

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THOMAS ELIAS
c/o 519 H Street NW
Washington, DC 20001

Plaintiff,

v.

ZHOU HOSPITALITY GROUP, LLC
d/b/a UMaya IZAKAYA
733 10th Street NW
Washington, DC 20001

CHAO CHARLES ZHOU
a/k/a CHARLES ZHOU
17213 Sumac Court
Germantown, MD 20874

Defendants.

Civil Action No. _____

COMPLAINT

1. Defendants employed Plaintiff at their Japanese restaurant, Umayaya Izakaya, as a bartender and server. Defendants did not pay Plaintiff overtime wages. Moreover, Defendants paid Plaintiff a regular hourly rate below the D.C. minimum wage for tipped employees.

2. Plaintiff brings this action to recover damages for Defendants' willful failure to pay minimum and overtime wages, in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*; the District of Columbia Minimum Wage Act Revision Act ("DCMWA"), D.C. Code, § 32-1001 *et seq.*; and the District of Columbia Wage Payment and Collection Law ("DCWPCL"), D.C. Code § 32-1301 *et seq.*

Jurisdiction and Venue

3. Jurisdiction is proper pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction).

4. Venue is proper pursuant to 28 U.S.C. § 1391(b), because all Defendants reside in this district, or a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

Parties

5. Plaintiff Thomas Elias is an adult resident of the District of Columbia.

6. Defendant Zhou Hospitality Group, LLC is a District of Columbia corporate entity. It does business as Umayra Izakaya. Its principal place of business is located at 733 10th Street NW, Washington, DC 20001. Its registered agent for service of process is Nonprofit Corporation Services, Inc., 1735 20th Street NW, Washington, DC 20009.

7. Defendant Chao Charles Zhou is an adult resident of Maryland. He resides at 17213 Sumac Court, Germantown, MD 20874. He is an owner and officer of Defendant Zhou Hospitality Group, LLC. He exercises control over the operations of Zhou Hospitality Group, LLC — including its pay practices.

8. Defendants own and operate the restaurant Umayra Izakaya, located at 733 10th Street NW, Washington, DC 20001.

Factual Allegations

9. Plaintiff worked at Umayra Izakaya from approximately January 20, 2017 through approximately April 11, 2019.

10. Plaintiff worked at Umayra Izakaya as a bartender and server.

11. Plaintiff's job duties at Umayya Izakaya primarily consisted of presenting menus, taking customer orders, serving food and drinks, and ensuring that tables were clean and presentable.
12. Plaintiff typically and customarily worked between 35 and 45 hours per week.
13. At all relevant times, Defendants paid Plaintiff by the hour.
14. At all relevant times, Plaintiff earned tips.
15. From July 1, 2017 through June 30, 2018, Defendants paid Plaintiff a regular hourly rate of \$3.33.
16. From July 1, 2018 through April 11, 2019, Defendants continued to pay Plaintiff a regular hourly rate of \$3.33.
17. Starting on July 1, 2018, the DCMWA required that employers pay tipped employees at least \$3.89 per hour. D.C. Code § 32-1003(f)(1)(c).
18. However, Defendants never raised Plaintiff's regular hourly rate. From July 1, 2018 through April 11, 2019, Defendants continued to pay Plaintiff a regular hourly rate of \$3.33.
19. Moreover, Defendants did not comply with the notice requirements pertaining to tipped employees at D.C. Code § 32-1003(g).
20. Accordingly, Defendants are not eligible to take a "tip credit" against their obligation to pay the minimum wage for non-tipped employees.
21. Plaintiff often worked more than 40 hours per workweek for Defendants.
22. At all relevant times, Plaintiff was paid the same regular hourly rate across all hours worked.
23. Defendants did not pay Plaintiff overtime wages — or one and one-half times his regular hourly rate for hours worked in excess of 40 in a workweek.

