

MAIN STREET LEGAL SERVICES, INC.
Hollis Pfitsch (HP5011)
City University of New York School of Law
2 Court Square
Long Island City, NY 11101
(212) 577-3465

CATHOLIC MIGRATION SERVICES
Alice Davis
47-01 Queens Blvd.
Suite 203B
Sunnyside, NY 11104
(347) 472-3500

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

SANTIAGO ALONSO VAZQUEZ, SALVADOR
SANTIAGO BACILIO, TELESFORO TORRES, and
JOSE GONZALEZ,

Plaintiffs,

v.

142 KNICKERBOCKER ENTERPRISE, CORP., d/b/a
WOW CAR WASH, GEORGE AUTO SPA, CORP.,
MOCHA MANAGEMENT, LLC, and MOSHE
AZOULAY,

Defendants.

No. 1:13-Civ-6085 (SLT) (VVP)

AMENDED COMPLAINT

Plaintiffs, by their attorneys, hereby allege as follows:

NATURE OF THE ACTION

1. This is a proceeding against 142 Knickerbocker Enterprise, Corp., George Auto Spa, Corp., and Mocha Management, LLC as corporations that, upon information and belief, are doing and/or have done business as Wow Car Wash, and Moshe Azoulay (collectively “Defendants”), to prevent their profiting from their failure to properly compensate Plaintiffs for Plaintiffs’ manual labor performed for Defendants.

2. Wow Car Wash (hereinafter Defendants), under information and belief, is incorporated under the name or names 142 Knickerbocker Enterprise, Corp., George Auto Spa, Corp., Mocha Management, LLC, and Moshe Azoulay, (hereinafter Azoulay).

3. Defendants employed or employ Plaintiffs to work at Wow to wash, dry, detail and vacuum cars. Throughout their employment, Plaintiffs were regularly required to work more than forty hours per week, with the majority of Plaintiffs working fifty to sixty hours per week for most of their employment. Plaintiffs worked less than forty hours per week only a handful of weeks per year. Defendants paid plaintiffs wages that ranged from \$6.50 to \$7.50 per hour with no overtime premium for any time worked. Defendants also regularly required that Plaintiffs work more than ten hours in a day, but never paid them one hour of additional pay at the minimum wage rate as required by New York Labor Law. In addition, Defendant Azoulay regularly stole a portion of Plaintiffs' tips, as did the current manager, Jose Calderon (hereinafter "Calderon") and by the former manager, Carlos Calero (hereinafter "Calero").

4. Defendant retaliated against Plaintiffs for filing the Complaint by taking various actions designed to intimidate them and any witnesses that may have been prepared to support them, including making complaints about one Plaintiff to the Social Security Administration and the Attorney General. Defendant indicated that he intended to take further retaliatory action against all Plaintiffs.

5. Plaintiffs bring this action to recover unpaid minimum wages, overtime compensation, spread-of-hours pay, withheld tips, unpaid wages, compensatory and liquidated damages pursuant to the Fair Labor Standards Act of 1938, as amended ("FLSA") 29 U.S.C. §§ 201 *et seq.* and pursuant to Articles 6 and 19 of the New York State Labor Law ("NYLL") and the supporting New York State Department of Labor Regulations ("NYCRR"), tit. 12, part 142.

Said violations arose from, *inter alia*, (a) Defendants' failure to pay Plaintiffs wages at or above the minimum wage rates established by law; (b) Defendants' failure to pay Plaintiffs overtime compensation at one and one-half times their regular rate of pay for time worked each week in excess of forty hours; (c) Defendants' failure to pay Plaintiffs one hour's pay at the basic minimum hourly wage rate, in addition to wages otherwise due to Plaintiffs, for each day of work in which Plaintiffs' spread of hours exceeded ten; (d) Defendants' misappropriation of Plaintiffs' tips in violation of NYLL § 196-d; (e) Defendants' failure to provide Plaintiffs' proper wage notice and statement of wages in violation of NYLL § 195; (f) Defendants' failure to pay wages to Plaintiffs for services rendered, in violation of NYLL §§ 198, 190; (g) Defendants' retaliatory actions in violation of NYLL §§ 215(1)(a) and 29 U.S.C. § 215(a)(3); (h) all other related state law claims.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1337.

7. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).

8. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391 because all of the acts of which Plaintiffs complain occurred in this District.

9. Jurisdiction is proper in the Eastern District of New York because Plaintiffs live in the district, Defendants 142 Knickerbocker Enterprise, Corp. and George Auto Spa, Corp. reside in this district. Because Mocha Management, LLC is owned by Defendant Azoulay, a resident of the district, leases and operates a car wash in the district, and engages in no other

business activities outside of the district, Defendant Mocha Management, LLC has minimum contacts with the state of New York and is therefore subject to the jurisdiction of the Eastern District.

10. Pursuant to § 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), Plaintiffs consented in writing to be parties to this lawsuit and their consents are attached to this Complaint.

PARTIES

Plaintiffs

11. Plaintiffs are adult individuals who resided and/or currently reside in Kings County, New York and Queens County, New York.

12. Plaintiffs have been and are currently employed by Defendants to work at Wow Car Wash located at 1070 Flushing Avenue, Brooklyn New York. As a result of the location bordering three streets, the address for Wow is alternatively listed as 1070 Flushing Ave., Brooklyn, New York, 11237, 142 Knickerbocker Ave., Brooklyn, New York, 11237, or 149 George St., Brooklyn, New York, 11237.

13. Defendants have employed Plaintiff Santiago Alonso Vazquez at Wow from on or around September 2007 to April 2014.

14. Defendants employed Plaintiff Salvador Santiago Bacilio at Wow from on or around March 2006 to August 2012.

15. Defendants have employed Plaintiff Telesforo Torres at Wow from on or around July 2007 to December 2012, and April 2013 to October 2014.

16. Defendants employed Plaintiff Jose Gonzalez at Wow from on or around February 2013 until July 2013.

17. At all relevant times, Plaintiffs were Defendants' employees as defined by 29 U.S.C. § 203(e)(1) and NYLL §§ 2(5) et seq.

18. At all relevant times, Defendants were Plaintiffs' employers within the meaning of 29 U.S.C. § 203(d) and NYLL §§ 2(6) et seq.

19. At all relevant times, Plaintiffs were employed by Defendants within the meaning of 29 U.S.C. § 203(g) and NYLL §§ (2)(7)

Defendants

20. Wow is a car wash that also provides detailing, waxing and other services, located in Brooklyn, New York. Upon information and belief, Wow is currently incorporated under the name 142 Knickerbocker Enterprise, Corp.

21. Upon information and belief, Defendant Moshe Azoulay is the current owner and operator of Wow and is the principal officer and sole shareholder of Defendant Corporations.

22. The corporation known as 142 Knickerbocker Enterprise, Corp. was established in New York in February of 2012 by Moshe Azoulay with the address of 142 Knickerbocker Ave., Brooklyn, NY 11237.

23. George Auto Spa, Corp. was incorporated in New York in November of 2007 with an address of 149 George St., Brooklyn, NY 11237. Moshe Azoulay is the C.E.O. of George Auto Spa Corp., which is still an active corporation.

24. Mocha Management, LLC was incorporated in Connecticut in June of 1998, with the address of 47 Dean Place, Bridgeport, CT 06610. Moshe Azoulay is the President of Mocha Management, LLC, which is still an active corporation.

25. Defendants Operated Wow as a Single Enterprise and Jointly Employed Plaintiffs

26. Upon information and belief, Wow engaged and continues to engage in interstate commerce within the meaning of the FLSA in that it, at all relevant times; (i) had and continues to have an annual gross volume of sales of not less than \$500,000; and (ii) had and continues to have employees, including Plaintiffs Vazquez, Bacilio, Torres and Gonzalez, working with and/or selling goods and materials that have been moved in or produced for interstate commerce. Plaintiffs' work includes the maintenance of vehicles that travel in interstate commerce, including those used by taxi and limousine providers to take passengers to New Jersey, among other locations. Upon information and belief, Plaintiffs use equipment and products made outside of New York and imported to New York, and Wow sells products made outside of New York.

