

**JUDGE FORREST**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARIA VIRGINIA ALVARADO ALCANTAR,

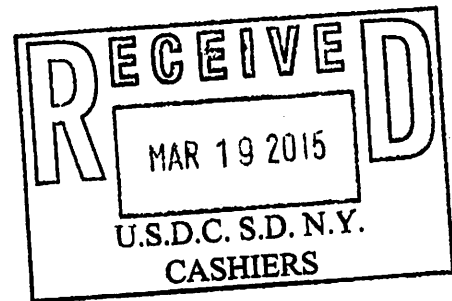
Plaintiff,

-against-

DIARIO DE MEXICO USA, INC., and GERMAN  
A. BAEZ GUTIERREZ

Defendants.

15 CV 02063



**COMPLAINT**

**ECF CASE**

**JURY TRIAL DEMANDED**

Plaintiff Maria Virginia Alvarado Alcantar ("plaintiff" or "Alvarado"), by her attorneys Braverman Law PC and Pechman Law Group PLLC, hereby files this Complaint against Diario de Mexico USA, Inc. ("Diario de Mexico USA") and German A. Baez Gutierrez (collectively referred to herein as "defendants"), and alleges:

**NATURE OF THE ACTION**

1. This action is brought to recover unpaid overtime wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.* (the "FLSA"), and the New York Labor Law § 190, *et seq.* ("NYLL").

2. Plaintiff seeks compensation for unpaid overtime wages, liquidated damages, pre-judgment and post-judgment interest, and attorneys' fees and costs pursuant to the FLSA and NYLL.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the controversy pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 1337, and 1343, and has supplemental jurisdiction over plaintiff's state law claims under the NYLL pursuant to 28 U.S.C. § 1367.

4. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391(b)(2), as plaintiff performed work for defendants within the Southern District.

### **THE PARTIES**

#### **Plaintiff**

5. Plaintiff Alvarado resides in New York County, New York.

6. Between approximately March 2002 and November 11, 2014, Alvarado worked for defendant Diario de Mexico USA as a reporter writing news articles for defendants' print and digital newspaper.

7. At all times relevant to this action, Alvarado has been an employee engaged in commerce or the production of goods for commerce.

#### **Defendants**

8. Defendant Diario de Mexico USA is a New York domestic business corporation, with an office located at 167 Madison Avenue, Suite 401, New York, New York 10016.

9. Diario de Mexico USA owns and operates a Spanish language print and digital newspaper known as "Diario de Mexico USA," which primarily covers stories of interest to the Mexican community living in New York City and in the United States.

10. Diario de Mexico USA is an “enterprise engaged in interstate commerce” within the meaning of the FLSA. Diario de Mexico USA has: (1) employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and (2) an annual gross volume of sales in excess of \$500,000.

11. Defendant German A. Baez Gutierrez (“Baez”) is a person engaged in business in the City and County of New York. Baez is an owner of Diario de Mexico USA, and is sued individually in his capacity as an owner, officer, and/or agent of Diario de Mexico USA. Baez exercises sufficient control over Diario de Mexico USA’s operations to be considered plaintiff’s employer under the FLSA and NYLL, and at all times material herein had the power to hire and terminate employees, to determine the employment rate and method of pay of its employees, and to set terms and conditions of employment.

### **FACTS**

12. Alvarado began working as a reporter for Diario de Mexico USA in approximately March 2002. She worked full-time as a reporter for Diario de Mexico USA until she was terminated on or around November 11, 2014.

13. At all times material herein, Alvarado was a “non-exempt” employee under the FLSA and NYLL.

14. For the duration of Alvarado’s employment by defendants, she was improperly classified as an “independent contractor,” and consequently, defendants did not comply with federal, New York State, and New York City laws regarding tax withholding and employee benefits.

15. Alvarado was assigned coverage of the “local beat,” covering events within the Mexican immigrant community living in or around New York City. Her

principal responsibility was to write standard recounts of public information by gathering facts on routine community events. This included routine, public community events, including annual Mexican holiday celebrations, such as Cinco de Mayo and Mexican Independence Day; articles on marches in support of immigration reform; and events at the U.S.-Mexican Consulate.

16. Throughout her employment with Diario de Mexico USA, Alvarado was subject to direction and control by management of Diario de Mexico USA in both New York and in Mexico City, Mexico.

17. Alvarado's editors directed her to provide, for their approval, an agenda with a brief summary of potential stories at the beginning of each week, including the order in which she planned to cover each story. Alvarado's editors selected the potential stories and topics for Alvarado. Diario de Mexico USA's editors often changed Alvarado's proposals, thereby further limiting her independent judgment as a journalist.

18. Alvarado was frequently directed to write articles covering the visits of Mexican politicians to New York City. These stories were subject to multiple reviews by Diario de Mexico USA's Editor in Chief Perla Guzman, the Editorial Coordinator Ruben Rivero, and the New York City office's General Manager Teresa Cabrero.

19. In addition to review from her editors, Alvarado's articles about political figures were regularly screened and subject to review by the offices of the Mexican politicians. Alvarado did not have license to write freely.