24. For example, during the fifteen day pay period from November 1, 2018 through November 15, 2018, Plaintiff worked 98.68 hours. As shown by the following paystub, Defendants paid Plaintiff \$3.33 for each hour worked ($\$328.60 \div 98.68 \text{ hours} = \3.33).

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Employee ID: EIAS		Employee Name: Thomas J. Elias						
Pay period : 11/01/18 to : 11/15/18		Earnings		Taxes		Deductions & Other Pays		
		Type	Hours	Dollars	Type	Dollars		
Gross	328.60	Reg	98.68	328.60	FWT	352.42	Advance	-2504.84
Other	-2504.84	OT1	0.00		OASDI	175.68		
Tips	2504.84	OT2	0.00		MED	41.08		
Cash Tips	0.00	Vac	0.00		SWT	172.31		
Subtotal		Sick	0.00		SDI	0.00		
Taxes	-741.49	Hol	0.00		SUI	0.00		
Deducts	0.00	Comm						
Net Pay	-412.89	Misc						
		Other						
		Gross Pay		328.60	Total Tax	741.49		
Year-to-Date: Gross	5660.80	FWT	4720.84	SWT	2374.52			
		OASDI	2850.18	SDI	0.00			
		MED	666.57	SUI	0.00			

Employee ID: EIAS		Employee Name: Thomas J. Elias						
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		Gross Pay		328.60	Total Tax	741.49		
Year-to-Date: Gross	5660.80	FWT	4720.84	SWT	2374.52			
		OASDI	2850.18	SDI	0.00			
		MED	666.57	SUI	0.00			

25. Defendants owe Plaintiff approximately \$21,000.00 in minimum and overtime wages (including the difference between Plaintiff's regular hourly rate (\$3.33) and the D.C. minimum wage (\$13.25), but excluding liquidated damages).

26. At all relevant times, Defendants had the power to hire and fire Plaintiff.

27. At all relevant times, Defendants had the power to control Plaintiff's work schedule.

28. At all relevant times, Defendants had the power to supervise and control Plaintiff's work.

29. At all relevant times, Defendants had the power to set Plaintiff's rate and manner of pay.

30. At all relevant times, Defendants were aware that they were legally required to pay Plaintiff one and one-half times his regular rate for all hours worked in excess of 40 hours in any one workweek.

31. At all relevant times, Defendants were aware that they were legally required to pay Plaintiff the applicable minimum wage.

32. At all relevant times, Defendants were aware that they were legally required to timely pay Plaintiff all wages legally due to Plaintiff.

33. At all relevant times, the annual gross volume of Defendants' business exceeded \$500,000.00.

34. At all relevant times, Defendants had two or more employees who handled goods and/or materials that had traveled in or been produced in interstate commerce.

35. At all relevant times, Defendant had employees who handled food products, such as rice and fish, that had been raised or caught outside of the District of Columbia.

COUNT I

FAILURE TO PAY OVERTIME WAGES UNDER THE FLSA

36. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

37. Each defendant was an "employer" of Plaintiff within the meaning of the FLSA. 29 U.S.C. § 203(d).

38. The FLSA requires employers to pay non-exempt employees one and one-half times their regular hourly rate for hours worked in excess of 40 hours in any one workweek. 29 U.S.C. § 207(a)(1). This regular hourly rate cannot be lower than the applicable state or local minimum wage. 29 C.F.R. § 778.5.

39. Defendants violated the FLSA by knowingly failing to pay Plaintiff at least one and one-half times Plaintiff's regular hourly rate for hours worked in excess of 40 hours in any one workweek.

40. Defendants' violations of the FLSA were willful.

41. For Defendants' violations of the FLSA, Defendants are liable to Plaintiff for unpaid overtime wages, an equal amount as liquidated damages, reasonable attorney's fees and expenses, interest, court costs, and any other relief deemed appropriate by the Court.