27. At all times relevant to this action, Wow has been an enterprise as defined in 29 U.S.C. § 203(r).

28. Upon information and belief, at all relevant times, Defendant Mocha Management, LLC has held a commercial lease for the operation of a car wash and a convenience store at 1070 Flushing Ave., Brooklyn NY. The lease agreement was formed between Mocha Management, LLC, signed by its principal officer Moshe Azoulay, and FUMP, LLC, the owner of the property.

29. Upon information and belief, and at all relevant times, Defendants Azoulay, George Auto Spa, Corp., and 142 Knickerbocker Enterprise, Corp. paid and continue to pay the monthly rent due to FUMP, LLC according to the terms of the lease agreement between Mocha Management, LLC and FUMP, LLC.

30. Upon information and belief, at all relevant times, Defendant Mocha Management, LLC has conveyed the right to use the premises and the car washing equipment

built into the structure at 1070 Flushing Avenue, without consideration, to Defendants Azoulay, George Auto Spa, Corp., and/or 142 Knickerbocker Enterprise, Corp. for the business purpose of employing Plaintiffs at Wow.

31. Upon information and belief, at all relevant times, Defendant Mocha Management, LLC, by the actions of its principal officer Moshe Azoulay, provided the premises upon which Plaintiffs performed work, and provided equipment, including, but not limited to, hoses and a conveyor belt built into the property, for the Plaintiffs to wash cars. Mocha Management, LLC, by providing the equipment and premises and through the actions of its principal officer Defendant Azoulay, directed and controlled the terms and conditions of Plaintiffs' employment at Wow.

32. Upon information and belief, at all relevant times until at least May 2012, Defendant George Auto Spa, Corp., by the actions of its principal officer Defendant Azoulay, operated Wow Car Wash on the premises and with the equipment provided by Defendant Mocha Management, LLC. During the same period, Defendant George Auto Spa, Corp., by the actions of its principal officer Defendant Azoulay, directed and controlled the terms and conditions of Plaintiffs' employment at Wow.

33. Upon information and belief, at all relevant times after May, 2012, Defendant 142 Knickerbocker Enterprise, Corp., by the actions of its principal officer Defendant Azoulay, operated Wow Car Wash on the premises and with the equipment provided by Defendant Mocha Management, LLC. During the same period, 142 Knickerbocker Enterprise, Corp., by the actions of its principal officer Defendant Azoulay, directed and controlled the terms and conditions of Plaintiffs' employment at Wow.

34. Upon information and belief, Mocha Management, LLC engages in no activities, business or otherwise, aside from operating Wow.

35. The activities alleged in paragraphs 24 through 32, in which Defendant Corporations engaged in the operation of Wow Car Wash, constitute a single enterprise under FLSA 29 U.S.C. § 203(r). The Defendant Corporations are commonly owned and operated by Defendant Azoulay with the common business purpose of operating Wow. By the related activities described in paragraphs 24 through 32, the Defendant Corporations are engaged in symbiotic and mutually supportive services to the substantial advantage of each entity, such that without the activity of anyone of the Defendant Corporations, Wow Car Wash could not have functioned.

36. Defendant Azoulay employs Calderon as manager at Wow. Calderon is under the direction and supervision of Defendant Azoulay. Prior to hiring Calderon, Defendant Azoulay employed Calero as a manager at Wow.

37. Upon information and belief, at all relevant times, Azoulay was and is actively involved in managing the day-to-day operations of Wow, including determining employees' schedules, duties, and rates of pay. Even when not physically present, Azoulay monitors Wow via surveillance camera and regularly communicates with and gives orders to Calderon regarding its operations.

38. Upon information and belief, at all relevant times, Defendant Azoulay had and has the power to hire and fire Plaintiffs, and has exercised the power to hire and fire employees, by firing Plaintiff Jose Gonzalez on or about July 6, 2013.