20. Stories that Alvarado submitted for publication were often subject to review by multiple editors of the newspaper in Mexico City, Mexico. Editors regularly changed her stories so that the final work product was a very different piece than what Alvarado first envisioned and wrote.

21. Other stories submitted by Alvarado were edited and published without her input. Many of the stories submitted by Alvarado to her editors were published under the names of her editors, who failed to give Alvarado credit for her contribution.

22. Alvarado was also required to take photographs to accompany the stories she was writing. Management at Diario de Mexico USA would typically tell Alvarado what to photograph for the visuals accompanying the stories.

23. During the course of her employment, Alvarado worked on an average of 65 (sixty-five) hours a week. Typically, she would start working at 8:00 AM and throughout the morning would receive directions from Diario de Mexico USA regarding events or stories she had to cover that day or in the near future. She would spend her afternoon either attending events or writing stories for submission. Since she had to produce up to four (4) stories a day for the paper, she would usually work until at least 7:00 or 8:00 PM and on occasion until approximately 11:00 PM.

24. For the first two years of her employment, *i.e.*, from March 2002 until 2004, Alvarado was paid \$400 per week. Beginning in approximately 2005, and lasting through 2006 (approximately), her pay was increased to \$500 per week.

25. From approximately 2007 through the date of her termination on or around November 11, 2014, Diario de Mexico USA paid Alvarado a salary of \$600 per week.

#### **DEFENDANTS' VIOLATIONS OF THE WAGE THEFT PREVENTION ACT**

26. The NYLL and Wage Theft Prevention Act require employers to provide all employees with a written notice of wage rates at the time of hire and also on or before February 1st of each subsequent year of employment, and an accompanying wage statement each time employees are paid.

27. Defendants paid plaintiff without providing a wage statement listing: the accurate number of regular hours worked, overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

28. Plaintiff was never given a notice, either at the time of hire or on or before February 1st of each subsequent year of employment, as required by Section 195 of the New York Labor Law, containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL §191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer, and anything otherwise required by law.

**FIRST CLAIM  
(Fair Labor Standards Act – Unpaid Overtime)**

29. Plaintiff repeats and realleges paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Defendants are employers within the meaning of 29 U.S.C. §§ 203(e) and 206(a).

31. Defendants were required to pay plaintiff one and one-half (1 1/2) times the regular rate for all hours worked in excess of forty in a workweek pursuant to the overtime wage provisions set forth in the FLSA.

32. Defendants failed to pay plaintiff the overtime wages to which she was entitled under the FLSA.

33. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay plaintiff overtime wages.

34. Due to defendants' violations of the FLSA, plaintiff is entitled to recover her unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**SECOND CLAIM**  
**(New York Labor Law – Unpaid Overtime)**

35. Plaintiff repeats and realleges paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Defendants are employers within the meaning of the NYLL §§ 190, 651(5), 652, and supporting New York State Department of Labor Regulations, and employed plaintiff.

37. Under the NYLL and supporting New York State Department of Labor Regulations, defendants were required to pay plaintiff one and one-half (1 1/2) times the regular rate for all hours worked in excess of forty hours in a workweek.

38. Defendants failed to pay plaintiff the overtime wages to which she was entitled under the NYLL.

39. Defendants willfully violated the NYLL by knowingly and intentionally failing to pay plaintiff overtime wages.

40. Due to defendants' violations of the NYLL, plaintiff is entitled to recover her unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

**THIRD CLAIM**  
**(New York Labor Law – Wage Theft Prevention)**

41. Plaintiff repeats and realleges paragraphs 1 through 40 as if fully set forth herein.

42. Defendants failed to furnish to plaintiff a notice containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL § 191, and anything otherwise required by law in violation of NYLL § 195(1).

43. Due to defendants' violation of NYLL § 195(1), plaintiff is entitled to recover from the defendants liquidated damages of \$50 per workweek when the violation occurred, up to a maximum of \$2,500, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to NYLL § 198(1-b).

44. Defendants failed to furnish to plaintiff with each wage payment, a statement accurately listing: rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked, and the number of overtime hours worked; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages; in violation of NYLL § 195(3).

45. Due to defendants' violation of the NYLL, § 195(3), plaintiff is entitled to recover from the defendants liquidated damages of \$100 per workweek.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests that this Court grant the following relief:

- a. A declaratory judgment that the practices complained of herein are unlawful and willful under the FLSA and the New York Labor Law;
- b. An award of unpaid overtime compensation due under the FLSA and the New York Labor Law;




- c. An award of liquidated damages as a result of defendants' willful failure to pay overtime compensation pursuant to the FLSA and NYLL;
- d. An award of and pre-judgment and post-judgment interest under the FLSA and the NYLL;
- e. An award of costs and expenses of this action together with reasonable attorneys' and expert fees;
- f. An injunction requiring defendants and their officers, agents, successor, employees, representatives and any and all persons acting in concert with them as provided by law to make all FICA and related contributions on behalf of plaintiff which they failed to make by improperly classifying plaintiff as an independent contractor rather than an employee of defendants and prohibiting the defendants from engaging in the unlawful practices, policies and patterns set forth herein; and
- g. Such other and further relief as this Court deems just and proper.

### **DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiff demands a trial by jury in this action.

Dated: New York, New York  
March 19, 2015

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