

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DAVID S. JONES,

Plaintiff,

Case No. 16-cv-2194

**COMPLAINT**

-v-

Jury Trial Demanded

TREVOR TAHIEM SMITH, Jr., (a/k/a "Trevor  
George Smith, Jr." & "Busta Rhymes") &  
STARBUS LLC,

Defendants.

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Plaintiff, David S. Jones (hereinafter "plaintiff"), by his undersigned attorneys, James Montgomery, Esq., PLLC, brings this action against the defendants, Trevor Tahiem Smith, Jr., (a/k/a "Trevor George Smith, Jr." & "Busta Rhymes") and Starbus LLC, for the relief demanded in this complaint and states as follows:

INTRODUCTION

1. Plaintiff alleges that pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, et seq. ("FLSA"), he is entitled to recover from the defendants: (i) unpaid overtime pay for hours worked in excess of 40 in any given payweek; (ii) liquidated damages equal to the overtime pay

- owed him; (iii) interest as allowed by law; (iv) reasonable attorney's fees and costs.
2. Plaintiff further alleges that pursuant to the New York Labor Law ("Labor Law") he is entitled to recover from the defendants unpaid wages plus liquidated damages in an amount equal to his unpaid wages plus reasonable attorney's fees and costs.
  3. Plaintiff further alleges pursuant to the New York City Human Rights Law ("NYCHRL"), §§ 8-107 and 8-102(5), he is entitled to recover from the defendants: (i) damages for age discrimination in employment; (ii) punitive damages for age discrimination in employment; (iii) interest as allowed by law; (iv) reasonable attorney's fees and costs.
  4. Plaintiff further alleges that pursuant to common law he is entitled to damages and punitive damages from the defendant Smith, for an assault committed on February 6, 2016.
  5. Plaintiff further alleges that pursuant to common law he is entitled to damages and punitive damages from the defendant Smith, for a battery on February 6, 2016.

JURISDICTION & VENUE

6. This Court has jurisdiction over plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331 and has supplemental jurisdiction over plaintiff's NYCHRL, Labor Law and common law claims pursuant to 28 U.S.C. § 1367.

7. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

PARTIES & FACTUAL ALLEGATIONS

8. Plaintiff is a resident of Queens County, New York and works as a chauffeur.
9. Defendant Trevor Tahiem Smith, Jr., ("Smith"), better known by his stage name "Busta Rhymes", is a resident of Kings County, New York.
10. Smith is a hip-hop recording artist, actor, record producer and record executive, who at all material times was engaged in commerce within the United States.
11. Defendant Starbus LLC ("Starbus"), is on information and belief, a limited liability company formed and existing under the laws of the State of California, with a registered office address at 10960 Wilshire Boulevard (5<sup>th</sup> Floor), Los Angeles, California 90024.
12. Starbus, on information and belief, provides transportation for Smith throughout the United States including within this judicial district and was itself at all material times engaged in commerce within the United States.
13. Defendants intentionally violated the FLSA by failing to pay plaintiff overtime pay as required in any payweek in

which he worked more than 40 hours and as follows hereunder.

14. Plaintiff was employed by defendants, within the meaning of 29 U.S.C. 203(a) and 29 U.S.C.(e)(1) (FLSA), and Regulations promulgated thereunder, 29 C.F.R. § 791.2, and was an employee within the meaning of the Labor Law and the defendants are jointly and severally liable with one another.
15. Plaintiff was suffered or permitted to work for defendants, as defined in 29 U.S.C. 203 (g), (FLSA).
16. Plaintiff was employed as aforesaid as a domestic service employee, specifically as the chauffeur of various automobiles for Smith and members of his family, driving Smith and family members to and from his home address and/or various other locations as directed.
17. Smith is an owner, officer, director and/or managing agent of Starbus and participated in the day-to-day management operations and direction of Starbus.
18. Defendants acted intentionally and maliciously towards plaintiff in not paying him overtime pay for hours worked in excess of 40 in any given payweek and are jointly and severally liable with one another to plaintiff for his unpaid overtime, liquidated damages and other remedies as claimed herein.

19. It was orally agreed during September and October 2014 between plaintiff and Smith as follows:
- (i) that plaintiff would be employed 7 days a week by defendants, chauffeuring Smith and other family members from approximately 2 p.m. each day until approximately 5 a.m. the following day, or as required;
  - (ii) that plaintiff would be paid an annual salary of \$100,000 for chauffeuring as aforesaid;
  - (iii) that if plaintiff needed to work shorter hours on any given day, he could designate an acceptable substitute chauffeur to cover all or part of the shift in question.
20. Plaintiff began his duties for defendants as chauffeur on or about October 23, 2014, as an employee.
21. On or about October 27, 2014, Smith told plaintiff that he had to "work on a 1099" because, in summary, Smith had no intention of paying the various employer's taxes which would be required to pay plaintiff "on a W2."
22. Plaintiff, to avoid personal tax irregularities at a later stage and in order to keep his employment with defendants, arranged with Smith's accountants that he would be paid via a corporation plaintiff controlled ("plaintiff's corporation") and would receive a tax form 1099 at the end of each year.

