

FIRST JUDICIAL DISTRICT COURT
STATE OF NEW MEXICO
COUNTY OF SANTA FE

GUADALUPE VALTIERREZ CENICEROS,
JOSE VALTIERREZ VILLA and CARLOS VAZQUEZ MARTINEZ

Plaintiffs,

vs.

No. CIV- D-101-CV-2017-01538

Case assigned to Mathew, Francis J.

KIM GONZALES and LRC, LLC, dba HORSEMAN'S HAVEN CAFE,

Defendants.

**COMPLAINT FOR FAILURE TO PAY WAGES TO EMPLOYEES AND
PENALTIES UNDER THE NEW MEXICO MINIMUM WAGE ACT
AND THE SANTA FE LIVING WAGE ORDINANCE**

COME NOW Plaintiffs Guadalupe Valtierrez Ceniceros, Jose Valtierrez and Carlos Vazquez by and through their attorneys, the United Workers' Center of New Mexico (Gabriela C. Ibañez Guzmán, Esq.), Law Office of Daniel Yohalem (Daniel Yohalem, Esq.), and Law Office of Katherine Murray (Katherine Murray, Esq.), and assert this cause of action for: (1) failure to pay wages to employees as actionable pursuant to the New Mexico Minimum Wage Act, NMSA 1978 § 50-4-1 *et seq.*; and (2) failure to pay wages to employees as actionable pursuant to Santa Fe Living Wage Ordinance, Ord.# 2007-43, §28-1.5(B), based upon the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this cause of action pursuant to the New Mexico Constitution, art. VI, § 13 (district court has original jurisdiction in all matters) and NMSA § 50-4-26(D) (New Mexico Minimum Wage Act).
2. Venue is appropriate in the First Judicial District Court, County of Santa Fe, pursuant to NMSA 1978, § 38-3-1(A)(residence of plaintiffs, defendants and where cause of action

arose).

PARTIES

3. Plaintiffs are all residents of New Mexico at all relevant times.
4. Defendants LRC, LLC, and Horseman's Haven Cafe conduct business in the state of New Mexico, within the City of Santa Fe.
5. Defendant Kim Gonzales is the member owner and operator of Horseman's Haven Cafe, a Santa Fe, New Mexico based company.
6. Defendants (hereinafter collectively referred to as "Horseman Haven Defendants") acted in concert.
7. Horseman Haven Defendants have maintained a business license with the City of Santa Fe since 2003.

FACTUAL ALLEGATIONS

Guadalupe Valtierrez Cenicerros

8. On or about September of 2007, the Horseman Haven Defendants hired Guadalupe Valtierrez Cenicerros to work as a dishwasher and a food preparer, for the Horseman Haven Defendants at 4354 Cerrillos Rd. in Santa Fe, New Mexico.
9. When Mr. Valtierrez Cenicerros was hired by the Horseman Haven Defendants he was never asked to fill out an application, a W-4 or other employment documents.
10. From September 2007 to October 2011, the Horseman Haven Defendants paid Mr. Valtierrez Cenicerros a flat rate of \$420 every week in cash which was below the Santa Fe Living Wage at that time.
11. During this time, Mr. Valtierrez Cenicerros worked on Mondays from 7 a.m. to 8 p.m.; Tuesdays from 7 a.m. to 8:30 p.m.; Wednesdays and Thursdays from 2:30 p.m. to 8:30

p.m. Friday was his day off. On Saturdays, Mr. Valtierrez Cenicerros worked from 7 a.m. to 8:30 p.m. and Sunday from 7:30 a.m. to 2:30 p.m.

12. During this time, Mr. Valtierrez Cenicerros was paid his wages in cash. He was never paid time and a half for his overtime hours and was rarely given a lunch break.
13. Beginning in October 2011, Mr. Valtierrez Cenicerros' work schedule was changed to Mondays 7 a.m. to 8:30 p.m.; Wednesdays and Thursdays from 7 a.m. to 3 p.m.; Fridays from 7 a.m. to 8:30 p.m. On Saturdays, he worked from 7 a.m. until about 3 p.m. On Sundays, Mr. Valtierrez Cenicerros worked from 7:30 a.m. until 2:30 p.m. Tuesday was his day off.
14. From October 2011 to November 2013, the Horseman Haven Defendants paid Mr. Valtierrez Cenicerros a flat rate of \$480 every week in cash which was below the Santa Fe Living Wage at that time.
15. He was never paid his overtime hours at the time-and-half required premium and was rarely given a lunch break.
16. In 2013 Defendant Kim Gonzales gave Mr. Valtierrez Cenicerros a copy of a key to the restaurant and the alarm code because he opened the restaurant on Mondays at 7 a.m. He would also close the restaurant on Monday at or around 8:30 p.m.
17. Starting on or about November 2013, the Horseman Haven Defendants paid Mr. Valtierrez Cenicerros a flat rate of \$540 every week in cash which was below the Santa Fe Living Wage at that time.
18. During this time, Mr. Valtierrez Cenicerros was never paid his overtime hours at the time-and-half required premium and was rarely given a lunch break.
19. Mr. Valtierrez Cenicerros' employment with the Defendants ended in February 2015.