39. Upon information and belief, at all relevant times, Defendant Azoulay had and has the power to determine Plaintiffs' working conditions and supervise their work, and has determined their working conditions and supervised their work.

40. Upon information and belief, at all relevant times, Defendant Azoulay had and has the power to set Plaintiffs' rate of pay and determine their methods of payment, and has set Plaintiffs' rates of pay and determined their methods of payment.

41. Upon information and belief, and at all relevant times, to the extent Wow maintained and/or maintains employment records, Defendant Azoulay had and has responsibility for maintaining employment records.

42. Upon information and belief, Defendant Azoulay engaged in the activities described in paragraphs 35 through 39 as an agent of Defendant George Auto Spa, Corp., 142 Knickerbocker Enterprise, Corp., and Mocha Management, LLC.

43. Defendant Azoulay, George Auto Spa, Corp, 142 Knickerbocker Enterprise, Corp, and Mocha Management, LLC are joint employers of Plaintiffs as employees of Wow Car Wash.

44. At all relevant times, Mocha Management, LLC has acted directly in the interest of Defendant Azoulay as an employer, in relation to Plaintiffs as employees. Through the actions of Defendant Azoulay as an agent of Mocha Management, LLC, and by providing the premises and equipment for Plaintiffs to perform work at Wow Car Wash, Mocha Management, LLC is a joint employer.

STATEMENT OF FACTS

45. Defendants employed Plaintiffs as carwash workers. Plaintiffs' duties included cleaning the interior of vehicles, washing and drying the vehicles, using chemicals to clean, wax

and detail the vehicles, and performing other tasks necessary to complete service to customers' vehicles.

46. To compensate Plaintiffs for their work, Defendants promised Plaintiffs an hourly wage and a share of pooled tips distributed at the close of each business day.

Defendants' Failure to Pay Overtime Premiums, Minimum Wage, and Spread of Hours

47. Plaintiff Vazquez was employed by Defendants from on or around September 2007 to April 2014. Throughout his employment, Defendants paid Plaintiff Vazquez at the rate of \$7.50 per hour. Throughout his employment Plaintiff Vazquez worked six days per week, from approximately 7:45 a.m. until approximately 6:00 p.m. to 7:00 p.m.

48. Plaintiff Bacilio was employed by Defendants from on or around March 2006 until August 2012. Defendants paid Plaintiff Bacilio \$6.50 per hour from 2006 to 2010, and \$7.15 per hour from 2010 until he quit. Plaintiff Bacilio worked six days per week, from approximately 7:45 a.m. until approximately 6:00 p.m. to 7:00 p.m.

49. Plaintiff Torres was employed by Defendants from on or around July 2007 to December 2012, and from April 2013 to October 2014. Defendants paid Plaintiff Torres \$5.50 per hour from 2007 to 2008, \$6.50 per hour from 2008 to 2010, and \$7.15 from 2010 to 2014. He worked six days per week, from approximately 7:45 a.m. until approximately 6:00 p.m. from July 2007-December 2012. From April 2013 until October 2014, Plaintiff Torres generally works on Mondays from 8:00 a.m. to 6:00 p.m.

50. Plaintiff Gonzalez was employed by Defendants from on or around February 2013 until July 2013. Throughout his employment, Defendants paid Plaintiff Gonzalez \$6.50 per hour. Throughout his employment Plaintiff Gonzalez worked six days per week, from approximately 7:45 a.m. until approximately 6:00 p.m.

51. Plaintiffs often worked shifts totaling approximately ten to eleven and a half hours, generally totaling over fifty-four hours per week.

52. Defendants generally failed to pay Plaintiffs the overtime rate of one and one-half times their regular rate of pay for hours Plaintiffs worked in excess of forty hours in a week, as required by 29 U.S.C. § 207, NYLL §§ 650 et seq., and 12 NYCRR § 142-2.2.