23. Regardless of the arrangement adopted, the economic reality of the relationship between plaintiff and defendants was one of employee and employer, respectively.
24. Plaintiff was employed by defendants as aforesaid until on or about January 26, 2015, when plaintiff resigned because Smith would not permit him to go home to his wife and daughter in the face of a major impending snowstorm and a New York City-wide traffic ban.
25. Thereafter, at the request of Smith, Plaintiff resumed his employment by defendants in the same position with the same duties on or about May 12, 2015, until he was assaulted, battered and dismissed by Smith on February 6, 2016.
26. During his shifts plaintiff was given no designated breaks and his working day lasted from either 2 p.m. or 2.30 p.m. until 5 a.m. the following day.
27. Further, plaintiff was "on duty" at all times during any working day which accordingly was as long as 14.5 hours or 15 hours, depending on Smith's requirements.
28. Plaintiff had no set day of rest and during many weeks worked the full 7 days.
29. Plaintiff's payweek ran from Monday to Sunday each week.
30. On arrival at Smith's home address, plaintiff was required to obtain the keys (from Smith's apartment building concierge) for Smith's automobile of choice for that day.

31. Plaintiff would obtain the keys for any one of the following automobiles owned or controlled by Smith: a GMC "Yukon" truck-limousine, a Maybach limousine or a Ford "Excursion", and bring the vehicle from the apartment building garage.
32. Once plaintiff had obtained the automobile, plaintiff would alert Smith by text message that he was ready to drive Smith as ordered.
33. Plaintiff would thereafter take Smith to different addresses during the day, wait for Smith, take Smith on to other locations, often nightclubs or other places of entertainment and eventually take Smith home at about 5 a.m. the following morning, as aforesaid, or would drive Smith until relieved by a substitute driver.
34. In addition to driving the various automobiles, plaintiff was required to keep them clean and periodically to take them to mechanics when they needed maintenance or repair.
35. Plaintiff had none of the duties of an executive, administrative or professional employee in his employment by defendants.
36. Plaintiff's duties did not include office work and were manual in nature, namely driving as Smith's chauffeur.

37. Further, regardless of the oral agreement made between plaintiff and Smith, plaintiff was not in fact paid an annual salary of \$100,000.
38. Plaintiff was employed by defendants for a total of not less than 53 weeks and received under \$100,000 in salary, namely \$85,753.43.
39. Plaintiff did not provide any vehicle of his own in which to drive Smith or members of his family.
40. Defendants paid for gasoline, toll expenses and all routine running expenses, cleaning and maintenance associated with the above-mentioned automobiles.
41. Plaintiff worked the days and hours as set forth in Ex. 1 attached hereto, made a part hereof by reference.
42. Per FLSA, all hours worked in excess of 40 in any given payweek are overtime hours, to be compensated at time and one half, i.e. the plaintiff's usual hourly rate plus a fifty percent increment.
43. During the period plaintiff was employed by defendants, plaintiff drove a total of 3,958.5 hours, as set forth on Ex. 1 hereto.
44. For these hours, plaintiff was actually paid a total of \$85,753.43, as aforesaid.
45. From his own resources, plaintiff paid relief drivers a total of \$12,000 during his employment by the defendants.



46. Plaintiff's usual paycheck was for \$4,109, twice per month.

47. However, defendants failed to pay plaintiff his wages at all for the second half of November 2014, the second half of January 2016 and the first week of February 2016, for a total of \$10,272.50 in unpaid wages.

48. Plaintiff's hourly rate can be expressed thus:

$$\frac{\text{Money paid} + \text{money owed} - \text{payments to relief drivers}}{\text{Hours worked by plaintiff}}$$

49. Numerically expressed, this is:

$$\frac{85,753.43 + 10,272.50 - 12,000}{3,958.5} = \$21.22 \text{ per hour.}$$

50. Accordingly, plaintiff's overtime rate was  $\$21.22 \times 1.5 = \$31.83$  per hour.

51. Accordingly, plaintiff's overtime "increment" was \$10.61 per hour.

52. Plaintiff received no overtime increment for any of the hours he worked for defendants in excess of 40 in any given payweek.

53. Accordingly, plaintiff is entitled to overtime compensation at the rate of \$10.61 per hour for his unpaid overtime hours as set out on Ex. 1., being 1,909.5 hours, amounting to a total of \$20,259.79, which is plaintiff's "unpaid overtime claim".

