

JUDGE HELLERSTEIN

13 CIV 4877

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

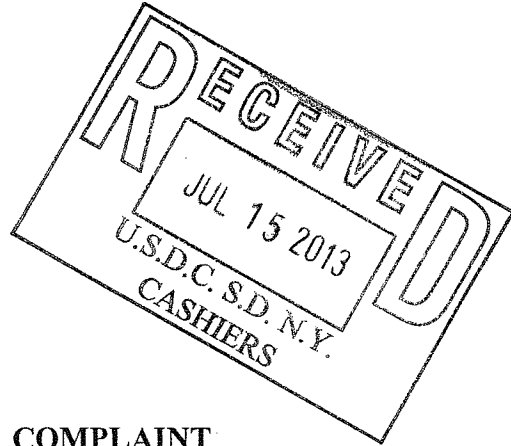
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**PRABIR JUDE SAMUEL,**

**Plaintiff,**

v.

**MONKEY BAR, L.P., and GRAYDON  
CARTER,**

**Defendants.**  
-----X



**COMPLAINT**

**INDEX NO.:**

**DEMAND FOR JURY TRIAL**

1. Plaintiff alleges as follows:

**JURISDICTION AND VENUE**

2. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) and 42 U.S.C. § 1981. This Court has supplemental jurisdiction over the New York state law claims, as they are so related to the claims in this action within the Court’s original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue is proper in this District because Defendants conduct business in this District, and the acts and/or omissions giving rise to the claims herein alleged took place in this District.

## PARTIES

4. All Defendants are hereinafter collectively referred to as “Defendants.”
5. Defendant Monkey Bar, L.P. is a New York corporation that owns and operates the Monkey Bar, a restaurant located in Manhattan.
6. Upon information and belief, Monkey Bar has an annual gross volume of sales in excess of \$500,000.
7. Defendant Graydon Carter is an owner of Monkey Bar.
8. Defendant Carter exercises sufficient control of Monkey Bar’s day to day operations to be considered Plaintiff’s employer under the FLSA and New York law.
9. Defendant Carter has and exercises authority to hire and fire employees including management employees at Monkey Bar.
10. For example, Defendant Carter hired and fired Belinda Chang, a General Manager at Monkey Bar.
11. Mr. Carter also hired Ken Friedman, Julie Reids, Damon Wise, and Michael Bailey at Monkey Bar.
12. Mr. Carter supervises employees at Monkey Bar. He is frequently present and periodically meets with the managers and general manager to discuss the restaurant’s management.
13. Upon information and belief, Mr. Carter has and at times exercises authority to set the rates of pay of employees at Monkey Bar.
14. Upon information and belief, Mr. Carter has ultimate authority over the retention and maintenance of employment records at Monkey Bar.

15. Plaintiff Samuel Jude Prabir worked for Defendants as a foodrunner from approximately January 2013 until his termination in June of 2013.

### FACTS

16. Defendants committed the acts alleged in this Complaint knowingly, intentionally and willfully.

17. Defendants knew that nonpayment of minimum wage would economically injure Plaintiff and violated federal and state laws.

18. Defendants paid Plaintiff less than the full state and federal minimum wages, pursuant to the federal and state tip credits, for his hours worked, including regular hours and overtime hours.

19. Defendants were not entitled to pay Plaintiff pursuant to federal/state tip credits for much of his time worked, because Plaintiff often spent more than 20% of his workdays performing non-tipped work, such as polishing silverware, setting up the expediter's station and preparing sauces.

20. Most/all of the back of the house employees at Monkey Bar during Plaintiff's employment were Mexican.

21. Most/all of the waiters at Monkey Bar during Plaintiff's employment were Caucasian.

22. For all/most of Plaintiff's employment, there were only three Bengali employees at Monkey Bar, and they were relegated to lower level front of the house positions, such as runner and/or busser.

23. For most of Plaintiff's employment, he suffered severe harassment by his coworkers in the back of the house.

24. Management at Monkey Bar, including Christopher Dorsey, General Manager, was well aware of the harassment and did nothing to stop it.

25. For example, Marco Gonzales, executive chef, and Jaime Gonzales, sous chef, (brothers) would often make discriminatory comments to the Bengali employees, such as “what are you [Bengali] people doing here?”

26. When the Gonzales brothers would serve food to the Mexican employees after the night shift ended, they told Plaintiff and the other Bengali employees, “this food is not for you [Bengali] people.” This occurred several times.

27. Runners/bussers were often required to put dishes back in a shelf/area in the kitchen. Jaime Gonzales obstructed the Bengali employees path to the kitchen shelf, telling them “you [Bengali] people are not allowed to cross this line.”

28. The Gonzales complained to Julie Hannigan, assistant manager, in Plaintiff’s presence, that there were too many Bengali employees employed at Monkey Bar.

29. After about three months of undergoing constant mistreatment and harassment by the back of the house employees, Plaintiff complained to Mr. Dorsey in March of 2013. Plaintiff made clear to Mr. Dorsey that the back of the house employees discriminated against and harassed the Bengali employees.

30. Mr. Dorsey promised to call a meeting to address these concerns.

31. While Mr. Dorsey called an entire-staff meeting shortly after Plaintiffs’ complaint. However, Mr. Dorsey mentioned nothing at the meeting about racial discrimination did nothing at all to prevent further harassment against the Bengali employees.

32. Thus, following Plaintiff’s complaint, the harassment escalated.

33. One back of the house employee, Marcel, began to physically threaten Plaintiff, telling Plaintiff frequently that he would “take care of him” and the Plaintiff should “watch [his] step.”

