to compensate Mr. Burgos at a rate of one and one-half times the basic minimum wage for all hours worked in excess of 40 in a workweek.

27. Instead, Pat's Pizza compensated Mr. Burgos at a rate of \$15 per hour for all hours worked in excess of 40 in a workweek.

28. 454 CMR 27.02(3) provides that "the overtime rate for a tipped employee receiving the service rate shall be computed at one and one half times the basic minimum wage..."

29. In 2020, the minimum wage in Massachusetts was \$12.75 per hour, yielding an overtime rate for tipped employees of \$19.13 per hour.

30. In 2021, the minimum wage in Massachusetts was \$13.50 per hour, yielding an overtime rate for tipped employees of \$20.25 per hour.

31. As of January 1, 2022, the minimum wage in Massachusetts is \$14.25 per hour, yielding an overtime rate of \$21.38 per hour.

32. To date, Pat's Pizza owes Mr. Burgos a significant amount of earned overtime wages.

Unremitted Delivery Charges

33. During the course of Mr. Burgos' employment, Pat's Pizza charged its customers a delivery charge of \$2.50 for regular orders and 5% of the total bill for catering orders (collectively, the "Delivery Charges"), including on deliveries completed by Mr. Burgos.

34. The Delivery Charges appeared on Pat's Pizza customers' receipts as "Delivery Charge."

35. During Mr. Burgos' employment, Pat's Pizza failed to inform customers that the Delivery Charges did not represent a tip for Mr. Burgos.

36. During Mr. Burgos' employment, Pat's Pizza failed to inform customers that it retained the Delivery Charges.

37. Pat's Pizza failed to remit to Mr. Burgos the Delivery Charges associated with deliveries he completed, depriving him of a significant amount of unpaid wages.

38. To date, Pat's Pizza owes Mr. Burgos a substantial amount of earned wages, including unreimbursed travel expenses, overtime wages, and unremitted delivery charges.

CAUSES OF ACTION

39. The Plaintiff hereby realleges and incorporates by reference the facts and allegations contained in the preceding paragraphs of this pleading as if fully set forth herein.

COUNT I

**NON-PAYMENT OF EARNED WAGES AND TRAVEL EXPENSES IN VIOLATION
OF M.G.L. C. 149, §§ 148, 150**

40. The Weekly Payment Of Wages Act requires the timely payment of all earned wages. M.G.L. c. 149, § 148.

41. M.G.L. c. 149, § 148 provides, in relevant part:

Every person having employees in his service shall pay weekly or bi-weekly each such employee the wages earned by him to within six day of the termination of the pay period during which the wages were earned. . . . and any employee discharged from employment shall be paid in full on the day of his discharge

42. Massachusetts law provides that, “[a]n employee required or directed to travel from one place to another after the beginning of or before the close of the work day shall be compensated for all travel time and shall be reimbursed for all transportation expenses.” 454 Code Mass. Regs. § 27.04.

43. By failing to timely pay the Plaintiff his earned wages, including intra-day travel expenses, overtime wages, and unremitted delivery charges, when the same became due and payable, the Defendants violated the Weekly Payment of Wages Act, M.G.L. c. 149, §§ 148, 150.

44. The Defendants further violated the Wage Act by passing on business expenses in the form of transportation costs to Plaintiff, thereby unlawfully reducing his wages.

45. The Defendants’ failure to comply with M.G.L. c. 149, § 148 entitles the Plaintiff to recover treble damages, interest, reasonable attorney’s fees, and costs pursuant to M.G.L. c. 149, § 150.

COUNT II

NON-PAYMENT OF OVERTIME WAGES IN VIOLATION OF M.G.L. c. 151, §§1A, 1B

46. The Defendants did not pay Plaintiff the full amount of the overtime wages he had earned, as required by law.

47. Massachusetts law provides that “[t]he overtime rate for a tipped employee receiving the service rate shall be computed at one and one half times the basic minimum wage, except where exempted by M.G.L. c. 151, § 1A.” 454 CMR 27.03(3).

48. By failing to pay the Plaintiff at a rate of one and one half times the basic minimum wage for all hours worked in excess of 40 in a workweek, the Defendants violated M.G.L. c. 151 §§ 1A, 1B.

49. The Defendants’ failure to comply with M.G.L. c. 151 §§ 1A, 1B entitles Plaintiff to recover three times his unpaid wages, interest, reasonable attorney’s fees, and costs of litigation.

COUNT III

**NON-PAYMENT OF DELIVERY CHARGES IN VIOLATION OF AN ACT
PROTECTING THE WAGES AND TIPS OF CERTAIN EMPLOYEES, M.G.L. c. 149, §
152A.**

50. The Plaintiff was a “service employee” within the meaning of M.G.L. c. 149, § 152A(a).

51. Defendants were Plaintiff’s “employer” within the meaning of M.G.L. c. 149, § 152A(a).

52. Defendants charged a delivery charge to customers that constituted a service charge within the meaning of M.G.L. c. 149, § 152A(a).

53. During all relevant time periods, Defendants did not inform customers that the delivery charge was not a tip or service charge for the Plaintiff.

54. M.G.L. c. 149, § 152A(d) provides:

If an employer or person submits a bill, invoice or charge to a patron or other person that imposes a service charge or tip, the total proceeds of that service charge or tip shall be remitted only to the wait staff employees, service employees, or service bartenders in proportion to the service provided by those employees.

Nothing in this section shall prohibit an employer from imposing on a patron any house or administrative fee in addition to or instead of a service charge or tip, if the employer provides a designation or written description of that house or administrative fee, which informs the patron that the fee does not represent a tip or service charge for wait staff employees, service employees, or service bartenders.

55. M.G.L. c. 149, § 152A(e) provides:

Any service charge or tip remitted by a patron or person to an employer shall be paid to the wait staff employee, service employee, or service bartender by the end of the same business day, and in no case later than the time set forth for timely payment of wages under section 148.

56. By failing to remit delivery charges to Plaintiff, Defendants violated an Act Protecting the Wages and Tips of Certain Employees, M.G.L. c. 149, § 152A.

57. The Defendants' violation of M.G.L. c. 149, § 152A entitles the Plaintiff to recover treble damages, interest, reasonable attorney's fees, and costs pursuant to M.G.L. c. 149, § 150.

WHEREFORE, the Plaintiff requests that the Court enter final judgment against the Defendants, jointly and severally, awarding the Plaintiff:

1. Treble damages, interest, reasonable attorney's fees, and costs pursuant to M.G.L. c. 149, § 150 for failure to pay earned wages, including unremitted delivery charges and transportation expenses;
2. Treble damages, interest, reasonable attorney's fees, and costs pursuant to M.G.L. c. 151, § 1B for failure to pay overtime wages; and
3. Such other relief that the Court deems just.

JURY DEMAND

THE PLAINTIFF DEMANDS A TRIAL BY JURY FOR ALL CLAIMS.

Respectfully submitted,

VINCENT BURGOS,
by his attorneys,

/s/ Raven Moeslinger

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