

IZ PARKING, INC.
470 West 165 St., Ste. 52
New York, NY 10032

FAYAZ DOE
470 West 165 St., Ste. 52
New York, NY 10032

ZAFAR MAJEED
56 Veltri Lane
Yonkers, NY 10704

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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CHRISTIAN BORREY, :
 :
 Plaintiff, : Index No.: _____
 :
 -against- :
 : **COMPLAINT**
 AD PARKING, INC.; IZ PARKING, INC.; :
 FAYAZ DOE; and, ZAFAR MAJEED, :
 : **JURY TRIAL DEMANDED**
 Defendants. :
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Plaintiff Christian Borrey, by his attorneys MFY Legal Services, Inc., alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Christian Borrey (“Borrey” or “plaintiff”) brings this action to recover unpaid minimum wages and overtime earned working as a parking lot attendant for defendants.
2. From May 2010 to December 2012, Borrey worked nearly twelve hours a day, seven days a week, and rarely got days off. Defendants paid him well below minimum wage for his work, and never paid him overtime. At the end of 2012, defendants fired plaintiff because he had taken time off for the birth of his child.
3. Borrey seeks unpaid wages, unpaid overtime, spread-of-hours pay, liquidated damages, and damages for failure to provide statements with pay, pursuant to New York Labor Law §§ 198 (1-d) and 663.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over defendants pursuant to New York CPLR § 301 because defendants operate their business in the State of New York, County of New York.

5. This Court has subject matter jurisdiction over New York Labor Law claims as a Court of general jurisdiction.

6. Venue in this Court is proper under New York CPLR § 503 (c). Defendants AD Parking, Inc. and IZ Parking, Inc. have their principal place of business in the State of New York and within New York County. Defendants Zafar Majeed and Fayaz Doe own and operate defendants AD Parking, Inc. and IZ Parking, Inc.

PARTIES

7. Borrey is an adult individual residing in Bronx County, New York City.

8. Borrey worked for defendants at a parking lot located at 30-30 Northern Boulevard, Long Island City, New York (“Parking Lot”) from May 2010 until December 2012.

9. The Parking Lot has been continuously run by the named individual defendants here, on the same premises, using the same equipment, and with similar personnel, without interruption, from the time Borrey began working there to the present. Defendants have used various corporate names to operate this continuous business.

10. Upon information and belief, defendant Zafar Majeed (“Majeed”) is an owner, manager, and majority shareholder of AD Parking, Inc. and IZ Parking, Inc. His usual place of business is 470 West 165 St., Ste. 52, New York, NY 10032. Defendant Majeed is a resident of Westchester County, New York.

11. From the beginning of Borrey’s employment through the present, Majeed exercised operational control and policymaking authority over employment policies, compensation policies, employee wages, employee hours, and employee schedules at the Parking Lot.

12. Upon information and belief, defendant Fayaz Doe (“Fayaz”) is an owner,

operator, and majority shareholder of AD Parking, Inc. and IZ Parking Inc. His usual place of business is 470 West 165 St., Ste. 52, New York, NY 10032. Upon information and belief, defendant Fayaz is a New York resident.

13. From the beginning of Borrey's employment through the present, Fayaz exercised operational control and policymaking authority over employment policies, compensation policies, employee wages, employee hours, and employee schedules at the Parking Lot.

14. Defendant AD Parking, Inc. is a New York business corporation with its principal place of business at 470 West 165 St., Ste. 52, New York, NY 10032. AD Parking, Inc. was incorporated on January 4, 2012. Upon information and belief, AD Parking, Inc. owns and operates parking lots in the Bronx, Brooklyn, and Queens.

15. Upon information and belief AD Parking, Inc. operates the Parking Lot and is a successor to Borrey's employer.

16. Defendant IZ Parking, Inc. is a New York business corporation with its principal place of business at 470 West 165 St., Ste. 52, New York, NY 10032. IZ Parking, Inc. was incorporated on January 4, 2012.

