

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

_____ )	
MARVIN MENDOZA, )	
<i>Plaintiff,</i> )	C.A. No. _____
) )	
v. )	
) )	
ANDREW TESTO, DANIEL CYLWIK, )	
DANIEL DOE, ASV LLC, and )	
170 FERRY BOULEVARD LLC, )	
<i>Defendants.</i> )	November 10, 2014
_____ )	

**COMPLAINT**

In May of 2013, Marvin Mendoza accepted a full-time position promising \$12 per hour at a new restaurant in Westbrook, Connecticut called Off the Hook Bar and Grill. When he accepted the job, Mr. Mendoza could not have anticipated the illegal and abusive treatment his employers would subject him to. Andrew Testo, Daniel Cylwik, and Daniel Doe required Mr. Mendoza to perform the work of five people while paying him approximately \$3.09 per hour, well below the legal minimum wage. On various occasions, Mr. Testo burst into the kitchen to smash dishes, hurl profanities, and threaten the staff with knives. Mr. Mendoza feared for his life.

Mr. Mendoza repeatedly approached Mr. Testo and Mr. Doe to discuss his inadequate wages. Not only did his employers continue to steal his wages; they ultimately fired Mr. Mendoza for requesting a legal wage. When Mr. Mendoza returned to the restaurant with a local workers’ rights organization to demand his wages, Mr. Testo threatened to call the police.

Mr. Mendoza brings this action to recover the monies owed to him in unpaid wages for work performed, liquidated damages, emotional damages, compensatory damages, punitive

damages, costs, and attorneys' fees under the federal Fair Labor Standards Act, Connecticut statutory provisions, and common law doctrines.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction over Mr. Mendoza's state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper pursuant to 28 U.S.C. § 1391(b), as the events giving rise to this action occurred within this district, and Defendants are located, reside, or do business in this district.

### **PARTIES**

3. Plaintiff Marvin Mendoza is a resident of Connecticut. He worked as a prep cook at Off the Hook Bar and Grill's Westbrook, Connecticut location from May 29, 2013 until April 16, 2014. At all relevant times, Mr. Mendoza was an employee of Defendants.

4. Defendant ASV LLC, d/b/a Off the Hook Bar and Grill, ("Off the Hook Westbrook") is a limited liability company that registered in Connecticut on June 7, 2013 and that owns and operates a seafood restaurant with a full bar. Off the Hook Westbrook is located at 110 Boston Post Road, Westbrook, Connecticut 06498.

5. Defendant 170 Ferry Boulevard LLC, also d/b/a Off the Hook Bar and Grill, ("Off the Hook Stratford") is a limited liability company that registered in Connecticut on February 22, 2012 and that owns and operates a seafood restaurant with a full bar. Off the Hook Stratford is located at 170 Ferry Boulevard, Stratford, Connecticut 06615.

6. Off the Hook Westbrook and Off the Hook Stratford (collectively, the "Off the Hook Defendants" or "Off the Hook") are two locations of Off the Hook Bar and Grill, both owned by Andrew Testo. Both locations perform the same activities for a common business purpose,

through a unified operation that includes shared supplies and staff. They constitute an integrated enterprise.

7. Defendant Andrew Testo is the registered agent and principal of both Off the Hook Westbrook and Off the Hook Stratford. Mr. Testo operates and manages both restaurants. He divides his time between them. Mr. Testo is an individual separate and distinct from the Off the Hook Defendants and is a resident of the state of Connecticut.

8. Defendant Daniel Cylwik is a principal and member of Off the Hook Stratford. Mr. Cylwik also managed Off the Hook Westbrook for the first three months of Mr. Mendoza's employment. Mr. Cylwik is an individual separate and distinct from the Off the Hook Defendants. Upon information and belief, Mr. Cylwik is a resident of the state of Connecticut.

9. Defendant Daniel Doe is a manager of Off the Hook Westbrook. Mr. Doe assumed managerial responsibility at Off the Hook Westbrook after Mr. Cylwik departed. Mr. Doe is an individual separate and distinct from the Off the Hook Defendants. Upon information and belief, Mr. Doe is a resident of the state of Connecticut. Mr. Mendoza does not know Mr. Doe's last name; employees at Off the Hook called him "Danny."

10. At all relevant times, Defendants Testo, Cylwik, and Doe acted as agents of the Off the Hook Defendants.

### **STATEMENT OF FACTS**

#### **Management of Off the Hook Westbrook and Off the Hook Stratford**

11. The Off the Hook Defendants perform related activities for a common business purpose. The two seafood restaurants have the same name, the same menu, and the same logo.