COUNT II

FAILURE TO PAY MINIMUM AND OVERTIME WAGES UNDER THE DCMWA

42. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

43. Each defendant was an "employer" of Plaintiff within the meaning of the DCMWA. D.C. Code § 32-1002(3).

44. The DCMWA required that employers pay non-exempt employees at least \$10.50 per hour from July 1, 2015 through June 30, 2016, \$11.50 per hour from July 1, 2016 through June 30, 2017, \$12.50 per hour from July 1, 2017 through June 30, 2018, and \$13.25 per hour from July 1, 2018 through the present. D.C. Code § 32-1003(a).

45. The DCMWA requires employers to pay non-exempt employees one and one-half times their regular hourly rate for hours worked in excess of 40 hours in any one workweek. D.C. Code § 32-1003(c).

46. Defendants violated the DCMWA by knowingly failing to pay the required minimum wage to Plaintiff.

47. Defendants violated the DCMWA by knowingly failing to pay Plaintiff at least one and one-half times Plaintiff's regular hourly rate for hours worked in excess of 40 hours in any one workweek.

48. Defendants' violations of the DCMWA were willful.

49. For Defendants' violations of the DCMWA, Defendants are liable to Plaintiff for unpaid minimum and overtime wages, an amount equal to three times the unpaid minimum and overtime wages as liquidated damages, court costs, reasonable attorney's fees and expenses, interest, and any other relief deemed appropriate by the Court.

COUNT III
FAILURE TO PAY WAGES UNDER THE DCWPCL

50. Plaintiff incorporates the foregoing paragraphs as if fully restated herein.

51. Each defendant was an "employer" of Plaintiff within the meaning of the DCWPCL. D.C. Code § 32-1301(1).

52. The DCWPCL requires employers to pay an employee who is discharged no later than the working day following the discharge. D.C. Code § 32-1303(1).

53. The DCWPCL requires employers to pay an employee who quits or resigns all wages due upon the next regular payday, or within 7 days from the date of quitting or resigning, whichever is earlier. D.C. Code § 32-1303(2).

54. For purposes of the DCWPCL, "wages" include, among other things, regular, minimum, and overtime wages. D.C Code § 32-1301(3).

55. Defendants violated the DCWPCL by knowingly failing to timely pay Plaintiff all wages due, including minimum and overtime wages.

56. Defendants' violations of the DCWPCL were willful.

57. For Defendants' violations of the DCWPCL, Defendants are liable to Plaintiff for unpaid wages, an amount equal to three times the amount of unpaid wages as liquidated damages, reasonable attorney's fees and expenses, interest, court costs, and any other relief deemed appropriate by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against Defendants, jointly and severally, on all counts, in the current total amount of **\$89,176.80**, and grant the following relief:

- a. Award Plaintiff \$84,000.00, consisting of the following overlapping elements:
 - i. unpaid overtime wages, plus an equal amount as liquidated damages, pursuant to the FLSA, 29 U.S.C. § 216;
 - ii. unpaid D.C. minimum and overtime wages, plus three times the amount of unpaid wages as liquidated damages, pursuant to the DCMWA, D.C. Code § 32-1012;
 - iii. unpaid D.C. minimum and overtime wages, plus three times the amount of unpaid wages as liquidated damages, pursuant to the DCWPCL, D.C. Code §§ 32-1303(4) and 32-1308;
- b. Award Plaintiff pre-judgment and post-judgment interest as permitted by law;
- c. Award Plaintiff attorney's fees and expenses computed pursuant to the matrix approved in *Salazar v. District of Columbia*, 123 F. Supp. 2d 8 (D.D.C. 2000), and updated to account for the current market hourly rates for attorney's services, pursuant to the DCWPCL, D.C. Code § 32-1308(b)(1) (as of this date, approximately \$4,776.80);
- d. Award Plaintiff court costs (currently, \$400.00); and
- e. Award any additional relief the Court deems just.

Date: May 6, 2019

Respectfully submitted,

/s/ Justin Zelikovitz
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