

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

ROMAN MORENO MARTINEZ and FELIPE
VARGAS,

Case No:

Plaintiffs,

COMPLAINT

-against-

KENNETH ROCKWOOD,

Defendant.

-----X

Roman Moreno Martinez and Felipe Vargas (together “Plaintiffs”), through their attorneys Catholic Migration Services, state and allege as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action against their employer Kenneth Rockwood (“Defendant”) for violations of federal and New York state labor laws, including by willfully failing to pay minimum wage and overtime pay under the Fair Labor Standards Act (“FLSA”) and New York Labor Law (“NYLL”), and failure to provide notice of wage rates and pay statements under the NYLL.
2. Plaintiffs are employed by Defendant at Rockwood Music Hall, a concert venue and bar owned and operated by Defendant and located on Manhattan’s Lower East Side at 196 Allen Street.
3. Plaintiffs are both employed in the position of porter.
4. Beginning in approximately June 2022, Defendant ceased to pay Plaintiffs their regular wages, often paying them only a portion of what they were owed for the proceeding pay period and, during some pay periods, not paying them anything at all.

5. Since that time, Defendant has repeatedly communicated to Plaintiffs his intention to pay them the unpaid wages they are owed yet, to date, has failed to make any such payment.

6. In addition to owing Plaintiffs the above-described unpaid wages, Defendant also owes Plaintiffs unpaid overtime pay. Throughout Plaintiffs' employment, the Defendant compensated Plaintiffs at their regular wage rate for overtime hours for which Plaintiffs were lawfully entitled to receive time-and-a-half.

7. Defendant's failure to timely pay Plaintiffs' wages is compounded by Defendant's further failure to issue wage notices and pay statements to Plaintiffs. Defendant's failure to issue wage notices and pay statements effectively concealed from Plaintiffs, or interfered with Plaintiffs' ability to assess, ongoing wage violations as they were taking place.

8. Rockwood Music Hall declared bankruptcy in March 2023. The list of creditors that was filed with the Bankruptcy Court includes the names of multiple Rockwood Music Hall employees, but Plaintiffs' names are not included.

9. In July 2023, Plaintiffs learned from a fellow employee that Rockwood Music Hall was undertaking fundraising activities in order to repay employees their unpaid wages. From June 2023 through September 2023, Rockwood Music Hall held a series of benefit concerts to raise money for the venue. There is also an ongoing online fundraiser for Rockwood Music Hall on gofundme.com.¹

10. To date, Plaintiffs still have not received any payment toward their unpaid wages.

11. In May 2023, Defendant proceeded to open a brand-new music club. The new club, also called Rockwood Music Hall, is located out-of-state, in Boston.²

¹ *Preserve Rockwood*, <https://www.preserverockwood.com/>, last visited October 25, 2023.

² *New, small music venue opens in Boston's Fenway neighborhood*, [wcvb.com](https://www.wcvb.com/article/new-small-music-venue-opens-in-bostons-fenway-neighborhood/43980095) (May 23, 2023), <https://www.wcvb.com/article/new-small-music-venue-opens-in-bostons-fenway-neighborhood/43980095>.

12. Plaintiffs now bring suit against the Defendant for their unpaid wages and damages. The relevant time period for purposes of this lawsuit is the six-year limitations period permitted by statute.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over Plaintiffs' federal claims pursuant to the Fair Labor Standards Act, 29 U.S.C. § 203, and 28 U.S.C. § 1331.

14. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391, because the events giving rise to the claims occurred in this District.

THE PARTIES

Plaintiffs

16. Plaintiffs Roman Moreno Martinez and Felipe Vargas are employed by Defendant at Rockwood Music Hall, where they work as porters.

17. As porters, Plaintiffs each spend more than 25% of their working time performing physical labor and therefore they are "manual workers" within the meaning of NYLL § 190. Plaintiffs are responsible for attending to each of Rockwood Music Hall's three bars. Plaintiffs' responsibilities include cleaning the bars, floors, windows, and bathrooms. They receive deliveries of beer, wine and liquor. They are responsible for changing the kegs of beer and CO2 tanks. They also refill the ice and refrigerators. Plaintiff Roman Moreno Martinez has additional responsibilities doing maintenance work. In addition, at the time of his hire he performed construction work at the club, helping to build one of Rockwood Music Hall's three bars.