12. Some employees of Off the Hook Westbrook and Off the Hook Stratford work in both restaurants. Mr. Testo and Mr. Cylwik managed both restaurants.

13. Off the Hook Westbrook sells food prepared by Off the Hook Stratford, and vice versa. On at least one occasion, Mr. Mendoza prepared food at Off the Hook Westbrook that Off the Hook Stratford later sold.

14. Upon information and belief, the Off the Hook Defendants had an annual gross volume of sales or business of not less than \$500,000 at all relevant times.

15. Upon information and belief, employees at Off the Hook, including Mr. Mendoza, regularly handled goods or materials that were moved in or produced for interstate commerce. Mr. Mendoza regularly handled and prepared meat, vegetables, and other food. He also used kitchen tools and cleaning products. Upon information and belief, many of these food items, kitchen tools, and cleaning products were produced out of state.

16. Upon information and belief, Mr. Testo split his time between Off the Hook Westbrook and Off the Hook Stratford. For approximately the first six months of Mr. Mendoza's employment, Mr. Testo spent almost every day at Off the Hook Westbrook. Later, he came less often but still maintained a regular presence at Off The Hook Westbrook.

17. On the days that Mr. Testo spent at Off the Hook Westbrook, he personally supervised employees, including Mr. Mendoza. Mr. Testo observed and instructed employees in their work. He also set employees' work schedules.

18. Mr. Testo hired and fired employees, including Mr. Mendoza.

19. Mr. Testo set employees' rate and method of payment. Mr. Testo told Mr. Mendoza his pay rate. On multiple occasions, Mr. Testo delivered Mr. Mendoza's payment in cash.

20. Upon information and belief, Mr. Testo maintained employment records for both Off the Hook locations.

21. Mr. Cylwik worked as a manager and administrator at Off the Hook for the first three

months of Mr. Mendoza's employment. Upon information and belief, he split his time between Off the Hook Westbrook and Off the Hook Stratford, but spent most days at Off the Hook Westbrook.

22. Mr. Cylwik directly supervised Mr. Mendoza and other employees. Mr. Cylwik set work schedules, answered employees' questions, and instructed them in the performance of their job duties. For example, Mr. Cylwik instructed Mr. Mendoza in how to prepare meat and fish.

23. Upon information and belief, Mr. Cylwik was involved in setting employees' rate and method of payment. On at least one occasion, Mr. Cylwik personally paid Mr. Mendoza in cash and showed him a record of his hours.

24. Mr. Cylwik maintained Off the Hook's employment records and business records. Mr. Cylwik recorded the restaurant's inventory in a book and spent part of each day in his office on the computer.

25. Mr. Cylwik participated in hiring and firing decisions. On one occasion, Mr. Cylwik fired a prep cook in front of the other kitchen employees because the cook had prepared an order incorrectly.

26. Mr. Doe worked as a manager at Off the Hook Westbrook for approximately eight months of Mr. Mendoza's employment, after Mr. Cylwik's departure. Mr. Doe directly supervised Mr. Mendoza and other employees. Mr. Doe set work schedules for Mr. Mendoza and the other kitchen employees, answered employees' questions, and instructed them in the performance of their job duties. Mr. Doe observed employees as they worked, walking around the restaurant and watching the kitchen from security cameras in his office.

27. Upon information and belief, Mr. Doe was involved in setting employees' rate and method of payment. Mr. Doe recorded employees' hours for each pay period and reported them

to Mr. Testo for purposes of payment. On at least one occasion, Mr. Doe personally paid Mr. Mendoza in cash.

28. Upon information and belief, Mr. Doe participated in hiring and firing decisions.

29. Mr. Doe maintained Off the Hook's employment and business records. Mr. Doe spent part of each day managing records on the computer. Mr. Doe told Mr. Mendoza that he kept track of all the employees' hours in the computer.

Mr. Mendoza's Employment at Off the Hook

30. Mr. Mendoza worked for Defendants from May 29, 2013 until April 16, 2014.

31. When Mr. Mendoza began working for Defendants, Mr. Testo promised to pay Mr. Mendoza every week at a rate of \$12 per hour.

32. Mr. Mendoza worked for Off the Hook as a prep cook at Off the Hook Westbrook.

33. Off the Hook electronically recorded Mr. Mendoza's hours. Mr. Mendoza indicated his start and end time every day on a computer. He received a ticket recording his hours at the start and end of each shift.

34. Shortly after Mr. Mendoza's arrival, Mr. Testo fired four of Mr. Mendoza's colleagues. As a result, Mr. Mendoza performed the work originally assigned to five people. His new responsibilities included washing dishes, vacuuming the restaurant's rugs, mopping the bar, cleaning the bathroom, and taking out the trash.