Jose Valtierrez Villa

20. In August 2012, Jose Valtierrez Villa was hired to work as a dishwasher and a food preparer for the Horseman Haven Defendants in Santa Fe, New Mexico. He has worked continuously at Horseman's Haven Café since August 2012.
21. When Mr. Valtierrez Villa was hired by the Horseman Haven Defendants he was never asked to fill out an application, a W-4 or other employment documents. He was hired by Rosa Romero.
22. Jose Valtierrez Villa was paid a flat rate of \$416 every week in cash which was below the Santa Fe Living Wage at that time.
23. Mr. Valtierrez Villa was never paid his overtime hours at the time-and-half required premium and was rarely given a lunch break
24. From August 2012 to May 2015, Mr. Valtierrez Villa worked on Mondays, Tuesdays and Saturdays from 7 a.m. to about 8:30 p.m. On Wednesdays and Thursdays, he worked from 2:30 p.m. until about 8:30 p.m. On Sundays, he worked from 7:30 a.m. to 2:30 p.m. Friday was his day off.
25. Following the filing of complaints with the City of Santa Fe and a National Labor Relations Board, Horseman Haven Defendants changed a number of employment practices.
26. On or about May 2015 the Horseman Haven Defendants began to pay Mr. Valtierrez Villa by check and provided a means to clock-in and clock-out after each shift.

Carlos Vazquez

27. On January 2015, Carlos Vazquez was hired to work as a dishwasher by the Horseman Haven Defendants in Santa Fe, New Mexico. His employment at Horseman's Haven Café ended on February 27, 2015.
28. When Mr. Vazquez was hired by the Horseman Haven Defendants he was never asked to fill out an application, a W-4 or other employment documents. He was always paid in cash.
29. Mr. Vazquez worked Mondays and Wednesdays to Sundays from 7:30 a.m. to about 3 p.m. Tuesday was his day off.
30. Every Tuesday, there would be an envelope under the cash register with Mr. Vazquez's name on it and inside was a total of \$304 in cash as his wages.
31. Mr. Vazquez was never paid his overtime hours at the time-and-half required premium and was rarely given a lunch break.
32. The Horseman Haven Defendants controlled all details of all the Plaintiffs work at their restaurant.
33. Upon information and belief, Horseman Haven Defendants have had a business license from the City of Santa Fe since 2003.

FIRST CAUSE OF ACTION
(New Mexico Minimum Wage Act)
NMSA 1978 § 50-4-1 *et seq.*

34. The actions of the Horseman Haven Defendants described above constitute a violation of Plaintiffs' rights under the New Mexico Minimum Wage Act because they were not paid the Santa Fe Living Wage.
35. The actions of the Horseman Haven Defendants also constitute a violation of the

Plaintiffs' rights under the New Mexico Minimum Wage Act by not paying them the required time and one-half rate for all overtime hours worked at their restaurant.

36. Defendant's violations occurred and are occurring as part of a continuing course of conduct as provided by NMSA § 50-4-32.

37. Plaintiffs are entitled under the New Mexico Minimum Wage Act to treble damages for the unpaid wages, interest on the unpaid wages, reasonable attorneys' fees, costs, injunctive relief and all other appropriate remedies.

SECOND CAUSE OF ACTION

(Santa Fe Living Wage Ordinance)

Ord. # 2007-43, §28-1.5(B)

38. The actions of the Horseman Haven Defendants, described above, constitute a violation of the Plaintiffs' rights under the Santa Fe Living Wage Ordinance.

39. Under the Santa Fe Living Wage, the Plaintiffs were entitled to the City's minimum wages during the entirety of their employment with the Horseman Haven Defendants.

40. Plaintiffs are entitled under the Santa Fe Living Wage Ordinance to treble damages for the unpaid wages, interest on the unpaid wages, reasonable attorneys' fees, costs, injunctive relief and all other appropriate remedies.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request judgment in their favor and against all Defendants as follows:

- 1.) Award Plaintiffs their unpaid wages, plus interest and treble damages;
- 2.) Award Plaintiffs their reasonable attorneys' fees and court costs;
- 3.) Award Plaintiffs such other and further relief as the Courts deems just and proper.

Respectfully submitted,

United Workers Center of New Mexico

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