18. The person who hired Plaintiffs is the Defendant.

19. Defendant hired Plaintiff Roman Moreno Martinez in 2009. Since then, Plaintiff Roman Moreno Martinez has worked for the Defendant for approximately fourteen years up to the present.

20. Defendant hired Plaintiff Felipe Vargas in 2013. Since then, Plaintiff Vargas has worked for the Defendant for approximately ten years, up to the present.

Defendant

21. Upon information and belief, at all times relevant to this action, Defendant Kenneth Rockwood was the owner and operator of the Rockwood Music Hall.

22. Defendant opened Rockwood Music Hall in 2005.

23. Rockwood Music Hall is a New York corporation with its principal place of business in New York.

24. Upon information and belief, at all relevant times to this action, Rockwood Music Hall was engaged in the sale of tickets for shows and drinks for consumption on the premises.

25. Upon information and belief, throughout the period Plaintiffs worked for Kenneth Rockwood, Rockwood Music Hall was an enterprise engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 203, in that it:

- a. had employees engaged in commerce or in the production of goods for commerce, or who handled, sold, or otherwise worked on goods or materials that were moved in or produced for commerce by any person; and
- b. had an annual gross volume of sales not less than \$500,000.

26. At all times Plaintiffs worked at Rockwood Music Hall, Kenneth Rockwood, as owner and operator, had control over Plaintiffs, including the ability to (1) hire and fire Plaintiffs; (2) supervise and control Plaintiffs' shifts and conditions of employment; (3) determine Plaintiffs' rate and method of payment; and (4) maintain employment records for Plaintiffs. In possessing

such control, Kenneth Rockwood was Plaintiffs' "employer" within the meaning of the FLSA, 29 U.S.C. § 203, and NYLL § 190.

27. Defendant Kenneth Rockwood hired both Plaintiffs to work at Rockwood Music Hall.

28. Defendant set the wage rate for Plaintiffs and personally paid the Plaintiffs their wages by cash, Zelle, or ACH bank transfer. Defendant typically paid wages on a weekly basis, except during weeks when he paid Plaintiffs no wages.

FACTS

November 2017 – June 2022:

Plaintiffs are paid a regular wage but not overtime

29. From approximately November 2017 to March 2020, Plaintiffs both worked similar schedules. Both worked six days per week, approximately seven to eight hours per day, totaling an average of 45 hours per week.

30. Plaintiffs both received full payment of their agreed upon wages on a weekly basis.

31. Plaintiff Moreno Martinez worked for an agreed upon rate of \$1,000.00 per week.

32. Plaintiff Vargas worked for an agreed upon rate of \$900.00 per week.

33. Plaintiffs did not receive overtime premiums for their hours worked over 40 hours in a week.

34. In addition, Defendant failed to provide Plaintiffs with a notice of wage rate at the time of their hire, or at any time thereafter, in violation of N.Y. Labor Law § 195(1).

35. Throughout their employment, Defendant failed to provide Plaintiffs with pay statements with their weekly pay, which should have included information about the dates and hours of worked covered by that pay statement, the rate of pay and basis thereof, and the gross and net wages, as required by N.Y. Labor Law § 195(3).

36. The Defendant's failure to provide Plaintiffs with a notice of wage rate and pay statements effectively concealed from Plaintiffs, or interfered with Plaintiffs' ability to assess,

ongoing overtime violations as they were taking place. This lack of information about their wage rate and weekly pay statements made it more difficult for the Plaintiffs to keep track of how much they were owed and made it harder for the Plaintiffs to advocate for themselves for the underpayment of wages discussed herein. Furthermore, because of this underpayment of wages, the plaintiffs were deprived of the opportunity to spend their wages on necessary expenses, including household expenses, food, housing, utilities and other items, to save their wages in interest-bearing accounts, to support their families, or to otherwise invest their wages in other ways that could generate additional earnings.