35. At the end of Mr. Mendoza's first week of employment, Mr. Cylwik showed him a record of his hours for the week, and paid him in cash an amount equivalent to approximately \$10 per hour, less than the promised hourly wage.

36. After that first week, all wage payments fell below the federal and state minimum wage. During his employment, Mr. Mendoza received an average hourly wage of approximately

\$3.09.

37. Mr. Mendoza received no payment for some weeks.

38. Although Mr. Mendoza often worked over forty hours per week, he never received time and a half of his regular rate for overtime hours.

39. Mr. Mendoza did not receive his promised hourly wage of \$12 for even one of the 47 weeks that he worked at Off the Hook.

40. Mr. Mendoza approached Mr. Testo about his illegal wages at least four times during his employment. Each time that Mr. Mendoza approached him, Mr. Testo promised to pay Mr. Mendoza his owed wages and to hire additional employees.

41. Mr. Mendoza also approached Mr. Doe about his unpaid wages on at least one occasion. On that occasion, Mr. Mendoza presented the paper tickets recording his hours to Mr. Doe as evidence of his owed wages. Mr. Doe told Mr. Mendoza that he did not need the paper tickets because Mr. Doe had access to Mr. Mendoza's hours in the computer. After this interaction, Mr. Mendoza continued to receive insufficient wages for the number of hours he worked.

42. Despite these promises, Defendants continued to withhold Mr. Mendoza's wages and failed to hire additional staff.

43. Upon information and belief, Mr. Testo, Mr. Cylwik, and Mr. Doe knew the federal and state minimum wage laws, but nevertheless disregarded those laws, ignoring Mr. Mendoza's repeated requests for legally sufficient wages and continuing to pay an illegally low wage.

44. Throughout Mr. Mendoza's employment, Mr. Testo and Mr. Doe routinely shouted profanities and insults at Mr. Mendoza and other Off the Hook employees.

45. On multiple occasions, Mr. Testo intentionally threw dishes and food on the kitchen's

floor to intimidate and create additional work for Mr. Mendoza and his colleagues.

46. On multiple occasions, Mr. Testo and Mr. Doe called the Off the Hook employees, many of whom are monolingual Spanish speakers, “bobos” or “idiots” for not speaking Italian while working in the restaurant.

47. Mr. Testo often appeared to be under the influence of drugs and/or alcohol while at Off the Hook.

48. In approximately six instances, Mr. Testo threatened Mr. Mendoza with a kitchen knife. He pressed the knife into Mr. Mendoza’s stomach with enough force to frighten him but not to break the skin. After the first attack, Mr. Mendoza began suffering from insomnia, trembling hands, and an incapacitating fear of Mr. Testo.

49. Mr. Testo knew or should have known that his behavior towards Mr. Mendoza would likely cause emotional distress.

50. On April 16, 2014, Mr. Mendoza once again approached Mr. Testo and Mr. Doe, requesting legally sufficient wages.

51. Mr. Testo and Mr. Doe denied Mr. Mendoza’s request. Mr. Testo shouted harsh profanities, threw a crumpled \$100 bill at Mr. Mendoza, and ordered him to leave his office.

52. In the week following Mr. Mendoza’s April 16 conversation with Mr. Testo and Mr. Doe, Mr. Mendoza called an Off the Hook employee several times to inquire about his work schedule. Each time, the employee said that Mr. Doe had not scheduled Mr. Mendoza for any hours.

53. After about three weeks without being scheduled, Mr. Mendoza understood that Off the Hook had terminated his employment. At that point, Mr. Mendoza returned to Off the Hook Westbrook to request his final wages, but Mr. Doe denied his request and refused to engage with

him.

54. On or about July 21, 2014, Mr. Mendoza returned to Off the Hook Westbrook with representatives from Unidad Latina en Acción (ULA), a workers' rights organization based in New Haven, Connecticut, to deliver a letter demanding the payment of Mr. Mendoza's unpaid wages.

55. Mr. Mendoza and the ULA representatives approached Mr. Doe, but Mr. Doe said he did not have time to talk to them.

56. The group delivered the letter to Mr. Testo after spotting him in the restaurant's general seating area. Mr. Testo shouted profanities, tore up the demand letter, and ordered Mr. Mendoza and the ULA representatives to leave the premises, threatening to call the police.

57. Because of the July 21 incident and Mr. Testo's past violent behavior, Mr. Mendoza feared Mr. Testo would retaliate. He felt so afraid that he moved out of his apartment and relocated to another town in Connecticut.

