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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
DANIEL MIRANDA, *individually and on
behalf of others similarly situated,*

Plaintiff,

-against-

COMMUNITY PARKING CORP.
(d/b/a COMMUNITY PARKING),
and HECTOR RIJO,

Defendants.

-----X

COMPLAINT

**COLLECTIVE ACTION
UNDER 29 U.S.C. § 216(b)**

ECF Case

Plaintiff Daniel Miranda (“Plaintiff Miranda” or “Mr. Miranda ”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., , and as against each of defendants Community Parking Corp. (d/b/a Community parking) (“Defendant Corporation”) and Hector Rijo (collectively, “Defendants”), upon information and belief, alleges as follows:

NATURE OF ACTION

1. Plaintiff Miranda is a former employee of Defendants Community Parking Corp. (d/b/a Community parking) and Hector Rijo.
2. Community parking is a Parking lot owned by Hector Rijo, located at 21-23 Hillside Avenue, New York, New York 10010.

3. Upon information and belief, Defendant Hector Rijo serves or served as owner, manager, principal or agent of Defendant Corporation and through this corporate entity operates the Parking lot.

4. Plaintiff Miranda is a former employee of Defendants.

5. Plaintiff Miranda was employed as a parking lot attendant.

6. At all times relevant to this Complaint, Plaintiff Miranda worked for Defendants in excess of 40 hours per week, without receiving the applicable minimum wage or appropriate overtime compensation for the hours that he worked.

7. Rather, Defendants failed to maintain accurate recordkeeping of his hours worked, failed to pay Plaintiff Miranda the applicable minimum wage, and failed to pay him appropriately for any hours worked over 40, either at the straight rate of pay or for any additional overtime premium.

8. Defendants' conduct extended beyond Plaintiff Miranda to all other similarly situated employees.

9. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Miranda and other employees to work in excess of forty (40) hours per week without providing them the minimum wage and overtime compensation required by federal and state law and regulations.

10. Plaintiff Miranda now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* ("FLSA"), the New York Labor Law ("NYLL")

§§190 and 650 *et seq.*, and "overtime wage order" respectively codified at N.Y.C.R.R. Tit. 12 § 146, including applicable liquidated damages, interest, attorneys' fees and costs.

11. Plaintiff Miranda seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1531 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Miranda's state law claims is conferred by 28 U.S.C. § 1367(a).

13. Venue is proper in this district under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their businesses in this district, and Plaintiff Miranda was employed by Defendants in this district.

PARTIES

Plaintiff

14. Plaintiff Daniel Miranda ("Plaintiff Miranda" or "Mr. Miranda") is an adult individual residing in New York County, New York.

15. Plaintiff Miranda was employed by Defendants from approximately January 7, 2016 until on or about August 16, 2016.

16. Plaintiff Miranda consents to being a party pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

Defendants

17. At all times relevant to this complaint, Defendants own, operate, and/or control a Parking lot located at 21-23 Hillside Avenue, New York, New York 10010 under the name “Community parking.”

18. Upon information and belief, Community Parking Corp. (“Defendant Corporation”) is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 21-23 Hillside Avenue, New York, New York 10010.

19. Defendant Hector Rijo is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Hector Rijo is sued individually in his capacity as an owner, officer and/or agent of Defendant Corporation.

20. Defendant Hector Rijo possesses or possessed operational control over Defendant Corporation, an ownership interest in Defendant Corporation, or controlled significant functions of Defendant Corporation.

21. Defendant Hector Rijo determined the wages and compensation of the employees of Defendants, including Plaintiff Miranda, and established the schedules of the employees, maintained employee records, and had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

22. Defendants operate a Parking lot located at 21-23 Hillside Avenue, New York, New York 10010.

23. Individual Defendant Hector Rijo possesses operational control over Defendant Corporation, possesses an ownership interest in Defendant Corporation, and controls significant functions of Defendant Corporation.

24. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method and share control over the employees.

25. Each Defendant possessed substantial control over Plaintiff Miranda's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Miranda, and all similarly situated individuals, referred to herein.

26. Defendants jointly employed Plaintiff Miranda, and all similarly situated individuals, and are Plaintiff Miranda's (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

27. In the alternative, Defendants constitute a single employer of Plaintiff Miranda and/or similarly situated individuals.

28. Upon information and belief, individual defendant Hector RIJO operates Defendant Corporation as either an alter ego of himself, and/or fails to operate Defendant Corporation as a legal entity separate and apart from himself by, among other things:

- (a) failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;

- (b) defectively forming or maintaining Defendant Corporation by, among other things, failing to hold annual meetings or maintaining appropriate corporate records;
- (c) transferring assets and debts freely as between all Defendants;
- (d) operating Defendant Corporation for his own benefit as the sole or majority shareholder;
- (e) operating Defendant Corporation for his own benefit and maintaining control over it as a closed corporation or closely controlled entity;
- (f) intermingling assets and debts of his own with Defendant Corporation;
- (g) diminishing and/or transferring assets of Defendant Corporation to protect his own interests; and
- (h) other actions evincing a failure to adhere to the corporate form.

