

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

GEORGE HATFIELD II,

Plaintiff,

v.

DARI DEL, INC. a/k/a DARI DEL INC.-2, and
MANINO BROTHERS HOLDINGS, LLC and
MANINO BROTHERS, INC. and SAMUEL A.
MANINO, in his individual capacity and d/b/a
MANINO BROS. and d/b/a DARI-DEL.

Defendants.

COMPLAINT

Civil Action No. 6:19-CV-0711 (GLS/TWD)

JURY TRIAL REQUESTED

PRELIMINARY STATEMENT

1. Plaintiff George Hatfield II was a manual laborer in Defendants' profitable dairy production, processing, distribution and retail businesses, and was paid less than three dollars per hour while required to live in on-site, overcrowded and substandard housing with his wife and ten-year-old child. He performed a broad range of arduous tasks for Defendants, including non-agricultural work, seven days a week for long hours under grueling conditions. Despite his tireless work, Defendants denied Plaintiff basic minimum wage pay, overtime pay, subjected him to unlawful payroll practices, unlawfully deducted wages from his paychecks, and committed numerous additional employment and housing law violations.

2. Plaintiff George Hatfield II ("Plaintiff"), by and through undersigned counsel, brings this action against Defendants Dari Del, Inc., Dari-Del Inc-2, Manino Brothers Holdings LLC, Manino Brothers Inc., (collectively "Corporate Defendants") and Samuel A. Manino ("Defendant Manino") and his doing business as designations of Manino Bros., and Dari-Del for

damages, declaratory, and injunctive relief for willful violations of the Fair Labor Standards Act ("FLSA"), New York Labor Law ("NYLL"), and New York Real Property Law ("NYRPL").

3. Under federal and state law employees are entitled to be paid at least the applicable state and federal minimum wage rate for every hour that they worked, are entitled to overtime pay for hours worked in excess of forty (40) hours per week, and are entitled to compliance with notice and recordkeeping requirements, tenants in employer provided housing are entitled to safe, habitable housing. These obligations are mandated by the FLSA, NYLL, and NYRPL.

4. Plaintiff seeks unpaid minimum wage and overtime compensation, an equal amount in statutory liquidated damages, attorneys' fees, and costs pursuant to 29 U.S.C. § 201, *et. seq.* of the FLSA. Plaintiff also seeks damages for unlawful deductions, inadequate pay notices; unpaid minimum wage and overtime compensation, an equal amount in statutory liquidated damages and prejudgment interest, attorneys' fees, and costs pursuant to Article 6 and 19(a) of NYLL. Plaintiffs also seeks actual damages, reimbursement for deducted rent, and attorneys' fees pursuant to NYRPL.

JURISDICTION AND VENUE

5. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331 this action arising under the laws of the United States, by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce, and pursuant to the FLSA, 29 U.S.C. § 201 *et. seq.*

6. With respect to the state law claims, this Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 in that the state law claims are so related to the federal claims that they derive from a common nucleus of operative facts and form part of the same case or controversy under Article III of the United States Constitution.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

PARTIES

8. Plaintiff Hatfield is a former employee of Defendants who currently resides in Herkimer County in New York.

9. At all times relevant to this action, Plaintiff was an “employee” of Defendants within the meaning of the FLSA and NYLL.

10. At all times relevant to this action, Defendants "employed" Plaintiff within the meaning of the FLSA and NYLL.

11. Defendant Dari Del, Inc. is a domestic business corporation located at 2422 Broad Street, Frankfort, New York 13340.

12. Defendant Dari Del, Inc. also went by the name Dari Del Inc.-2.

13. Defendant Manino Brothers Holdings, LLC is a domestic limited liability company located at 160 Ferguson Road, Frankfort, New York 13340.

14. Defendant Manino Brothers, Inc., is a domestic business corporation located at 2422 Broad Street, Frankfort, New York 13340.

15. Upon information and belief, Defendant Manino is an officer of Defendant Manino Brothers Holdings, LLC and Manino Brothers, Inc.

16. Defendant Manino also conducts business under the assumed names of Manino Bros. and Dari-Del.

17. Upon information and belief, Defendant Manino lives in Herkimer County, New York.

18. At all times relevant to this Complaint, Defendant Manino and Corporate Defendants functioned as a single enterprise, engaged in related activities for a common business purpose under common ownership and management.