53. Defendants generally failed to pay Plaintiffs Bacilio, Torres and Gonzalez the applicable minimum wage, in violation of 29 U.S.C. § 206(a)(1), NYLL § 652(1) and 12 NYCRR § 142-2.1.

54. Defendants generally failed to pay Plaintiffs one extra hour's pay at minimum wage for work hours exceeding ten hours per day from start to finish, as required by 12 NYCRR § 142.2-4.

Defendants Stole Plaintiffs' Gratuities

55. Pooled tips were collected and counted at the close of each business day. Manager Calderon or a designated employee distributed the tips at the close of each business day as follows: one share to each car wash worker, one share to Calderon, and one share to the cashier or cashiers on duty. Calderon reserved two or three shares in an envelope for Defendant Azoulay.

56. Calderon primarily worked in the office at Wow.

57. The cashier completes customer transactions at the cash register in the indoor merchandise sales area of Wow. Generally employees who work as cashiers do not assist in the washing, waxing, or detailing of vehicles during the same shift in which they operate the cash register.

58. Plaintiffs have observed Defendant Azoulay in possession of said envelopes containing tips reserved for him.

59. Plaintiffs received tips that varied widely, totaling approximately \$30 to \$60 in most weeks.

60. Defendants stole and misappropriated gratuities received by the employees, in violation of NYLL § 196-d.

Defendants' Failure to Pay Wages for Work Performed

61. Defendants required Plaintiffs Vazquez, Bacilio, Torres, and Gonzalez to begin work approximately 15 minutes before Wow opened for business to prepare the car wash for opening. However, Defendants never paid them for time worked before Wow opened for business, which was at 8:00 a.m. or 9:00 a.m., depending on the day.

Defendants' Willful Concealment of their Illegal Practices

62. At all relevant times, Defendants failed to provide Plaintiffs with a notice in English and Plaintiffs' primary language, Spanish, before February 1st of each year of employment containing the rates of pay and basis thereof; whether paid by the hours, shift, day, week, salary, piece, commission, or other; or allowances claimed as part of the minimum wage, including tips, as required by NYLL § 195(1)(a).

63. Defendants failed to provide Plaintiffs with accurate wage statements containing information required by NYLL § 195(3), including dates of work, rates of pay for regular and overtime hours, number of regular hours and overtime hours worked, or wage deductions taken, as required by NYLL § 193.

64. Upon information and belief, on one day in the summer of 2011, Defendant Azoulay instructed former manager Calero to require employees, including Plaintiffs Vazquez,

Bacilio, and Torres, to sign every paper in a large pile of papers that referenced tip earnings. Calero called each individual employee to the office to sign the papers, but did not inform employees of what they were signing. The employees did not place a date next to their signatures.

Defendants' Retaliation Against the Plaintiffs for Filing the Complaint

65. Defendants have failed to act in good faith, intentionally, and willfully violated all of the federal and state laws cited above, and caused significant damages to Plaintiffs.

66. Plaintiffs engaged in protective activity by filing the Complaint in this action on November 1, 2013.

67. While discovery was in process, Defendant Azoulay took retaliatory actions against Plaintiffs. (Def.'s Letter to Judge Pohorelsky and Judge Townes, February 13, 2014 ECF No. 46.) . The letter informed Plaintiffs that Defendant had investigated one Plaintiff with the IRS and had filed complaints against one Plaintiff with the Social Security Administration on December 13, 2014; with the Attorney General's Office on January 15, 2015; and with the FBI on January 15, 2015 (Def.'s Letter 2-5, ECF No.46) Defendant's letter also suggested that he intended to take further action against other Plaintiffs.

68. Upon information and belief, Defendant's actions were designed to intimidate. Plaintiffs are at risk of irreparable harm by the Defendant's actions, including impaired access to the court, deterrence of their own ability to assert their statutory rights, emotional distress, and a chilling effect on any potential witnesses.