17. IZ Parking, Inc. operates the Parking Lot and is a successor to Borrey's employer. At the front of the Parking Lot is a sign that reads "IZ Parking."

STATEMENT OF FACTS

18. Defendants own and operate the Parking Lot.

19. On or about May 2, 2010, defendant Fayaz hired Borrey to work as an attendant at the Parking Lot. Defendant Fayaz told Borrey that he would be required to work seven days a week, for twelve hours each day, and that his initial pay would be \$350 per week. Defendant Fayaz also told Borrey that defendants would prepare Borrey's tax filings, but never had Borrey

fill out tax documents.

20. Borrey began working that same day.

21. At the time Borrey was hired, AD Parking, Inc. and IZ Parking, Inc. had not yet been incorporated. Defendants Majeed and Fayaz operated the Parking Lot under a different corporate name.

22. Borrey worked as an attendant at the Parking Lot seven days a week, twelve hours a day from May 2, 2010 to December 4, 2012. Typically, he worked from 7 a.m. to 7 p.m. He also worked holidays. His only break each day was a half hour for lunch.

23. Initially, Borrey received \$350 per week in pay.

24. On or about July 3, 2010, defendants raised Borrey's pay to \$375 per week.

25. On or about September 5, 2010, defendants raised Borrey's pay to \$400 per week.

Borrey's pay remained at \$400 per week until defendants terminated his employment.

26. During the relevant time period, defendants paid Borrey in cash each week, and did not withhold taxes.

27. Defendants did not provide to Borrey statements with his pay listing information required by New York Labor Law § 195 (3), such as the dates of work the pay was meant to cover, Borrey's pay rate, and hours worked.

28. For the first eight months that he worked at the Parking Lot, Borrey took no days off. This time period covered approximately May 2, 2010 to January 2, 2011.

29. After the first eight months of his employment, defendants permitted Borrey to take two days off each month. Borrey received two days off per month from January 2, 2011 to December 4, 2012.

30. On January 4, 2012, AD Parking, Inc. and IZ Parking, Inc. were incorporated and began exercising control over the Parking Lot. However, little besides the corporate name changed. Defendants Majeed and Fayaz remained Borrey's managers, no changes were made to the employees who worked at the Parking Lot, and no changes were made to the manner in which the Parking Lot was operated.

31. From May 2, 2010, to September 14, 2012, defendants failed to keep records of Borrey's hours worked and salary paid. This failure to keep records was in direct violation of New York Labor Law § 195 (4) and 12 NYCRR § 142-2.6.

32. On September 14, 2012, defendant AD Parking, Inc. put Borrey on its official books. Although its records purport to demonstrate that Borrey was paid \$290 per week and that AD Parking, Inc. withheld Borrey's taxes, Borrey continued to receive \$400 each week in cash. Defendants AD Parking, Inc., IZ Parking, Inc., Fayaz, and Majeed intentionally maintained inaccurate records for the hours worked and wages earned by Borrey in violation of the New York Labor Law § 195 (4).

33. In August 2012, Borrey told his supervisor, Ali Mustafa, that he would need time off in December because his wife was pregnant. Ali Mustafa agreed to relay this request to defendants Majeed and Fayaz.

34. In November 2012, Ali Mustafa told Borrey that he could take time off and to let Ali Mustafa know when he needed to take time off.

35. On December 4, 2012, Borrey's wife went into labor. Borrey told Ali Mustafa that his wife was in labor, and Ali Mustafa told Borrey to take two weeks of vacation.

36. On December 18, 2012, Borrey attempted to return to work, but was told he was fired.

37. Defendants paid Borrey for only one of the two weeks of vacation he was granted.

38. In total, Borrey worked about 80.5 hours each week, well above the 40 hours he was required to work before receiving overtime pay. Defendants employed Borrey for about 129 weeks.