19. At all times relevant to this Complaint, Defendant Manino had the authority to, and did in fact, exercise control over all aspects of the day-to-day functions of Corporate Defendants.

20. At all times relevant to this Complaint, Defendant Manino exercised operational control over Corporate Defendants, including actively managing, supervising, and directing business operations.

21. At all times relevant to this Complaint, Defendant Manino had the power to establish, and did establish, the terms and conditions of Plaintiff's employment.

22. At all times relevant to this Complaint, Defendant Manino had control and exercised control over employee work schedules.

23. At all times relevant to this Complaint, Defendant Manino had the ability to determine and did determine the rate and method of employee payment.

24. At all times relevant to this Complaint, Defendant Manino maintained employment records of Corporate Defendants.

25. At all times relevant to this Complaint, Defendant Manino acted directly and indirectly in Corporate Defendants' interest in relation to its employees.

26. Corporate Defendants constitute enterprises engaged in commerce.

27. At all times relevant to this Complaint, Defendants have employed two (2) or more individuals, including Plaintiff, handling, selling, or otherwise working on dairy products

or materials that have been moved in or produced for commerce including milk, food products, agricultural products, and packaging materials.

28. At all times relevant to the Complaint, Corporate Defendants annual gross volume of sales made or business done was not less than \$500,000 per year.

29. Plaintiff has agreed and consented in writing to be a party plaintiff in this action as required by 29 U.S.C. § 216(b).

FACTS

30. Defendants run and maintain a dairy farm and other businesses in and around Frankfort, New York.

31. Defendants have adopted employment practices that require employees to work long and arduous hours assisting in a range of tasks including non-agricultural work.

32. Defendants employed multiple laborers to maintain their operations.

33. Plaintiff Hatfield was employed by Defendants as a full-time laborer from on or around March 18, 2018 until on or around January 22, 2019.

34. In early 2018, Plaintiff Hatfield responded to a job opportunity on the website craigslist.com. Plaintiff Hatfield and his wife called the listed number and spoke with Defendant Manino about a job opportunity working for Defendants on their dairy farm.

35. During their initial meeting and thereafter Defendant Manino obfuscated the identity of the entity that would be employing Plaintiff and used the following names interchangeably: Dari Del, Dari Del Inc., Deli Del Inc-2, Manino Bros, Manino Bros Farms, Manino Dairy, Manino Dairy Farms, Dari Del Farms, Dari Del Dairy, Manino Brothers Holdings LLC, and Manino Brothers, Inc.

36. Plaintiff Hatfield began working for Defendants on or around March 18, 2018.

37. Plaintiff Hatfield's duties and responsibilities included but were not limited to milking, feeding, and cleaning up after livestock; maintaining the work environment; keeping the equipment safe, clean, and in operational order; and numerous barn chores, some related to and some unrelated to the dairy operation.

38. Plaintiff often performed work unrelated to Defendants' dairy operations, like chopping wood for Defendant Manino's personal home fireplace, cleaning apartments for Defendant Manino Brothers Holdings LLC, or trimming the hedges of Defendant Manino's personal home.

39. This work was not "agriculture" within the meaning of 29 U.S.C. § 203(f) and, therefore, covered by the overtime exemption provisions of FLSA.

40. Plaintiff Hatfield performed significant non-agricultural work during approximately thirty (30) of the forty-five (45) weeks that he was employed by Defendants.

41. Throughout the entire duration of Plaintiff Hatfield's employment he worked seven days a week.

42. Plaintiff Hatfield worked on a two-week rotating schedule.

- a. During week one of his two-week rotation, he worked approximately from 5:30 AM in the morning to 7:00 PM at night from Monday to Sunday. This generally included a twenty (20) minute break for breakfast around 9:00 AM and a twenty (20) minute break for lunch around 1:00 PM, for a total of eighty-seven and one half (87.5) hours per week.
- b. During week two of his two-week rotation, he worked approximately from 5:30 AM in the morning to 7:00 PM at night from Monday to Saturday. This generally included a twenty (20) minute break for breakfast around 9:00 AM

and a twenty (20) minute break for lunch around 1:00 PM. On the Sunday of the second week he would only work a “half day” and would generally work from 5:30 AM in the morning to 2:00 PM, for a total of eighty-two and one half (82.5) hours per week.