FIRST CAUSE OF ACTION
(FLSA – Minimum Wage Violations)

69. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

70. Section 6(a)(1) of the FLSA, as amended, 29 U.S.C. § 206(a)(1), requires an employer to pay an employee wages at not less than \$7.25 per hour for work performed on or after July 24, 2009.

71. Defendants regularly failed to pay Plaintiffs Bacilio, Torres, and Gonzalez, the applicable federally mandated minimum wage, in violation of 29 U.S.C. § 206(a)(1).

72. Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis. Defendants knew or should have known that the practices described in this Cause of Action were unlawful. Said violations were willful within the meaning of 29 U.S.C. § 255(a).

73. As a result of the foregoing, Plaintiffs have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial and are entitled to recovery of such amounts, an additional equal amount of liquidated damages, reasonable attorney's fees, and costs of the action, and such other legal and equitable relief as this Court deems just and proper, pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
(FLSA - Failure to Pay Overtime)

74. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

75. Pursuant to Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), Defendants were and are required to pay each Plaintiff overtime compensation at not less than one and one-half times his regular rate of pay for all hours worked in excess of forty hours per week.

76. Defendants failed and continue to fail to pay Plaintiffs the appropriate overtime compensation for each hour worked in excess of forty hours per week, as required by 29 U.S.C. § 207(a)(1).

77. Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis. Defendants knew or should have known, and know or should know, that the practices described in this Cause of Action were and are unlawful. Said violations were willful within the meaning of 29 U.S.C. § 255(a).

78. As a result of Defendants' unlawful acts, Plaintiffs were deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, an additional equal amount as liquidated damages, reasonable attorneys' fees, and costs of the action, pursuant to 29 U.S.C. § 216(b).

THIRD CAUSE OF ACTION
(NYLL Article 19 – Minimum Wage Violations)

79. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

80. NYLL § 652(1) and 12 NYCRR § 142-2.1 require an employer to pay to each employee wages at not less than the minimum wage.

81. At all times relevant, Plaintiffs have been and are employees and Defendants have been and are employers within the meaning of NYLL §§ 651(5), (6).

82. Defendants regularly failed to pay Plaintiffs Bacilio, Torres, and Gonzalez, wages in compliance with the minimum wage rates and violated NYLL § 652(1) and 12 NYCRR § 142-2.1.

83. Pursuant to Section 652 of the NYLL, as amended, NYLL § 652(1), requires an employer to pay an employee wages at not less than (a) \$7.15 per hour for work performed on and after January 1, 2007; and (b) \$7.25 per hour for work performed on or after July 24, 2009.

84. Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis. Defendants knew or should have this known that the practices described in Cause of

Action were unlawful under NYLL §§ 652(1) and 12 NYCRR § 142-2.1. Said violations were willful within the meaning of NYLL § 663(1).

85. As a result of Defendants' willful violations of the NYLL, Plaintiffs are entitled to recover their unpaid compensation, liquidated damages as provided for by NYLL §§ 198, 663(1), attorneys' fees and costs, pre and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION
(NYLL Article 19 – Overtime Compensation Violations)

86. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

87. Pursuant to 12 NYCRR § 142-2.2, Defendants were and are required to pay each Plaintiff overtime compensation at not less than one and one-half times his regular rate of pay for all hours worked in excess of forty hours per week.

88. Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis. Defendants knew or should have known, and know or should know, that the practices described in this Cause of Action were and are unlawful under 12 NYCRR § 142-2.2. Said violations were and are willful within the meaning of NYLL § 663(1).

89. Due to Defendants' NYLL violations, Plaintiffs are entitled to recover from Defendants amounts to be proven at trial for their unpaid overtime compensation, an additional amount as liquidated damages, prejudgment interest, reasonable attorneys' fees, and costs of the action pursuant to NYLL § 663.

FIFTH CAUSE OF ACTION
(NYLL – Spread of Hours Pay Violations)

90. Plaintiffs reallege and reincorporate by reference all preceding paragraphs.

91. Pursuant to 12 NYCRR § 142-2.4, Defendants were and are required to pay each Plaintiff one hour's pay at the basic minimum wage rate, in addition to wages otherwise due, for each day of work in which said Plaintiff's spread of hours exceeded ten.