54. None of these hours of overtime has been paid by defendants and plaintiff makes demand for the same from them and for

liquidated damages in a sum equal to his unpaid overtime claim, a further \$20,259.79, for a total of \$40,519.59.

55. As aforesaid, defendants willfully failed to pay plaintiff any wages at all for regular hours worked during the periods November 15 through November 30, 2015 inclusive, January 16 through January 31, 2016 inclusive and from February 1 to February 6, 2016 inclusive.

56. Defendants owe plaintiff \$10,272.50 in unpaid wages for said periods, liquidated damages in an equal amount for a total of \$20,545, plus reasonable attorney's fees and costs, all pursuant to the Labor Law.

57. Further, plaintiff was subjected to intentional age discrimination by defendants in violation of the NYCHRL as follows hereunder.

58. Plaintiff was born on January 28, 1959 and was therefore over the age of 40 years at all material times.

59. Smith was born May 20, 1972 and is therefore approximately 13 years younger than plaintiff.

60. On information and belief, defendants had 4 or more employees at the material time.

61. From the outset of plaintiff's employment Smith made derogatory remarks about the plaintiff's age.

62. Smith said: "You drive like an old man" or "you driving your age - I can see that!", when Smith wanted plaintiff to break the speed limit, or to jump red lights.
63. If plaintiff could not recall a particular address or location, Smith remarked: "You can't remember? You just took me there last week!" or "you can't remember? You act like an old man!"
64. These remarks were repeated two to three times a week, were intentionally hurtful, upset the plaintiff and injured his feelings.
65. On February 6, 2016, plaintiff reported for work at 2.30 p.m., as directed.
66. At about 6 p.m. that day, Smith came down from his apartment and angrily demanded to know why his chosen automobile of the day (the GMC Yukon) had not been washed.
67. As plaintiff tried to explain to Smith, he grew angrier still and said "this is going to cost you 3 or 4 days, wait 'til you see your check!"
68. Plaintiff replied "I work too hard for you to be taking money from me." Defendant Smith replied "do what you have to do, fuck that, you messed up my son's birthday!" Plaintiff answered "how did I do that?"
69. Smith then immediately told plaintiff "you're fired! Get the fuck outta here!" and shoved plaintiff hard with both

palms placed on his chest, pushing plaintiff back into the street a distance of 6-8 feet.

70. Smith then immediately stared plaintiff in the eye and clenched his fists, remarking "this is where I'm at with it now!"

71. Defendant Smith's acts caused plaintiff reasonably to fear bodily harm or offensive physical contact by Smith.

72. Plaintiff did not react but instead walked towards the rear of the GMC Yukon vehicle to retrieve his personal property, having been dismissed.

73. As plaintiff tried to do so, Smith shoulder-barged past him and positioned himself between plaintiff and the vehicle, shouting "don't touch my truck! Get your old ass outta here!"

74. Plaintiff's property was then retrieved from the vehicle by a third party present at the scene and handed to him.

75. Defendant Smith's assault and battery of plaintiff humiliated the plaintiff and was harmful to him.

76. On information and belief, Smith that same day hired one Jonathan Skinner, an individual under the age of 40, to replace plaintiff as his full-time chauffeur, Skinner having been plaintiff's relief driver until that point.

77. Defendants caused plaintiff to be dismissed from his employment on account of his age and intentionally

discriminated against plaintiff on grounds of age by doing so.

AS A FIRST CAUSE OF ACTION - UNPAID OVERTIME CLAIM

PER FLSA AGAINST DEFENDANTS

78. Plaintiff repeats all the preceding paragraphs of this complaint as if fully set forth below.
79. Defendants employed plaintiff as a domestic service worker, namely a chauffeur for Smith and his family, for the periods stated as aforesaid.
80. Plaintiff was entitled to be paid overtime at the rate of one and a half times his hourly rate for all hours worked in excess of 40 in any given payweek.
81. Plaintiff's hourly rate was as aforesaid, \$21.22 per hour.
82. Plaintiff's overtime rate was \$31.83 per hour, with an overtime increment of \$10.61 per hour.
83. Plaintiff worked the overtime hours and regular hours as set forth on Ex. 1 attached hereto, incorporated by reference.
84. Plaintiff is owed \$20,259.79 in overtime pay for the 1,909.5 hours of overtime worked for defendants.
85. In addition to the aforesaid overtime pay owed him by defendants, plaintiff is statutorily entitled to an award of liquidated damages in the same amount, namely \$20,259.79, for a total of \$40,519.59.

86. Plaintiff is further statutorily entitled to an award of costs, interest as allowed by law and reasonable attorney's fees in this matter.