37. In 2021, Plaintiff Moreno Martinez attempted to rent a studio apartment, but was not able to complete the application because he did not have documentary evidence of his income. As a result, Plaintiff Moreno Martinez was forced to pay an additional \$400 more per month in rent in order to remain in the apartment where he was living at the time.

38. Plaintiffs' employment was interrupted approximately from March 2020 through May 2021 due to the closure of Rockwood Music Hall during the COVID pandemic.

39. Upon returning to work after Rockwood Music Hall re-opened Plaintiffs resumed their former work schedules.

40. During this period, Defendant raised Plaintiff Moreno Martinez's rate of pay to \$1,100.00 per week.

41. Plaintiff Vargas continued to work for the previously agreed upon rate of \$900.00 per week.

42. As before, Plaintiffs did not receive overtime premiums, wage notices, or pay statements.

**June 2022 - December 2022:
Plaintiffs work more hours and pay becomes irregular**

43. In June 2022, Defendant increased Plaintiffs' hours. From approximately June 2022 up to and including December 2022, Plaintiffs worked 7 days per week, approximately 7 hours per day, for a total of approximately 50 hours per week.

44. Defendant continued to pay Plaintiff Moreno Martinez \$1,100.00 per week and Plaintiff Vargas \$900.00 per week.

45. Plaintiffs did not receive full payment for their wages on a weekly basis. Many weeks, Defendant paid Plaintiffs only partial wages – sometimes as little as \$300.00 – or no wages at all. As a result, Plaintiffs' wages routinely fell below the lawful minimum wage under the FLSA and NYLL.

46. Plaintiffs did not receive overtime premiums, wage notices, or pay statements.

**January 2023 - June 2023:
Plaintiffs work fewer hours and pay continues to be irregular**

47. In early January 2023, Defendant reduced Plaintiffs' hours. From January 2023 through September 11, 2023, Plaintiffs worked 6 days a week, approximately 7 hours each day, for a total of approximately 42.5 hours each week.

48. At the same time, Defendant reduced Plaintiffs' pay. Plaintiffs' newly agreed upon rate was \$800.00 per week.

49. However, once again, Plaintiffs did not receive full payment for their wages on a weekly basis. Many weeks, Defendant paid Plaintiffs only partial wages, most typically \$400.00, or no wages at all.

50. Defendant paid Plaintiff Moreno Martinez partial wages approximately twelve (12) weekly pay periods. Defendant failed to pay Plaintiff Moreno Martinez at all approximately five (5) weekly pay periods.

51. Defendant paid Plaintiff Vargas partial wages for approximately twelve (12) weekly pay periods. Defendant failed to pay Plaintiff Vargas at all for approximately seven (7) weekly pay periods.

52. As a result, Plaintiffs' wages routinely fell below the lawful minimum wage under the FLSA and NYLL.

53. Plaintiffs did not receive overtime premiums, wage notices, or pay statements.

54. After Plaintiffs' counsel contacted Defendant on or around July 18, 2023, Defendant started to pay Plaintiffs their agreed upon wages of \$800.00 per week.

55. On or around September 11, 2023, Defendant reduced Plaintiffs work schedule to four days per week, approximately 8 hours each day, for a total of approximately 32 hours each week.

56. Plaintiffs' newly agreed upon wage is \$600.00 per week.

57. As of November 10, 2023, Defendant has returned to underpaying Plaintiffs, by paying them \$300.00 per week rather than their agreed upon wage of \$600.00.

58. Through the present, Plaintiffs still do not receive wage notices or pay statements.

**Fundraising and Bankruptcy:
Defendant Attempts to Repay Employees But Not Plaintiffs**

59. On or about March 3, 2023, Defendant Kenneth Rockwood, in his capacity as manager of Kenrock Enterprises LLC, filed for Chapter 11 bankruptcy.