34. Marcel told Plaintiff repeatedly that he found Bengali people to be “lazy,” “dirty,” “nasty,” and “ugly.”

35. In early June 2013, Plaintiff complained to Mr. Dorsey about the overt discrimination.

36. The following day, Defendants retaliated against Plaintiff by terminating his employment.

**FIRST CLAIM FOR RELIEF**  
**(FLSA Minimum Wage Violations, 29 U.S.C. §§ 201, *et seq.*)**

37. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

38. At all relevant times, Defendants have been, and continue to be, “employers” engaged in interstate “commerce” and/or in the production of “goods” for “commerce,” within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed, “employee[s],” including Plaintiff.

39. Throughout the statute of limitations period covered by these claims, Defendants knowingly failed to pay Plaintiff the federal minimum wage for each hour worked.

40. Plaintiff seeks damages in the amount of his unpaid compensation, liquidated (double) damages as provided by the FLSA for minimum wage violations, attorneys’ fees and costs, and such other legal and equitable relief as this Court deems just and proper.

**SECOND CLAIM FOR RELIEF**  
**(FLSA Overtime Violations, 29 U.S.C. §§ 201 *et seq.*)**

41. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

42. Throughout the statute of limitations period covered by these claims, Plaintiff regularly worked in excess of forty (40) hours per workweek.

43. At all relevant times, Defendants had and operated under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the Plaintiff at one and one half times the minimum wage for work in excess of forty (40) hours per workweek and willfully failing to keep records required by the FLSA and relevant regulations even though the Plaintiff had been entitled to overtime.

44. At all relevant times, Defendants willfully, regularly and repeatedly failed to pay Plaintiff at the required overtime rate of one and a half times the federal minimum wage for hours worked in excess of forty (40) hours per workweek.

45. Plaintiff seeks damages in the amount of his unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

**THIRD CLAIM FOR RELIEF**  
**(New York State Minimum Wage Violations, N.Y. Lab. L. §§ 650 *et seq.*)**

46. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

47. Defendants knowingly paid Plaintiff less than the New York State minimum wage.

48. Defendants did not pay Plaintiff the New York minimum wage for all hours worked.

49. Defendants' failure to pay Plaintiff the New York minimum wage was willful.

50. As a result of Defendants' willful and unlawful conduct, Plaintiff is entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

**FOURTH CLAIM FOR RELIEF**  
**(New York State Overtime Violations, N.Y. Lab. L. §§ 650 *et seq.***  
**N.Y. Comp. Codes R. & Regs. Tit. 12, §§ 146-1.4, 137-1.3)**

51. Plaintiff realleges and incorporates by reference all preceding paragraphs as if they were set forth again herein.

52. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime wages for all hours worked in excess of forty (40) hours in any workweek.

53. Defendants willfully, regularly and repeatedly failed to pay Plaintiffs at the required overtime rate of one-and-one-half times the minimum wage for hours worked in excess of forty (40) hours per workweek.

54. As a result of Defendants' willful and unlawful conduct, Plaintiffs are entitled to an award of damages, including liquidated damages, in amount to be determined at trial, pre- and post-judgment interest, costs and attorneys' fees, as provided by N.Y. Lab. Law § 663.

**FIFTH CLAIM FOR RELIEF**  
**(42 U.S.C. § 1981)**

55. Plaintiff incorporates by reference each allegation of each preceding paragraph.

56. In violation of Section 1981, Defendants intentionally discriminated against Plaintiff on the basis of his race and/or ethnicity by:

57. subjecting Plaintiff to a hostile work environment that was severe or pervasive enough to alter the terms and conditions of his employment; and

58. discharging Plaintiff.

**SIXTH CLAIM FOR RELIEF**

**(New York Human Rights Law (“NYSHRL”), N.Y Exec. Law § 296)**

59. Plaintiff incorporates by reference each allegation of each preceding paragraph.

60. In violation of NYSHRL, Defendants intentionally discriminated against Plaintiff on the basis of their race, color, gender and ethnicity by:

61. subjecting Plaintiff to a hostile work environment that was severe or pervasive enough to alter the terms and conditions of his employment; and

62. discharging Plaintiff.

**SEVENTH CLAIM FOR RELIEF**

**(New York City Human Rights Law (“NYCHRL”),  
Administrative Code of the City of New York § 8-107 *et seq.*)**

63. Plaintiff incorporate by reference each allegation of each preceding paragraph.

64. A copy of this Complaint is being served on the New York City Commission of Human Rights.

65. In violation of NYCHRL, Defendants intentionally discriminated against Plaintiff on the basis of his race, color, gender and ethnicity by:

66. subjecting Plaintiff to a hostile work environment that was severe or pervasive enough to alter the terms and conditions of his employment; and

67. discharging Plaintiff.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:



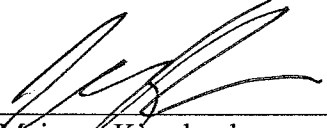
- A. An award of damages, according to proof, including, back pay, front pay, emotional distress damages, punitive damages, and liquidated damages, to be paid by Defendants;
- B. Penalties available under applicable laws;
- C. Costs of action incurred herein, including expert fees;
- D. Attorneys' fees, including fees pursuant to applicable statutes;
- E. Pre-judgment and post-judgment interest, as provided by law; and
- F. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: New York, New York  
June 16, 2013

Respectfully submitted,

JOSEPH & KIRSCHENBAUM LLP

By:



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### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which he has a right to a jury trial.