FIRST CLAIM FOR RELIEF

MINIMUM WAGE VIOLATION: NEW YORK LABOR LAW

(AGAINST ALL DEFENDANTS)

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

40. Defendants were plaintiff's employers, and plaintiff was an employee, within the meaning of New York Labor Law §§ 2 and 651.

41. At all relevant times, defendants Majeed and Fayaz were employers of plaintiff within the meaning of New York Labor Law §§ 2 and 651 because they exercised operational control and policymaking authority over employment policies, compensation policies, employee wages, employee hours, and employee schedules.

42. 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 and 12 NYCRR § 142-2.1.

43. As a result of this New York Labor Law violation, plaintiff is entitled to recover from defendants an amount to be proven at trial for unpaid minimum wages, liquidated damages, prejudgment interest, reasonable attorney's fees, and costs of the action, pursuant to New York Labor Law § 663 (1).

SECOND CLAIM FOR RELIEF

OVERTIME WAGE VIOLATION: NEW YORK LABOR LAW

(AGAINST ALL DEFENDANTS)

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

45. Defendants 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 and 12 NYCRR § 142-2.2.

46. As a result of defendants' willful violation of plaintiff's rights under the New York Labor Law, plaintiff is entitled to recover from defendants an amount to be proven at trial for unpaid overtime wages, liquidated damages, prejudgment interest, reasonable attorney's fees, and costs of this action, pursuant to New York Labor Law § 663 (1).

THIRD CLAIM FOR RELIEF

SPREAD-OF-HOURS VIOLATION: NEW YORK LABOR LAW

(AGAINST ALL DEFENDANTS)

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

48. From May 2010 to December 2012, plaintiff routinely worked twelve hours per day, seven days per week.

49. 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 § 663, *et seq.*, and 12 NYCRR § 142-2.4.

50. As a result of these 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, prejudgment interest, reasonable attorney's fees, and costs of this action, pursuant to New York Labor Law § 663 (1).

FOURTH CLAIM FOR RELIEF

**FAILURE TO PROVIDE STATEMENTS WITH PAY: NEW YORK LABOR LAW
(AGAINST ALL DEFENDANTS)**

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

52. Defendants failed to provide plaintiff, with each payment of plaintiff's wages, a statement including information such as number of days worked, rate of pay, and manner of pay, as required by New York Labor Law § 195 (3).

53. As a result of defendants' violations, plaintiff is entitled to recover from defendant \$100 per week for each week in which defendant failed to provide plaintiff with a statement accompanying payment of his wages, up to the maximum penalty amount of \$2,500, as well as costs of this action, prejudgment interest, and reasonable attorney's fees, pursuant to New York Labor Law § 198 (1-d).

PRAYER FOR RELIEF

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

A. Award plaintiff unpaid minimum wages and an additional amount as liquidated damages, pursuant to New York Labor Law § 663 (1);

B. Award plaintiff unpaid overtime wages and an additional amount as liquidated damages, pursuant to New York Labor Law § 663 (1);

C. Award plaintiff the full amount of unpaid spread-of-hour wages, as well as an additional amount as liquidated damages, pursuant to New York Labor Law § 663 (1).

D. Award plaintiff damages for each week defendants failed to provide statements with his pay, pursuant to New York Labor Law § 198 (1-d).

E. Award plaintiff prejudgment interest, pursuant to New York CPLR §§ 5001 and 5004.

F. Award plaintiff the costs of this action together with reasonable attorney's fees pursuant to New York Labor Law §§ 198 (1-d) and 663 (1); and

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

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: February 20, 2014
New York, New York

Respectfully Submitted,

MFY Legal Services, Inc.

By: /s/ David Ureña
David Ureña,
Maia Goodell
of counsel to
Jeanette Zelhof, Esq.,
MFY LEGAL SERVICES, INC.
299 Broadway, 4th Floor
New York, New York 10007
(212) 417-3700

Attorneys for Plaintiff