60. On the list of creditors filed with the court, Defendant included several employees of Rockwood Music Hall but not Plaintiffs, even though at the time of filing, Defendant owed Plaintiffs amounts more than any of the other individual employees on the list of creditors. List of Creditors, *In re: Kenrock Enterprises, LLC.*, Bankr. S.D.N.Y. (2022) (No. 23-10197).

61. On or around July 3, 2023, Plaintiffs learned from a coworker about a campaign to raise funds for Rockwood Music Hall. The same coworker said that Plaintiffs and other employees of

Rockwood Music Hall would receive payment toward their unpaid back wages from the proceeds of the fundraising campaign.

62. The campaign, known as “#Preserve Rockwood,” included a series of benefit concerts and an ongoing online fundraiser on gofundme.com.³ Beginning in late June 2023 and continuing through September 2023, Rockwood Music Hall held a series of benefit concerts. More than thirty benefit concerts were held, including four by Grammy award-winning artist Sara Bareilles.⁴

63. To date, Plaintiffs have received no payments towards their back wages.

64. In May 2023, Defendant opened another music venue, also known as Rockwood Music Hall, out of state, in Boston⁵

FIRST CAUSE OF ACTION
For Failure to Pay Minimum Wages under the Fair Labor Standards Act

65. Plaintiffs re-allege and incorporate by reference each of the allegations contained in this Complaint.

66. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of the FLSA, 29 U.S.C. § 203.

67. Defendant failed to pay Plaintiffs Moreno Martinez and Vargas the applicable legal minimum wage for various weeks in 2022 and 2023, in violation of 29 U.S.C. § 206(a).

68. Due to Defendant’s FLSA violation, Plaintiffs are entitled to recover from Defendant their unpaid minimum wages and an equal amount of liquidated damages, as well as reasonable attorneys’ fees and costs of the action.

³ Preserve Rockwood, <https://www.preserverockwood.com/>, last visited October 25, 2023.

⁴ The Preserve Rockwood Benefit Concert Series, <https://www.preserverockwood.com/concert-series>, last visited October 25, 2023.

⁵ *New, small music venue opens in Boston’s Fenway neighborhood*, wcvb.com (May 23, 2023), <https://www.wcvb.com/article/new-small-music-venue-opens-in-bostons-fenway-neighborhood/43980095>.

69. As an employer under the FLSA, Defendant is liable for these damages.

SECOND CAUSE OF ACTION
For Failure to Pay Minimum Wages under the New York Labor Law

70. Plaintiffs re-allege and incorporate by reference each of the allegations contained in this Complaint.

71. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of the New York Labor Law, including but not limited to N.Y. Labor Law §§ 2 and 651.

72. Defendant failed to pay Plaintiffs Moreno Martinez and Vargas the applicable legal minimum wage for various weeks in 2022 and 2023, in violation of N.Y. Labor Law § 652.

73. Defendant's failure to pay Plaintiffs the lawful minimum hourly wage was willful.

74. Due to Defendant's New York Labor Law violations, Plaintiffs are entitled to recover from Defendant their unpaid minimum wages, liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

75. As an employer under the New York Labor Law, Defendant is liable for these damages.

THIRD CAUSE OF ACTION

For Failure to Pay Overtime under the Fair Labor Standards Act

76. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

77. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of the FLSA, 29 U.S.C. § 203.

78. Defendant failed to pay Plaintiffs overtime wages at rates at least one-and-a-half times the regular rate of pay, for each hour worked in excess of 40 hours per week, in violation of 29 U.S.C. § 207.

79. Defendant's failure to pay Plaintiffs their lawful overtime wages was willful.

80. Due to Defendant's FLSA violations, Plaintiffs are entitled to recover from Defendant their unpaid overtime wages and an equal amount of liquidated damages, as well as reasonable attorneys' fees and costs of the action.

81. As an employer under the FLSA, Defendant is liable for these damages.

FOURTH CAUSE OF ACTION

For Failure to Pay Overtime under the New York Labor Law

82. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

83. At all times relevant to this action, Plaintiffs were employed by Defendant within the meaning of New York Labor Law, including but not limited to N.Y. Labor Law §§ 2 and 651.

