

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

TRIAL COURT OF MASSACHUSETTS  
SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1881-cv-02674

\_\_\_\_\_ )  
 )  
 on behalf of himself and )  
 all others similarly situated, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JETRO HOLDINGS, LLC; RD MASS, )  
 INC.; RICHARD KIRSCHNER; )  
 BRIAN EMMERT; and JOHN DOES, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

JURY TRIAL DEMANDED

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff (“Plaintiff”), on behalf of himself and all others similarly situated, brings this Class Action Complaint against Jetro Holdings, LLC; RD Mass, Inc.; Richard Kirschner; Brian Emmert; and John Does, seeking damages based on the failure to pay wages.

**PARTIES**

1. Plaintiff is an individual who resides in Lynn, Massachusetts.
2. Defendant Jetro Holdings, LLC (“Jetro”) is a Delaware company with its principal place of business in College Point, New York. Jetro is the payor on paychecks to Plaintiff, and is, according to its website, the corporate parent of the “Restaurant Depot” entities.
3. Defendant RD Mass Inc. (“RD”) is a Delaware company with its principal

place of business in College Point, New York. RD is, on information and belief, a subsidiary of Jetro that operates the “Restaurant Depot” business in Massachusetts. Jetro and RD are referred to herein as “Restaurant Depot.”

4. Defendant Richard Kirschner is an individual, who, on information and belief, resides in Flushing, New York. Mr. Kirschner is the President of RD and therefore individually liable under Massachusetts Wage Law.

5. Defendant Brian Emmert is an individual who, on information and belief, resides in Garden City, New York. Mr. Emmert is the Treasurer of RD and therefore individually liable under Massachusetts Wage Law.

6. John Does are the functional equivalent of the President and the Treasurer of Jetro, whose identity is not known to Plaintiff at this time, but who are individually liable for Jetro’s violations of the Massachusetts Wage Law, together with such other individuals affiliated with Jetro and/or RD with sufficient control over their employment practices to be liable as an employer under Massachusetts Wage Law.

#### **JURISDICTION AND VENUE**

7. This Court has personal jurisdiction over Restaurant Depot because it generally transacts business in the Commonwealth, and because the acts complained of herein occurred in the Commonwealth.

8. Venue is proper in this county because Plaintiff resides in this County.

#### **SUNDAY WAGE LAW**

9. Massachusetts law requires, among other things, that retail employers must pay their employees time and one half their normal hourly rate for all hours worked on Sunday and on holidays. See M.G.L. ch. 136 § 6(50), 13 through 16.

10. The Massachusetts Wage Law requires payment to an employee of all wages earned. See M.G.L.ch. 149 § 148.

11. Employees may bring suit for all wages wrongfully withheld. See M.G.L. ch. 149 § 150.

#### **FACTUAL ALLEGATIONS**

12. Restaurant Depot operates locations in Andover, Needham, Avon, Everett, and Chicopee, Massachusetts.

13. Restaurant Depot sells such retail restaurant equipment as clothing, dinnerware, kitchen appliances, janitorial supplies, sink equipment, and furniture.

14. Plaintiff worked at the Restaurant Depot location in Everett, Massachusetts from approximately December 2017 until September 2018.

15. Plaintiff, as well as other members of the “Class,” as defined below, regularly worked on Sundays and holidays, but was not paid time and one half his regular hourly wage for such work.

#### **CLASS ALLEGATIONS**

16. Plaintiff brings this complaint individually, and on behalf of a class of former or current non-exempt Restaurant Depot employees who have worked for Restaurant Depot on at least one Sunday or covered holiday in Massachusetts within the last three years prior to the filing of this action, but were not paid time and one half their regular hourly wage for such work (the “Class”).

17. Plaintiff is a member of the Class.

18. Numerosity: The members of the Class are so numerous that individual joinder of all Class members is impracticable. On information and belief, the Class

consists of over 500 members. The precise number of Class members and their addresses may be ascertained from Restaurant Depot's payroll records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

19. Commonality: This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. Common questions of law and fact, include, but are not limited to, whether Restaurant Depot violated the Sunday and holiday pay laws.

20. Typicality: Plaintiff's claims are typical of the claims of the Class because he and the other members of the Class were subjected to the same employment practices of Restaurant Depot, principally failing to be paid time and one half rate for work performed on Sundays and holidays.

21. Adequacy of Representation: Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Class he seeks to represent; he has retained counsel competent and experienced in class action litigation; and he intends to prosecute this action vigorously.

22. Superiority: A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims, so it would be impracticable for the Class members to individually seek redress

for Restaurant Depot's wrongful conduct. Even if the Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

**COUNT I**  
**Massachusetts Wage Law**

23. Plaintiffs incorporate all other allegations in the complaint.

24. The wage provisions set forth in M.G.L. ch. 136 § 6(50) and 13 through 16 protect Plaintiff and members of the class.

25. Defendants violated M.G.L. ch. 136 § 6(50) and 13 through 16, and M.G.L.ch. 149 § 148.

26. Restaurant Depot failed to pay Plaintiff and members of the Class wages to which they are entitled.

27. Plaintiff and members of the Class may therefore bring suit under M.G.L. ch. 149 § 150

28. To the extent it may be required, Plaintiff has sought and received a "right to sue" letter with respect to the conduct alleged herein from the Massachusetts Attorney General's Office.

29. As a result of Restaurant Depot's violations of Massachusetts Wage Law, Plaintiff and the members of the Class have suffered damages by being denied wages in amounts to be determined at trial, and they are entitled to recovery of such amounts, treble damages, prejudgment interest, attorneys' fees, costs, and other compensation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that the Court:

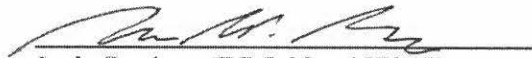
- a. Certify the Class;
- b. Award members of the Class damages to be determined at trial, including, but not limited to treble damages, together with attorneys' fees and costs and pre-judgment and post-judgment interest; and
- c. Grant such other relief as the court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury on all issues so triable.

Dated: November 15, 2018

Individually and on behalf of all others  
similarly situated,  
By his attorneys,



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**Certificate of Service**

I, Josh Gardner, certify that on November 15, 2018 I served a copy of this Amended Class Action Complaint on counsel to Defendants by email and mail.