- c. Throughout the duration of his employment, this schedule did not deviate except on three occasions: he was granted a “half-day” on Christmas, December 25, 2018, and was allowed to leave work at 2:00 PM; in January of 2019 he missed two work days, one due to a medical appointment and one due to exhaustion and back pain.

43. Plaintiff Hatfield averaged approximately eighty-five (85) hours per workweek.

44. Plaintiff was not paid overtime at a rate of one and one half (1.5) times his regular rate of pay for any of the hours worked in excess of forty hours each week that he performed non-agricultural work.

45. Plaintiff Hatfield received a flat rate of pay of two hundred and three dollars (\$203), per week.

46. The minimum wage rate in New York was \$10.40 per hour in 2018 and is now \$11.10 per hour in 2019.

47. Plaintiff Hatfield was paid by Defendants weekly on Saturdays. He was provided a check and a handwritten paystub, he was instructed by Defendant Manino that he had to sign the check on the spot and hand it back to Defendants to receive two hundred and three dollars (\$203) in cash.

48. Throughout the duration of his employment Defendants paid Plaintiff Hatfield at an hourly rate of approximately two dollars and thirty-eight cents (\$2.38) per hour.

49. Defendants paid Plaintiff Hatfield at a rate which was well below the legally-mandated minimum wages.

50. Throughout Plaintiff Hatfield's employment with Defendants, he was not paid the statutorily-required rate of pay for all hours worked.

51. Defendants knew Plaintiff Hatfield was typically performing eighty-five (85) hours of work per week, yet they failed to properly compensate him for all his hours worked.

52. Defendants omitted the hours Plaintiff Hatfield worked and his hourly pay rate on the paystubs and payroll information they provided him, misleading him and concealing the fact that he was being paid improperly.

53. Defendants deducted one hundred dollars (\$100) from each of Plaintiff Hatfield's paystubs for rent. This was signified on his paystubs by a large "R 100", Defendants did so without securing written authorization for the deduction from wages or providing him with appropriate notice.

54. Defendants' rent deductions occurred every week that Plaintiff worked for Defendants, even during the initial weeks of Plaintiff's employment when he did not live in employer-provided housing.

55. Defendants' housed Plaintiff Hatfield in substandard housing that did not comply with substantive safety and health standards.

56. When Defendant Manino Brothers Holdings LLC. initially provided housing for Plaintiff Hatfield, they placed him, his wife, and his ten-year-old son in a living room of another family's apartment. Since the living room was a shared space Plaintiff Hatfield and his family had limited access to it and could not sleep without numerous interruptions.

57. Plaintiff Hatfield remained in the housing because he needed to retain his job and was promised better housing as soon as possible.

58. Plaintiff Hatfield lived in this space for approximately four months, from in or around March to July.

59. In July Plaintiff Hatfield was instructed that another space was open and told he could have his own apartment.

60. Plaintiff Hatfield was given access to the apartment in horrendous condition. He and his wife were forced to clean animal feces from the rooms under such foul conditions that he had to stop numerous times to go outside and vomit.

61. In Plaintiff Hatfield's new apartment, the housing conditions were dangerous to his life, health, and safety.

62. The apartment Defendant Manino Brothers Holdings LLC. provided did not have consistent heat or electricity.

63. Both of Plaintiff Hatfield's apartments and numerous other apartments were on the same power grid and he did not have access to the circuit breaker. His apartment lost power frequently and because he could not restore the electricity on his own he suffered long periods without any access to electricity.

64. The front door to Plaintiff Hatfield's apartment did not properly shut, which led to significant drafts, gusts of cold air, and at times snow entering the apartment.

65. The apartment did not have a rear exit.

66. A window in the apartment had significant damage, including a large crack.

67. The oven in Plaintiff Hatfield's apartment did not function.

68. Plaintiff Hatfield informed Defendant Samuel Manino personally and as the owner of Defendant Manino Brothers Holdings LLC numerous times about the aforementioned housing issues. Defendants refused to address or fix any housing issues.

69. After Defendants failed to fix Plaintiff Hatfield's window, he had to coat it with silicone to prevent wind and snow from entering the apartment.

70. Defendants' rent deductions far exceeded the maximum lawful allowance permitted under the Minimum Wage Order for Farm Workers, 12 NYCRR § 190-3.1(b)(2).