84. Defendant failed to pay Plaintiffs overtime wages at rates at least one-and-a-half times the regular rate of pay, for each hour worked in excess of 40 hours per week, in violation of the New York Labor Law and accompanying regulations.

85. Due to Defendant's New York Labor Law violations, Plaintiffs are entitled to recover from Defendant, during the period from approximately November 2017 to June 2023, their unpaid overtime wages, liquidated damages, as well as reasonable attorneys' fees, costs of the action, and interest.

86. As an employer under the NYLL, Defendant is liable for these damages.

FIFTH CAUSE OF ACTION

For Failure to Provide Notice of Wage Rates Under New York Labor Law

87. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.
88. Defendant also failed to provide Plaintiffs with a wage notice that informed them of, among other things, their rates of pay.
89. Defendant's acts violated N.Y. Labor Law § 195(1)(a).
90. Because Defendant failed to comply with the statute's requirement to provide wage notice, the wage theft complained of here – to wit, Defendant's failure to pay minimum wage under FLSA and New York Labor Law, and failure to pay Plaintiffs overtime wages – was not prevented and was allowed to persist.
91. Because the wage theft was not prevented, Plaintiffs were denied the opportunity to spend or invest their legally owed wages.
92. Due to Defendant's violations, under NYLL § 198(1-b), Plaintiffs are each entitled to recover from Defendant the statutory maximum of five thousand dollars for Defendant's violation of NYLL § 195(1)(a), interest, reasonable attorneys' fees, costs of the action, and any other relief that the court deems necessary and appropriate.
93. As an employer under the NYLL, Defendant is liable for these damages.

SIXTH CAUSE OF ACTION

For Failure to Provide Pay Statements Under New York Labor Law

94. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs as if fully set forth herein.

95. Throughout Plaintiffs' employment, Defendant failed to provide Plaintiffs with a written statement at the time wages were paid containing all of the information required by NYLL § 195(3), including but not limited to the rate(s) of pay and basis thereof; regular hourly rate of pay; overtime rate of pay; number of regular hours worked; and number of overtime hours worked.

96. Defendant's acts violated NYLL § 195(3) throughout Plaintiffs' employment.

97. Because Defendant failed to comply with the statute's requirement to provide pay statements, the wage theft complained of here – to wit, Defendant's failure to pay minimum wage under FLSA and New York Labor Law, and to pay the Plaintiffs overtime wages – was not prevented and was allowed to persist.

98. Because the wage theft was not prevented, Plaintiffs were denied the opportunity to spend or invest their legally owed wages.

99. Under NYLL § 198(1-d), Plaintiffs are each entitled to recover from Defendant the statutory maximum of five thousand dollars for Defendant's violations of NYLL § 195(3), interest, reasonable attorneys' fees, costs of the action, and any other relief that the court deems necessary and appropriate.

100. As an employer under the NYLL, Defendant is liable for these damages.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs respectfully requests that judgment be granted:

- A. Declaring that Defendants' conduct complained of herein is in violation of federal and New York State labor laws and their respective regulations;
- B. Awarding Plaintiffs unpaid minimum wages due under the FLSA and NYLL;
- C. Awarding Plaintiffs overtime wages due under the FLSA and NYLL;

- D. Awarding Plaintiffs damages for notice violations under the NYLL;
- E. Awarding Plaintiffs liquidated damages under the FLSA and NYLL;
- F. Awarding Plaintiffs attorneys' fees and costs;
- G. Awarding Plaintiffs pre- and post-judgment interest;
- H. Awarding Plaintiffs any such further relief as may be just and proper.

Dated: November 15, 2023
Queens, New York

Respectfully submitted,
By: /s/ Alice Davis

Benjamin Locke
CATHOLIC MIGRATION SERVICES
47-01 Queens Blvd., Suite 203
Sunnyside, NY 11104
(347) 472-3500
adavis@catholicmigration.org
blocke@catholicmigration.org

Attorneys for Plaintiffs