92. Each Plaintiff's spread of hours regularly exceeded and continues to exceed ten.

93. Defendants failed and fail to pay each Plaintiff one hour's pay at the basic minimum wage rate, in addition to wages otherwise due, for each day of work in which said Plaintiff's spread of hours exceeded ten. Defendants thereby violated and continue to violate 12 NYCRR § 142-2.4.

94. Defendants know or should have known, and know or should know, that the practices described in this Cause of Action were and are unlawful under 12 NYCRR § 142-2.4. Defendants' violations of Plaintiffs' rights under 12 NYCRR § 142-2.4 were and are willful and intentional. Defendants have failed to make a good faith effort to comply with 12 NYCRR § 142-2.4 with respect to the compensation of Plaintiffs.

SIXTH CAUSE OF ACTION
(NYLL - Tip Appropriation)

95. Plaintiffs reallege and reincorporate by reference all preceding paragraphs.

96. Plaintiffs received tips/gratuities from customers who utilized Defendants' car wash.

97. Defendant Azoulay was never eligible to receive a portion of the gratuities left for Plaintiffs by the customers. Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis.

98. Defendants' misappropriation of Plaintiffs' gratuities was in violation of NYLL § 196-d.

99. Plaintiffs are entitled to an award of the amount of gratuities misappropriated by the Defendants.

100. As a result of Defendants' violations of NYLL, Plaintiffs are entitled to recover from Defendants amounts to be proven at trial for Defendants' misappropriation of Plaintiffs' gratuities, an additional amount as liquidated damages, reasonable attorneys' fees, and the costs of the action, pursuant to NYLL §§ 198, 663(1).

SEVENTH CAUSE OF ACTION
(NYLL – Notice and Record-Keeping Requirements)

101. Plaintiffs reallege and incorporate by reference all preceding paragraphs.

102. Defendants failed to provide Plaintiffs with a wage notice in English and Plaintiffs' primary language, Spanish, on or before February first of each subsequent year of employment containing information outlined in NYLL § 195(1), including information such as the rate of pay, any allowances claimed as part of the minimum wage, and notice of deductions taken as required by NYLL §§ 193, 195.

103. Defendants failed to provide Plaintiffs with a statement with every payment of wages, listing dates of work covered by the payment of wages, rates of pay per day, gross wages, deductions, and net wages as required by NYLL § 195(3). Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis.

104. As a result of Defendants' violations of NYLL §§ 195(1), 195(3), each Plaintiff is entitled to damages of \$50 for each work week Defendants failed to provide Plaintiff with a wage notice, and damages of \$100 for each work week Defendants failed to provide Plaintiff with an accurate wage statement, reasonable attorneys' fees and costs of the action, pursuant to NYLL § 198.

EIGHTH CAUSE OF ACTION
(NYLL – Failure to Pay Agreed Upon Wages for Work Performed)

105. As a result of Defendants' violations of NYLL §§ 195(1), 195(3), each Plaintiff is entitled to damages of \$50 for each work week Defendants failed to provide Plaintiff with a wage notice, and damages of \$100 for each work week Defendants failed to provide Plaintiff with an accurate wage statement, reasonable attorneys' fees and costs of the action, pursuant to NYLL § 198.

106. Defendants failed to pay agreed upon wages to Plaintiffs Vazquez, Bacilio, Torres, and Gonzalez for work performed at Wow in preparation of operation, which included opening the gates of the car wash and arranging cleaning supplies and equipment on the car wash line, as required by NYLL §§ 198, 190(1). Defendants' unlawful conduct was willful, intentional, and lacked a good faith basis.

107. As a result of Defendants' violations of NYLL §§ 198, 190(1), Plaintiffs are entitled to recover from Defendants amounts to be proven at trial for their unpaid wages as compensation, and an additional amount as liquidated damages pursuant to NYLL § 198, 663.