71. Defendants deducted twenty-one dollars (\$21) from each of Plaintiff Hatfield's paystubs for milk signified on his paystubs by a "m 21", Defendants did so without securing written authorization for the deduction from wages or providing him with appropriate notice.

72. Defendants' milk deductions far exceeded the fair market value of milk and constitute impermissible in kind payments in violation of the Minimum Wage Order for Farm Workers, 12 NYCRR § 190-3.1(c).

73. Plaintiff Hatfield was not furnished with paystubs reflecting his actual hours worked or any information regarding hours worked during his employment with Defendants.

74. Plaintiff Hatfield was not furnished with accurate statements of payment of wages, listing gross wages, deductions, or net wages, or the full name and address of the employer or the other information required by NYLL § 195(3) during his employment with Defendants.

75. At the time he began working for Defendants, Plaintiff Hatfield did not receive written disclosure of his wage rates or written disclosure of the other information required by NYLL § 195(1).

76. Plaintiff Hatfield never thereafter received written disclosures of the information required by NYLL § 195(1).

77. In mid-January Plaintiff Hatfield attempted to provide Mike Manino, the son of Defendant Samuel A. Manino, with a doctors' note from his neurologist stating that he could only work five days a week and needed two days of rest per week due to a medical issue. Mike would not accept the letter.

78. Plaintiff then attempted to give the doctor's note to Defendant Manino and Defendant Manino told Plaintiff that the employer provided housing is only for workers and if he's only working five days a week he is not a full time worker and will have to move out. Plaintiff Hatfield returned to work and worked sixteen hours his next day.

79. On January 21, 2019, Plaintiff Hatfield had to take the day off because of the back pain and exhaustion from continuous chronically long workdays with no days of rest.

80. On January 22, 2019, Mike Manino told Plaintiff he was fired and needed to move out.

81. On January 22, 2019, Plaintiff received an eviction notice indicating that his tenancy is terminated and he is required to vacate and surrender the employer provided housing, it was signed by landlord "Manino Brothers Holdings LLC" and by "Sam Manino."

82. Defendants failed to pay Plaintiff at the state and federally mandated minimum wages rate.

83. Defendants paid Plaintiff a pre-determined flat rate without regard for hours worked in a particular pay period.

84. Defendants directed Plaintiff to perform non-agricultural work but did not pay him an overtime premium for his work performed in excess of forty (40) hours.

85. Defendants did not pay Plaintiff an additional hour of work as required by law when he performed work for more than ten (10) hours in a single day.

86. Defendants unlawfully deducted wages from Plaintiff's paychecks.

87. Defendants failed to employ any timekeeping system to record Plaintiff's work time.

88. Defendants failed to keep any records of work time, breaks, meal periods, or total daily hours worked by Plaintiff.

89. Defendants failed to post required posters at their work sites informing employees of their rights under FLSA and NYLL.

90. Defendants failed to provide Plaintiff Hatfield with a habitable apartment.

FIRST CAUSE OF ACTION
(Fair Labor Standards Act – Minimum Wage and Overtime Violations)
(All Defendants)

91. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

92. Defendants failed to pay Plaintiff minimum wages as required by FLSA, 29 U.S.C. §§ 201, *et. seq.*, and its implementing regulations.

93. Defendants failed to pay Plaintiff overtime wages at a rate of one and one half times his regular rate of pay for every hour or partial hour Plaintiff worked above forty (40) in a work week as required by FLSA, 29 U.S.C. §§ 201 *et. seq.* and its implementing regulations.

94. Defendants' failure to pay the required hourly wage was willful within the meaning of 29 U.S.C. § 255 in that Defendants knew or showed reckless disregard for the issue of whether Defendants' conduct was prohibited by the FLSA.

95. Defendants' made unlawful deductions from Plaintiff's wages.

96. Plaintiff is entitled to his unpaid wages, plus an additional equal amount in liquidated damages, as a consequence of Defendants' unlawful actions and omissions, in accordance with 29 U.S.C. § 216(b).

97. Plaintiff is also entitled to costs of Court, pursuant to 29 U.S.C. § 216(b).

98. Plaintiff also seeks, and is entitled to, attorneys' fees incurred by his counsel, pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
(New York Labor Law – Minimum Wage and Overtime Violations)
(All Defendants)

99. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

100. Defendants failed to pay Plaintiff the required minimum wage in violation of Article 6 and 19(a) of the NYLL and its implementing regulations.