29. At all relevant times, Defendants were Plaintiff Miranda's employers within the meaning of the FLSA and NYLL.

30. Defendants had the power to hire and fire Plaintiff Miranda, controlled the terms and conditions of his employment, and determined the rate and method of any compensation in exchange for Plaintiff Miranda's services.

31. In each year from 2016 to the present date, Defendants, both individually and jointly, had gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

32. In addition, upon information and belief, Defendants and/or their enterprises were directly engaged in interstate commerce. For example, numerous items that were used in the

Parking lot on a daily basis, such as car keys and customer cards, were produced outside of the State of New York.

Individual Plaintiff

33. Plaintiff Miranda is a former employee of Defendants, employed in performing the duties of a parking lot attendant.

34. Plaintiff Miranda seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

Plaintiff Daniel Miranda

35. Plaintiff Miranda was employed by Defendants from approximately January 7, 2016 until on or about August 16, 2016.

36. At all relevant times, Plaintiff Miranda was employed by Defendants as a parking lot attendant.

37. Plaintiff Miranda regularly handled goods in interstate commerce, such as car keys and cloth rags produced outside of the State of New York.

38. Plaintiff Miranda's work duties required neither discretion nor independent judgment.

39. Throughout his employment with Defendants, Plaintiff Miranda regularly worked in excess of 40 hours per week.

40. From approximately January 7, 2016 until on or about August 16, 2016, Plaintiff Miranda worked from approximately 10:00 p.m. until on or about 6:00 a.m., six or seven days a week (typically 48 or 56 hours per week).

41. Throughout his employment with defendants, Plaintiff Miranda was paid his wages in cash.

42. From approximately January 7, 2016 until on or about June 2016, defendants paid Plaintiff Miranda \$8.75 per hour.

43. From approximately June 2016 until on or about August 16, 2016, defendants paid Plaintiff Miranda \$9.00 per hour.

44. Defendants never granted Plaintiff Miranda any break or meal periods of any length.

45. Defendants did not provide Plaintiff Miranda with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

46. Plaintiff Miranda was not required to keep track of his time, nor to his knowledge did the Defendants utilize any time tracking device, such as a time clock or punch cards, that accurately reflected his actual hours worked.

47. Defendants never provided Plaintiff Miranda with a written notice, in English and in Spanish (Plaintiff Miranda's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

48. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Miranda regarding overtime and wages under the FLSA and NYLL.

49. Defendants required Plaintiff Miranda to purchase "tools of the trade" with his own funds—including work shirts and work pants.

Defendants' General Employment Practices

50. Defendants regularly required Plaintiff Miranda to work in excess of forty (40) hours per week without paying him the proper minimum and overtime wages.

51. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Miranda (and all similarly situated employees) to work in excess of forty (40) hours per week without paying him appropriate minimum wage and/or overtime compensation, as required by federal and state laws.

52. Plaintiff Miranda was paid his wages entirely in cash.

53. Defendants willfully disregarded and purposefully evaded record keeping requirements of the Fair Labor Standards Act and New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

54. By employing these practices, Defendants avoided paying Plaintiff Miranda the minimum wage for his regular hours and overtime compensation of time and a half for all of his hours worked in excess of forty (40) hours per week.

55. Defendants failed to post required wage and hour posters in the Parking lot, and did not provide Plaintiff Miranda with statutorily required wage and hour records or statements of his pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of Plaintiff Miranda's relative lack of sophistication in wage and hour laws.

56. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Miranda (and similarly situated individuals) worked, and to avoid paying Plaintiff Miranda properly for (1) his full hours worked and (2) for overtime due.

57. Defendants failed to provide Plaintiff Miranda and other employees with wage statements at the time of payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

58. Defendants failed to provide Plaintiff Miranda and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language of Spanish, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

59. Plaintiff Miranda brings his FLSA minimum wage, overtime compensation and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants, or

any of them, on or after the date that is three years before the filing of the complaint in his case (the “FLSA Class Period”), as employees of Defendants (the “FLSA Class”).

60. At all relevant times, Plaintiff Miranda and other members of the FLSA Class who are and/or have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required minimum wage, overtime pay of one and one-half times his regular rates for work in excess of forty (40) hours per workweek under the FLSA and willfully failing to keep records required by the FLSA.

61. The claims of Plaintiff Miranda stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION
VIOLATION OF THE FLSA MINIMUM WAGE PROVISIONS

62. Plaintiff Miranda repeats and realleges all paragraphs above as though fully set forth herein.

63. At all times relevant to this action, Defendants were Plaintiff Miranda’s employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Miranda (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

64. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

65. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

66. Defendants failed to pay Plaintiff Miranda (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

67. Defendants' failure to pay Plaintiff Miranda (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

68. Plaintiff Miranda (and the FLSA Class members) were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
VIOLATION OF THE FLSA OVERTIME PROVISIONS

69. Plaintiff Miranda repeats and realleges all paragraphs above as though fully set forth herein.

70. At all times relevant to this action, Defendants were Plaintiff Miranda's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Miranda (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for his employment.

71. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

72. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

73. Defendants, in violation of 29 U.S.C. § 207 (a)(1) of the FLSA, failed to pay Plaintiff Miranda (and the FLSA Class members) overtime compensation at rates of one and

one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

74. Defendants' failure to pay Plaintiff Miranda (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

75. Plaintiff Miranda (and the FLSA Class members) were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK MINIMUM WAGE RATE

76. Plaintiff Miranda repeats and realleges all paragraphs above as though fully set forth herein.

77. At all times relevant to this action, Defendants were Plaintiff Miranda's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Miranda (and the FLSA Class members), controlled terms and conditions of employment, and determined the rates and methods of any compensation in exchange for employment.

78. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff Miranda (and the FLSA Class members) less than the minimum wage.

79. Defendants' failure to pay Plaintiff Miranda (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

80. Plaintiff Miranda (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
VIOLATION OF THE NEW YORK STATE
LABOR LAW'S OVERTIME PROVISIONS

81. Plaintiff Miranda repeats and realleges all paragraphs above as though fully set forth herein.

82. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.* and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Miranda (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

83. Defendants failed to pay Plaintiff Miranda (and the FLSA Class members) in a timely fashion, as required by Article 6 of the New York Labor Law.

84. Defendants' failure to pay Plaintiff Miranda (and the FLSA Class members) overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

85. Plaintiff Miranda (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
VIOLATION OF THE NOTICE AND RECORDKEEPING
REQUIREMENTS OF THE NEW YORK LABOR LAW

86. Plaintiff Miranda repeats and realleges all paragraphs above as though fully set forth herein.

87. Defendants failed to provide Plaintiff Miranda with a written notice, in English and in Spanish (Plaintiff Miranda's primary language), of his rate of pay, regular pay day, and such other information as required by NYLL §195(1).

88. Defendants are liable to Plaintiff Miranda in the amount of \$5,000, together with

costs and attorney's fees.

SIXTH CAUSE OF ACTION
VIOLATION OF THE WAGE STATEMENT PROVISIONS
OF THE NEW YORK LABOR LAW

89. Plaintiff Miranda repeats and realleges all paragraphs above as though set forth fully herein.

90. Defendants did not provide Plaintiff Miranda with a statement of wages with each payment of wages, as required by NYLL 195(3).

91. Defendants are liable to Plaintiff Miranda in the amount of \$5,000, together with costs and attorney's fees.

SEVENTH CAUSE OF ACTION
(RECOVERY OF EQUIPMENT COSTS)

92. Plaintiff Miranda repeats and re-alleges all paragraphs above as though set forth fully herein.

93. Defendants required Plaintiff Miranda to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform his job, such as work shirts and pants, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

94. Plaintiff Miranda was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Miranda respectfully requests that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the pendency of this action, and permitting them promptly to file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Miranda and the FLSA class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Miranda and the FLSA class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Miranda's, and the FLSA class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Miranda and the FLSA class members;

(f) Awarding Plaintiff Miranda and the FLSA class members damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA, as applicable;

(g) Awarding Plaintiff Miranda and the FLSA class members liquidated damages in an amount equal to 100% of his damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA

as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Miranda and the members of the FLSA Class;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Miranda and the members of the FLSA Class;

(j) Declaring that Defendants violated the timely payment provisions of the NYLL as to Plaintiff Miranda and the members of the FLSA Class;

(k) Declaring that Defendants violated the notice, recordkeeping, and wage statement requirements of the NYLL with respect to Plaintiff Miranda's, and the FLSA Class members' compensation, hours, wages; and any deductions or credits taken against wages;

(l) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Miranda's, and the FLSA Class members' compensation, hours, wages; and any deductions or credits taken against wages;

(m) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Miranda and the FLSA Class members;

(n) Awarding Plaintiff Miranda and the FLSA class members damages for the amount of unpaid minimum and overtime wages as well as damages for any improper deductions or credits taken against wages;

(o) Awarding Plaintiff Miranda damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(p) Awarding Plaintiff Miranda and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the minimum and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(q) Awarding Plaintiff Miranda and the FLSA class members pre-judgment and post-judgment interest as applicable;

(r) Awarding Plaintiff Miranda and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(s) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(t) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Miranda demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
November 04, 2016

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace

By: Michael A. Faillace [MF-8436]
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August 16, 2016

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.

(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre:

Daniel Miranda

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:



Date / Fecha:

16 de agosto de 2016

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Minimum Wage, Overtime Class Action Filed Against Community Parking](#)