NINTH CAUSE OF ACTION
(FLSA- Anti-Retaliation Violation)

108. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs as if fully set forth herein.

109. Plaintiffs attempted to enforce their rights under the FLSA by filing a complaint about wage and hour violations.

110. Plaintiffs actions are protected activity under FLSA.

111. Plaintiffs are entitled to equitable relief, monetary relief including but not limited to liquidated damages, compensatory damages, reasonable attorneys' fees and costs, and other appropriate relief. 29 U.S.C. § 216(b).

TENTH CAUSE OF ACTION
(NYLL- Anti-Retaliation Violation)

112. Plaintiffs reallege and incorporate by reference all allegations in all proceeding paragraphs as if fully set forth herein.

113. Plaintiffs attempted to enforce their rights under the New York Labor Law by filing a complaint about wage and hour violations.

114. Plaintiffs actions are protected activity under New York Labor Law.

115. Defendant retaliated against the plaintiffs in violation of Section 215(1)(a) of New York Labor Law.

116. Notice of this claim has been served upon the Attorney General pursuant to New York Labor Law §215(2)

117. Plaintiffs are entitled to equitable relief, monetary relief including but not limited to liquidated damages, compensatory damages, reasonable attorneys' fees and costs, and other appropriate relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs hereby seek the following relief:

- (a) A declaratory judgment that the practices complained of herein are unlawful;
- (b) Appropriate equitable and injunctive relief to remedy Defendants' violations of the law, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;

(c) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid minimum wages and overtime compensation due to the Plaintiffs pursuant to the FLSA and an additional equal amount as liquidated damages;

(d) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid minimum wages and overtime compensation due to the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award as liquidated damages in the amount of an additional 25% (through April 12, 2011) and 100% (from April 12, 2011 going forward) of the unpaid minimum wages and overtime compensation due to the Plaintiffs under New York law;

(e) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid spread of hours pay due to the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award of liquidated damages in the amount of 25% (through April 12, 2011) and 100% (from April 12, 2011 going forward) of the unpaid spread of hours pay due to the Plaintiffs under New York law;

(f) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the misappropriated gratuities due to the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award as liquidated damages in the amount of 25% (through April 12, 2011) and 100% (from April 12, 2011 going forward) of the misappropriated gratuities due to Plaintiffs under New York law;

(g) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of fifty dollars for each work week that Defendants failed to provide a Wage Notice in violation of NYLL § 195(1);

(h) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of one hundred dollars for each week Defendants failed to provide a wage statement in violation of NYLL § 195(3);

(i) Judgment in favor of each Plaintiff and against Defendants, jointly and severally, in the amount of the unpaid wages due for work performed by the Plaintiffs pursuant to the NYLL and regulations promulgated thereto, and an additional award of liquidated damages in the amount of 25% (through April 12, 2011) and 100% (from April 12, 2011 going forward) of the unpaid wages to the Plaintiffs under New York law.

(j) Liquidated damages under the FLSA for retaliation, 29 U.S.C. § 216;

(k) Compensatory damages for the emotional distress, pain and suffering caused by the Defendant's retaliatory actions against the Plaintiffs;

(l) Liquidated damages under the NYLL for retaliation, NYLL § 215(1)(b);

(m) Pre-judgment and post-judgment interest, as provided by law;

(n) An order enjoining Defendants from any further violations of the FLSA and New York laws and regulations.

(o) Attorneys' fees and costs of the action;

(p) Such other relief as this Court shall deem just and proper.

Dated: Queens, New York
April 16, 2015

Respectfully submitted,

MAIN STREET LEGAL SERVICES, INC.

By:

/s _____

Hollis Pfitsch

MAIN STREET LEGAL SERVICES, INC.

City University of New York School of Law

2 Court Square
Long Island City, NY 11101
(212) 577-3465

CATHOLIC MIGRATION SERVICES

Alice Davis
47-01 Queens Blvd.
Suite 203B
Sunnyside, NY 11104
(347) 472-3500

ATTORNEYS FOR THE PLAINTIFFS