

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF NEW YORK

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MOHAMMED TAJUL ISLAM,

Index No. 016334/10 – NY

Plaintiff,

**[CORRECTED]**  
**FIRST AMENDED VERIFIED**  
**COMPLAINT**

-against-

SALMA HOSSAIN dba LUFTA and  
MOHAMMAD ANWER HOSSAIN “MD”,

Defendants.  
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Plaintiff Mohammed Tajul Islam, by his attorneys MFY Legal Services, Inc., alleges as follows:

#### NATURE OF THE ACTION

1. Plaintiff Mohammed Tajul Islam brings this action to recover unpaid wages and overtime earned when he worked for Defendants at food carts they owned and/or operated in downtown Manhattan.
2. From May 2009 to March 2010, Islam worked at least 12 hours a day, six days a week at Defendants’ food carts, constantly on his feet and in all types of weather. Defendants paid him only sporadically for his work, and never paid him overtime.
3. Additionally, Islam received numerous tickets from the City of New York for failure of the carts and equipment, which were owned and/or controlled by Defendants, to comply with city codes. Defendants promised to cover the cost of these tickets but never paid them, thus placing Islam’s own food vending license in jeopardy.
4. In this case, Islam seeks to recover from Defendants the amount of his unpaid wages, unpaid overtime, liquidated damages, and reimbursement for the tickets he received pursuant to New York Labor Law, Article 6 § 190, *et seq.*, and Article 19 § 650, *et seq.*

## **JURISDICTION AND VENUE**

5. Jurisdiction is proper pursuant to Civil Court Act § 201.

6. Venue is appropriate in this Court pursuant to Civil Court Act § 301(a) because Plaintiff resided in New York County at the time he filed the case.

## **PARTIES**

7. Plaintiff Mohammed Tajul Islam is an adult individual residing in New York City, in Bronx County. Plaintiff was residing in New York County at the time he filed the case.

8. Plaintiff Mohammed Tajul Islam holds a valid individual mobile food vendor license from the City of New York.

9. Upon information and belief, Defendant Salma Hossein, dba "Luthfa," is an adult individual residing in New York City.

10. Upon information and belief, Defendant Salma Hossein, dba "Luthfa," owns one or more food vending carts licensed in New York City, rents other carts, and operates a business selling food from the carts. Upon information and belief, Defendant Salma Hossein, dba "Luthfa," hires workers to staff the carts, and has power to hire and fire the workers, set their wages and schedules, pay the workers, and maintain records of work hours and wages.

11. Upon information and belief, Defendant Mohammad Anwer Hossein is an adult individual residing in New York City.

12. Upon information and belief, Defendant Mohammad Anwer Hossein owns one or more food vending carts licensed in New York City, rents other carts, and operates a business selling food from the carts. Upon information and belief, Defendant Mohammad Anwer Hossein hires workers to staff the carts, and has power to hire and fire the workers, set their wages and schedules, pay the workers, and maintain records of work hours and wages.

13. At all times relevant to this action, Defendants were Plaintiff's employers within the meaning of New York Labor Law.

### STATEMENT OF FACTS

14. Upon information and belief, Defendants own and operate an unincorporated business selling food from a number of carts on the street. Many of Defendants' carts operate near the corner of Broadway and Canal Street in Manhattan. Several carts operate 24 hours a day, seven days a week.

15. Defendants hired Islam in or around May 2009.

16. Defendants told Islam he would work 12-hour shifts from about 8 a.m. to 8 p.m.

17. Defendants promised Islam wages of \$100 per day.

18. Defendants also promised to pay the cost of any fines related to the operation of the carts assessed by the City of New York and its regulatory agencies.

19. Islam did not provide any equipment for his work. Defendants supplied the carts, the food, and all necessary equipment such as propane tanks and paper goods.

20. Islam did not retain any portion of the proceeds from sales at the carts as tips, commissions, or otherwise. His only pay was the daily wages.

21. Islam began work on approximately May 2, 2009.

22. He generally worked six days a week. His schedule would sometimes vary according to instructions from Defendants.

23. Often Islam would be required to stay at work more than 12 hours a day to wait for the next person to take over the night shift.

24. Islam worked at several different carts, according to instructions from Defendants.

25. Defendants did not pay Islam on a regular basis. Rather, Defendant Mohammad Anwer Hossein would give Islam varying amounts of money sporadically. The payments almost never amounted to the full wages Islam had earned at the promised rate of \$100 a day.

26. Upon information and belief, Defendants kept no record of payments to Islam.

27. Islam contemporaneously recorded in a notebook the number of days he worked each month. He also contemporaneously recorded the days when he received wages from Defendants and the amount he had received.

28. During the course of his work for Defendants, Islam received numerous tickets in his own name for Health Code violations involving the condition of Defendants' food carts.

29. The tickets involve fines from fifty to one thousand dollars. Islam showed the tickets to Defendants and asked them to pay, but they refused to do so.