58. Mr. Mendoza's fear of Mr. Testo's violent behavior continued to haunt him after he left his employment at Off the Hook. On more than one occasion, Mr. Mendoza spotted a truck that resembled Mr. Testo's on the highway and pulled over to the side of the road, fearing that his anxiety might force him to lose control of his car.

**FIRST CLAIM FOR RELIEF**  
**FAIR LABOR STANDARDS ACT ("FLSA")**  
**Against All Defendants**

59. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

60. At all relevant times, Defendants ASV LLC, 170 Ferry Boulevard LLC, Andrew Testo, Daniel Cylwik, and Daniel Doe were joint and/or integrated employers within the

meaning of 29 U.S.C. §§ 203(d), 203(r), and 29 C.F.R. § 791.2.

61. At all relevant times, Mr. Mendoza was an employee of Defendants within the meaning of 29 U.S.C. § 203(e)(1).

62. At all relevant times, Defendants engaged in “commerce” within the meaning of 29 U.S.C. §§ 203(b) and 203(s).

63. Defendants failed to pay Mr. Mendoza the federal minimum wage nearly every week of his employment from May 29, 2013 until April 16, 2014, in violation of 29 U.S.C. § 206(a)(1).

64. Defendants failed to pay Mr. Mendoza overtime for all hours that he worked in excess of forty per week for each week, in violation of 29 U.S.C. § 207(a)(1).

65. Defendants willfully violated FLSA.

66. As a result of these violations, Mr. Mendoza suffered damages.

67. Defendants are jointly and severally liable to Mr. Mendoza for these violations of his rights under federal law.

68. Mr. Mendoza is entitled to an award of damages for unpaid wages and unpaid overtime, plus liquidated damages in an equal amount, as well as attorneys’ fees and costs, in an amount to be determined at trial. 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF**  
**CONNECTICUT MINIMUM WAGE ACT**  
**Against All Defendants**

69. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

70. Mr. Mendoza brings this claim under the Connecticut Minimum Wage Act, Conn. Gen. Stat. §§ 31-68 and 31-72, against all Defendants.

71. At all relevant times, Defendants ASV LLC, 170 Ferry Boulevard LLC, Andrew Testo, Daniel Cylwik, and Daniel Doe were “employers” within the meaning of Conn. Gen. Stat. §§ 31-58(d) and 31-71a(1).

72. At all relevant times, Defendants employed Mr. Mendoza within the meaning of Conn. Gen. Stat. § 31-58(g). At all relevant times, Mr. Mendoza was an employee of Defendants within the meaning of §§ 31-58(e) and 31-71a(2).

73. Defendants, knowingly and in bad faith, failed to pay Mr. Mendoza the Connecticut minimum fair wage almost every week of his employment, in violation of Conn. Gen. Stat. §§ 31-58(i) and 31-60(a).

74. Defendants, knowingly and in bad faith, failed to pay Mr. Mendoza the promised hourly wage due to him for all hours worked, in violation of Conn. Gen. Stat. § 31-71b.

75. Defendants, knowingly and in bad faith, failed to pay overtime wages due to Mr. Mendoza for hours worked in excess of forty per week, in violation of Conn. Gen. Stat. §§ 31-76b and 31-76c.

76. As a result, Mr. Mendoza suffered damages.

77. Defendants are jointly and severally liable to Mr. Mendoza for these violations of his rights under state law.

78. Mr. Mendoza is entitled to an award of damages for unpaid wages and unpaid overtime, plus liquidated damages in an equal amount, as well as attorneys’ fees, in an amount to be determined at trial. Conn. Gen. Stat. §§ 31-68, 31-72.

**THIRD CLAIM FOR RELIEF**  
**FRAUDULENT MISREPRESENTATION**  
**Against Andrew Testo**

79. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding

paragraphs of this complaint as if fully set forth herein.

80. Mr. Testo made representations and, through the Off the Hook Defendants, caused representations to be made that were material to the employment agreement between Defendants and Mr. Mendoza.

81. These representations included promises to pay Mr. Mendoza \$12 per hour. Upon information and belief, Mr. Testo did not intend to perform these promises.

82. Mr. Testo's representations also included statements that Defendants would pay Mr. Mendoza the wages missing from his pay at a later date, which Mr. Testo has not done and did not intend to do.

83. Mr. Testo's representations also included statements that Defendants would hire additional kitchen staff to reduce Mr. Mendoza's workload. Upon information and belief, Mr. Testo did not intend to perform these promises.

84. Upon information and belief, Mr. Testo made these representations in order to induce Mr. Mendoza to continue working for Defendants without being paid sufficiently.