AS A SECOND CAUSE OF ACTION - CLAIM FOR UNPAID WAGES

PER THE LABOR LAW AGAINST DEFENDANTS

87. Plaintiff repeats all the preceding paragraphs of this complaint as if fully set forth below.

88. Plaintiff was employed by defendants in the position, for the dates and on the terms as aforesaid.

89. Defendants failed to pay plaintiff his earned wages for the following periods: November 15-30, 2015 inclusive; January 16-31, 2016 inclusive; February 1-6, 2016 inclusive.

90. Plaintiff is owed a total of \$10,272.50 in unpaid wages.

91. In addition, plaintiff demands liquidated damages of the defendants in an equal sum, namely \$10,272.50 for a total claim of \$20,545, plus costs and reasonable attorney's fees.

AS A THIRD CAUSE OF ACTION - DAMAGES FOR

AGE DISCRIMINATION PER NYCHRL AGAINST DEFENDANTS

92. Plaintiff repeats all the preceding paragraphs of this complaint as if fully set forth below.

93. Smith repeatedly made derogatory remarks about the plaintiff's age as aforesaid.

94. These remarks were intentional and injured the feelings of the plaintiff.
95. At all material times plaintiff was employed by defendants pursuant to NYCHRL 8-102(5).
96. At all material times defendants had four or more employees.
97. Smith dismissed plaintiff on February 6, 2016 and in so doing made further derogatory remarks about his age and accompanied these acts with threats and acts of violence towards plaintiff, as aforesaid.
98. Once plaintiff was dismissed, Smith hired one Jonathan Skinner, an individual under the age of forty years, to replace the plaintiff in the same position.
99. By reason of the matters complained of, plaintiff is entitled to damages and punitive damages for age discrimination against defendants, in the sum of not less than \$75,000 to be determined by a jury in due course.
100. Plaintiff is entitled to an award of costs and reasonable attorney's fees in this matter.

AS A FOURTH CAUSE OF ACTION - DAMAGES FOR  
ASSAULT BY DEFENDANT SMITH

101. Plaintiff repeats all the preceding paragraphs of this complaint as if fully set forth below.

102. Defendant Smith, on or about February 6, 2016, intentionally caused plaintiff to fear harmful or offensive physical contact in that Smith pushed and barged plaintiff as aforesaid and threatened him with physical violence.

103. Defendant Smith's acts caused plaintiff reasonably to apprehend bodily harm or offensive physical contact.

104. Defendant Smith's actions towards plaintiff were humiliating and harmed plaintiff.

105. Such acts were without plaintiff's consent.

106. By reason of the conduct complained of plaintiff demands damages and punitive damages against defendant Smith for assault, in the sum of not less than \$50,000 to be determined by a jury in due course.

AS A FIFTH CAUSE OF ACTION - DAMAGES FOR  
BATTERY BY DEFENDANT SMITH

107. Plaintiff repeats all the preceding paragraphs of this complaint as if fully set forth below.

108. Defendant Smith, on or about February 6, 2016, twice intentionally pushed and barged plaintiff, without plaintiff's consent.

109. Such pushing and barging by defendant Smith caused an offensive bodily contact to plaintiff.

110. Defendant Smith's actions towards plaintiff were humiliating and harmed plaintiff.



111. By reason of the conduct complained of plaintiff demands damages and punitive damages against defendant Smith, in the sum of not less than \$50,000 to be determined by a jury in due course.

DEMAND FOR JURY TRIAL

112. Plaintiff demands trial by jury on all claims made herein.

WHEREFORE, Plaintiff demands judgment against the defendants as follows hereunder:

A: Under the First Cause of Action: against both defendants, the sum of \$20,259.79 in unpaid overtime, plus an equal amount in liquidated damages, pursuant to the FLSA, for a total of \$40,519.59.

B: Under the Second Cause of Action: against both defendants, the sum of \$10,272.50 in unpaid wages, plus an equal amount in liquidated damages, pursuant to the Labor Law, for a total of \$20,545.

C: Under the Third Cause of Action: against both defendants, an award of damages and punitive damages for age discrimination in employment, in a sum not less than \$75,000 to be determined by a jury and pursuant to the NYCHRL.

D: Under the Fourth Cause of Action: against defendant Smith, an award of damages and punitive damages for

assault, in a sum not less than \$50,000 to be determined by a jury.

E: Under the Fifth Cause of Action: against defendant Smith, an award of damages and punitive damages for battery, in a sum not less than \$50,000 to be determined by a jury.

F: Further, plaintiff is entitled under all causes of action to an award of costs and interest as allowed by law and under the First and Second Causes of action, to an award of reasonable attorney's fees.

JAMES MONTGOMERY, ESQ., PLLC

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