30. If Islam fails to pay these fines before his food vendor license expires in March 2011, the license cannot be renewed and Islam will lose the basis of his livelihood.

31. By March 2010, Islam was no longer willing to work without knowing he would be paid the full amount he had earned. He told Defendants he would no longer work for them, and demanded the amount still owed to him for the work he had performed.

32. However, Defendants refused and continue to refuse to pay him the amount owed.

33. In their Answer to Plaintiff's original Complaint, Defendants assert several frivolous counterclaims, for which the legal basis is unclear, and seek \$20,500 in damages from Plaintiff.

34. Upon information and belief, Defendants asserted these counterclaims in retaliation for Plaintiff's filing his Complaint against them.

**FIRST CLAIM FOR RELIEF  
MINIMUM WAGE AND OVERTIME VIOLATION: FAIR LABOR STANDARDS  
ACT**

35. Plaintiff realleges and incorporates by reference all preceding paragraphs.

36. Upon information and belief, Defendants at all relevant times owned and operated an enterprise engaged in commerce within the meaning of the Fair Labor Standards Act (“FLSA”).

37. Defendants willfully failed to compensate Plaintiff the minimum wage for the hours he worked, in violation of the FLSA, 29 U.S.C. § 206(a).

38. Defendants willfully failed to pay Plaintiff overtime compensation for each hour he worked in excess of forty hours in a workweek in violation of the FLSA, 29 U.S.C. § 207.

39. Upon information and belief, Defendants made no good faith effort to comply with the FLSA with respect to the compensation of Plaintiff.

40. As a result of the foregoing, Plaintiff is entitled to recover from the Defendants amounts to be proven at trial for his unpaid minimum and overtime wages, an additional equal amount as liquidated damages, reasonable attorney’s fees, and the costs of the action, pursuant to 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF  
MINIMUM WAGE AND OVERTIME VIOLATION: NEW YORK LABOR LAW**

41. Plaintiff realleges and incorporates by reference all preceding paragraphs.

42. At all times relevant to this action, Defendants were Plaintiff’s employers within the meaning of New York Labor Law §§ 2 and 651.

43. At all times relevant to this action, Plaintiff was Defendants’ employee within the meaning of New York Labor Law §§ 2 and 651.

44. Defendants willfully required, suffered, or permitted Plaintiff to work for wages below the legal minimum wage, in violation of the State Minimum Wage Act, New York Labor Law § 652; 12 NYCRR § 142-2.1.

45. Defendants also willfully failed to pay Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for each hour worked in excess of forty hours in a workweek as required under New York Labor Law § 160, 12 NYCRR § 142-2.2.

46. As a result of Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants amounts to be proven at trial for unpaid minimum and overtime wages, liquidated damages equal to twenty-five percent of the total wages found to be due, reasonable attorney's fees, and the costs of the action, pursuant to New York Labor Law § 663(1).

**THIRD CLAIM FOR RELIEF**  
**FREQUENCY OF PAYMENT VIOLATION: NEW YORK LABOR LAW**

47. Plaintiff realleges and incorporates by reference all preceding paragraphs.

48. Defendants failed to pay Plaintiff his wages on either a weekly or semi-monthly basis, in violation of New York Labor Law § 191.

49. Defendants failed to pay Plaintiff wages owed to him after he ceased working for Defendants by the next regular pay day, in violation of New York Labor Law § 191.

50. As a result of Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants, jointly and severally, the full amount of wages owed to him, liquidated damages equal to twenty-five percent of the total amount of wages found to be due, reasonable attorney's fees, and the costs of the action, pursuant to New York Labor Law § 663(1).

**FOURTH CLAIM FOR RELIEF**  
**SPREAD-OF-HOURS VIOLATION: NEW YORK LABOR LAW**

51. Plaintiff realleges and incorporates by reference all preceding paragraphs.

52. Plaintiff routinely worked more than ten hours per day.

53. Defendants willfully failed to pay Plaintiff an extra hour of pay at the basic minimum wage rate for each day Plaintiff worked more than ten hours per day (“spread-of-hours pay”), in violation of New York Labor Law § 650, *et seq.*; 12 NYCRR § 142-2.4.

54. As a result of Defendants’ New York Labor Law violations, Plaintiff is entitled to recover from Defendants amounts to be proven at trial for his unpaid spread-of-hours pay, liquidated damages equal to twenty-five percent of the spread-of-hours pay found to be due, reasonable attorney’s fees, and costs of the action, pursuant to New York Labor Law § 663(1).

**FIFTH CLAIM FOR RELIEF  
EMPLOYMENT RECORDS VIOLATION: NEW YORK LABOR LAW AND FLSA**

55. Plaintiff realleges and incorporates by reference all preceding paragraphs.

56. Upon information and belief, Defendants intentionally failed to maintain adequate and accurate written records for the hours worked and wages earned by plaintiff in order to facilitate their exploitation of plaintiff’s labor.