101. Defendants failed to pay Plaintiff the required overtime wage in violation of Article 6 and 19(a) of the NYLL and its implementing regulations.

102. Defendants' failure to pay the required wages as set forth herein was willful within the meaning of NYLL.

103. At no time did Defendants furnish Plaintiff with proper written pay notice at the time of hire or anytime thereafter in violation of NYLL § 195(1).

104. At no time did Defendants furnish Plaintiff with proper wage statements in violation of NYLL § 195(3).

105. Plaintiff is entitled to his unpaid wages mandated by NYLL, statutory damages, plus an additional liquidated damages, as a consequence of the Defendants' unlawful actions and omissions in accordance with NYLL § 198, 663, and 681.

106. Plaintiff also seeks, and is entitled to, attorneys' fees incurred by his counsel, costs of Court, and interest.

THIRD CAUSE OF ACTION
(New York Labor Law – Unlawful Deductions)
(All Defendants)

107. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

108. Defendants willfully violated the rights of Plaintiff by deducting money from his wages for a purpose which was not primarily for the benefit of the Plaintiff and by not securing Plaintiff's voluntary written authorization and without written notice of all terms and conditions of the payment and/or its benefits in violation of NYLL § 193 and its regulations.

109. Defendants willfully violated the rights of Plaintiff by deducting money from his wages and by receiving such payments upon the statement, representation, or understanding that failure to comply with such request or demand would prevent Plaintiff from retaining employment in violation of the NYLL § 198-b and its regulations.

110. Due to Defendants' NYLL violations Plaintiff Hatfield is entitled to recover from Defendants, jointly and severally, his unlawfully deducted wages, liquidated damages, reasonable attorneys' fees, and costs of this action, pursuant to NYLL §§ 198, 663, 681.

FOURTH CAUSE OF ACTION
(New York Labor Law – Spread of Hours)
(All Defendants)

111. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

112. Defendants willfully violated Plaintiff's rights by failing to provide him with an additional hour of pay at the minimum wage rate for days on which his workday spanned more than ten (10) hours.

113. Due to Defendants' NYLL violations Plaintiff Hatfield is entitled to recover from Defendants, jointly and severally, his unpaid spread of hours compensation, liquidated damages, reasonable attorneys' fees, and costs of this action, pursuant to NYLL §§ 198, 663, 681.

FIFTH CAUSE OF ACTION
(New York Real Property Law)
(Defendant Manino Brothers Holdings LLC.)

114. Plaintiff repeats each and every allegation set forth above as if fully set forth herein at length.

115. Defendants failed to provide Plaintiff with premises that were fit for human habitation in violation of N.Y. Real Prop. Law § 235-b and its implementing regulations.

116. Defendants subjected Plaintiff to housing conditions that were dangerous, hazardous, and detrimental to his life, health, and safety in violation of N.Y. Real Prop. Law § 235-b and its implementing regulations.

117. Defendants deducted significant sums of money from Plaintiffs' paystubs as payment for rent.

118. Plaintiff is entitled to his actual damages, reimbursement of deducted rent, and court costs as a consequence of the Defendants' unlawful actions in accordance with NYRPL § 235-b.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that this Court enter an Order:

- i. Assuming jurisdiction over this action;

- ii. Declaring that Defendants violated the FLSA and NYLL and that such violations were willful and intentional;
- iii. Declaring that Defendants violated the NYRPL;
- iv. Permanently enjoining Defendants from further violations of the FLSA, NYLL;
- v. Granting judgment to Plaintiff for claims of unpaid wages as secured by FLSA as well as an equal amount in liquidated damages;
- vi. Granting judgment to Plaintiff on his NYLL claims and awarding unpaid wages, damages for inadequate pay notice, unauthorized pay deductions, spread of hours pay, and statutory liquidated damages, as well as other damages allowed under NYLL;
- vii. Granting judgment to Plaintiff on his NYRPL claims for actual damages, reimbursement of deducted rent;
- viii. Awarding Plaintiff prejudgment and post-judgment interest as allowed by law;
- ix. Awarding Plaintiff reasonable attorney's fees and costs; and
- x. Granting such other and further relief as the Court may deem appropriate.

Date: June 14, 2019
Syracuse, New York

/s/ John A. Marsella
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