85. Defendants did not pay Mr. Mendoza his promised hourly wage or make up the missing portions of Mr. Mendoza's pay.

86. Mr. Mendoza relied on these promises and continued working for Defendants. His reliance on the promises caused him to suffer from a loss of expected wages.

87. Accordingly, Mr. Mendoza is entitled to compensatory damages equal to the reasonable value of the labor provided to Defendants less the amount paid.

88. Mr. Mendoza is also entitled to punitive damages equal to the cost of litigation less taxable costs.

**FOURTH CLAIM FOR RELIEF**  
**BREACH OF CONTRACT**  
**Against All Defendants**

89. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

90. Defendants entered into an express contract with Mr. Mendoza to pay him \$12 per hour. Each party's acceptance was supported by good and valuable consideration.

91. Defendants breached the contract with Mr. Mendoza by failing to pay contractually established wages for work Mr. Mendoza performed.

92. Mr. Mendoza fulfilled his contractual obligations by laboring to prepare food, wash dishes, vacuum rugs, mop the bar, clean the bathroom, and take out the trash for the benefit of Defendants.

93. Because of Defendants' breach of contract, Mr. Mendoza suffered from a loss of expected wages.

94. Mr. Mendoza is entitled to damages for Defendants' breach of contract.

95. Mr. Mendoza is entitled to monetary damages equal to the amount specified in the contract entered into with Defendants less the amounts paid.

**FIFTH CLAIM FOR RELIEF**  
**UNJUST ENRICHMENT AND QUANTUM MERUIT**  
**Against All Defendants**

96. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

97. By laboring to prepare food, wash dishes, vacuum rugs, mop the bar, clean the bathroom, and take out the trash, Mr. Mendoza provided benefits to Defendants.

98. Mr. Mendoza expected to be compensated for the labor he provided to Defendants.

Defendants knowingly accepted Mr. Mendoza's services and represented to him that Defendants would compensate him in the future.

99. Defendants' failure to pay Mr. Mendoza wages for all labor performed constituted a distinct detriment to Mr. Mendoza.

100. Accordingly, Mr. Mendoza is entitled to money damages equal to the reasonable value of the labor provided to Defendants less the amount paid.

**SIXTH CLAIM FOR RELIEF**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**Against Andrew Testo**

101. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

102. Mr. Testo knew or should have known that his behavior towards Mr. Mendoza would likely cause emotional distress.

103. Mr. Testo's behavior towards Mr. Mendoza was extreme and outrageous.

104. Mr. Testo's violent behavior caused Mr. Mendoza's severe emotional distress.

105. Mr. Testo's violent behavior reveals a reckless indifference to Mr. Mendoza's rights.

106. Accordingly, Mr. Mendoza is entitled to punitive and compensatory damages for his emotional distress.

**SEVENTH CLAIM FOR RELIEF**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**Against Andrew Testo**

107. Mr. Mendoza repeats and re-alleges the allegations contained in the preceding paragraphs of this complaint as if fully set forth herein.

108. Mr. Testo's conduct created an unreasonable risk of causing Mr. Mendoza

emotional distress.

109. Mr. Mendoza's emotional distress was foreseeable.

110. Mr. Mendoza's emotional distress was severe enough that it might result in illness or bodily harm.

111. Mr. Testo's behavior caused Mr. Mendoza's distress.

112. Mr. Testo's violent behavior reveals a reckless indifference to Mr. Mendoza's rights.

113. Accordingly, Mr. Mendoza is entitled to punitive and compensatory damages for his emotional distress.

**PRAYER FOR RELIEF**

WHEREFORE, Mr. Mendoza respectfully requests that this Court:

a. Award Mr. Mendoza monetary damages for unpaid wages and unpaid overtime, plus liquidated damages in an equal amount, as provided by the FLSA, 29 U.S.C. § 216(b), in an amount to be determined at trial;

b. Award Mr. Mendoza monetary damages for unpaid wages and unpaid overtime, plus liquidated damages in an equal amount, as provided by Conn. Gen. Stat. §§ 31-68 and 31-72, in an amount to be determined at trial;

c. Award Mr. Mendoza compensatory damages for Defendants' violations of Connecticut common law, including breach of contract, unjust enrichment, fraudulent misrepresentation, and intentional or negligent infliction of emotional distress;

d. Award Mr. Mendoza punitive damages for Defendants' fraudulent misrepresentation and intentional or negligent infliction of emotional distress;

e. Award attorneys' fees and costs pursuant to 29 U.S.C. § 216(b) and Conn. Gen. Stat. §§ 31-68(a), 31-72; and

f. Grant such additional and further relief as the Court deems just and proper.

Dated: November 10, 2014

/s/ A. Nicole Hallett

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