57. Defendants’ knowing and intentional acts constitute a violation of 29 U.S.C. § 211(c) and 29 C.F.R. § 516.2.

58. Defendants’ knowing and intentional acts constitute a violation of N.Y. Lab. Law § 195(4) and 12 N.Y.C.R.R. §§ 137-2.1, 137-2.2.

59. As a result of the foregoing, Plaintiff has been injured, and Defendants have profited thereby, in an amount to be proven at trial.

**SIXTH CLAIM FOR RELIEF  
ILLEGAL DEDUCTIONS: NEW YORK LABOR LAW**

60. Plaintiff realleges and incorporates by reference all preceding paragraphs.

61. By requiring Plaintiff to pay fines that were the responsibility of Defendants, and failing to reimburse him for the amount of the fines, Defendants illegally deducted the amount of fines from Plaintiff's wages in violation of New York Labor Law § 193.

62. As a result of Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants the total amount of fines he was required to pay, liquidated damages equal to twenty-five percent of the amount of fines Plaintiff was required to pay, reasonable attorney's fees, and costs of the action, pursuant to New York Labor Law § 663(1).

**SEVENTH CLAIM FOR RELIEF  
ILLEGAL KICKBACKS UNDER NEW YORK LABOR LAW**

63. Plaintiff realleges and incorporates by reference all preceding paragraphs.

64. At all times relevant to this action, Defendants were persons within the meaning of New York Labor Law § 198-b.

65. Defendants demanded that Plaintiff kick back a portion of his wages each month by requiring him to pay fines that were the responsibility of Defendants, and failing to reimburse him for the amount of the fines, in violation of New York Labor Law § 198-b.

66. As a result of Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants the total amount of fines he was required to pay, liquidated damages equal to twenty-five percent of the amount of fines Plaintiff was required to pay, reasonable attorney's fees, and costs of the action, pursuant to New York Labor Law § 663(1).

**EIGHTH CLAIM FOR RELIEF  
RETALIATION: NEW YORK LABOR LAW**

67. Plaintiff realleges and incorporates by reference all preceding paragraphs.

68. Defendants retaliated against Plaintiff after he filed the instant proceeding, by including baseless and frivolous counterclaims in their Answer and seeking \$20,500 in damages,



despite the fact that the asserted claims have no basis in the law, in violation of New York Labor Law § 215.

69. As a result of Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants damages and reasonable attorney's fees, pursuant to New York Labor Law § 215(2).

**NINTH CLAIM FOR RELIEF  
BREACH OF CONTRACT**

70. Plaintiff realleges and incorporates by reference all preceding paragraphs.

71. Defendants and Plaintiff agreed that Defendants would reimburse Plaintiff for all New York City-assessed fines incurred in the course of his employment by Defendants.

72. Defendants breached that agreement because they never reimbursed Plaintiff for the fines he incurred during the course of his employment.

73. Plaintiff is entitled to damages in the amount of all fines he incurred that Defendants promised to but did not reimburse, pursuant to New York common law, in an amount to be determined at trial.

**PRAYER FOR RELIEF**

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

1. Award Plaintiff unpaid minimum wages and an additional amount equal to twenty-five percent of the unpaid minimum wages as liquidated damages, pursuant to New York Labor Law § 663(1);
2. Award Plaintiff unpaid minimum wages and an additional equal amount as liquidated damages, pursuant to 29 U.S.C. § 216(b);

3. Award Plaintiff unpaid overtime wages and an additional amount equal to twenty-five percent of the unpaid overtime wages as liquidated damages, pursuant to New York Labor Law § 663(1);

4. Award Plaintiff unpaid overtime wages and an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b)

5. Award Plaintiff the full amount of wages that were not paid on a regular basis, and an additional amount as liquidated damages, pursuant to New York Labor Law § 198;

6. Award Plaintiff the full amount of unpaid spread-of-hours wages, as well as an additional amount equal to twenty-five percent, pursuant to New York Labor Law § 663(1);

7. Award Plaintiff the full amount of the illegal deductions and/or kickbacks, and an additional amount as liquidated damages, pursuant to New York Labor Law § 198;

8. Award Plaintiff reasonable damages for retaliatory counterclaims, pursuant to New York Labor Law § 215(2).

9. Award Plaintiff prejudgment interest, pursuant to New York CPLR §§ 5001 and 5004;

10. Award Plaintiff the costs of this action together with reasonable attorney's fees pursuant to New York Labor Law §§ 198 and 663(1) and 29 U.S.C. § 216(b); and

11. Such other and further relief as this Court deems necessary and proper.

Dated: New York, New York  
November 15, 2010

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Rachel Spector, Esq., of counsel to  
Christopher Lamb, Esq.  
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VERIFICATION

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

MOHAMMED TAJUL ISLAM, being duly sworn, deposes and says:

I am the Plaintiff named in the Verified Amended Complaint. I have read the Verified Amended Complaint and the contents thereof are true to my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

\_\_\_\_\_  
MOHAMMED TAJUL ISLAM

Sworn to before me this  
\_\_\_ day of November, 2010

\_\_\_\_\_  
NOTARY PUBLIC