

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

| | |
|---|---|
| ORLANDO BALUJA and all others similarly |) |
| situated under 29 U.S.C. 216(b), |) |
| |) |
| Plaintiff, |) |
| vs. |) |
| |) |
| EL GALLEGO SPANISH TAVERN |) |
| RESTAURANT, INC., |) |
| EL GALLEGO SPANISH RESTAURANT |) |
| INC, |) |
| ENRIQUE BLANCO, |) |
| JORGE BLANCO, |) |
| |) |
| Defendants. |) |

COMPLAINT UNDER 29 U.S.C. 201- 216 MINIMUM WAGE VIOLATIONS

Plaintiff, ORLANDO BALUJA on behalf of himself and all others similarly situated under 29 U.S.C. 216(b), through undersigned counsel, files this Complaint against Defendants, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., EL GALLEGO SPANISH RESTAURANT INC, ENRIQUE BLANCO, and JORGE BLANCO, and alleges:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. §§ 201-216.
2. The Plaintiff was a resident of Dade County, Florida at the time that this dispute arose.
3. The Defendant EL GALLEGO SPANISH TAVERN RESTAURANT, INC., was a corporation that regularly transacted business within Dade County. Upon information and belief, the Defendant Corporation was the FLSA employer for Plaintiff’s employment period from on or about May 31, 2012 through on or about December 31, 2014.
4. The individual Defendant ENRIQUE BLANCO was a corporate officer and/or owner and/or manager of the Defendant Corporation, EL GALLEGO SPANISH TAVERN

RESTAURANT, INC., who ran the day-to-day operations of the Corporate Defendant, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., for the time period of on or about May 31, 2012 through on or about December 31, 2014, and was responsible for paying Plaintiff's wages for said time period and controlled Plaintiff's work and schedule and was therefore Plaintiff's employer as defined by 29 U.S.C. 203 (d).

5. The individual Defendant JORGE BLANCO was a corporate officer and/or owner and/or manager of the Defendant Corporation, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., who ran the day-to-day operations of the Corporate Defendant, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., for the time period of on or about May 31, 2012 through on or about December 31, 2014, and was responsible for paying Plaintiff's wages for said time period and controlled Plaintiff's work and schedule and was therefore Plaintiff's employer as defined by 29 U.S.C. 203 (d).
6. Under information and belief, the Defendants, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., ENRIQUE BLANCO, and JORGE BLANCO, sold the business to the Defendant EL GALLEGO SPANISH RESTAURANT INC., on or about January 1, 2015.
7. Under information and belief, the Defendant Corporation, EL GALLEGO SPANISH RESTAURANT INC., continued the business in the same location with the same employees, equipment, operation, and/or resourced and with a similar business model geared towards the same clientele/customer base.¹

¹ Plaintiff reserves the right to amend the Complaint to allege joint employer and joint enterprise as to all the Defendants should the facts adduced in discovery justify same. *See*, 29 U.S.C. 203(r). Further, Plaintiff reserves the right to amend the Complaint to allege that the Defendant Corporation, EL GALLEGO SPANISH RESTAURANT INC., is doing business as a successor of the Defendant Corporation, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., and are one and the same company and therefore specifically liable for the damages claimed in this lawsuit should the facts adduces in discovery justify same. *See, Steinbach v. Hubbard*, 51 F.3d 843, 844 (9th Cir. Wash. 1995) (The principles of equity require that the successor be held liable for the damages sought.).

8. The Defendant EL GALLEGO SPANISH RESTAURANT INC, is a corporation that regularly transacted business within Dade County. Upon information and belief, the Defendant Corporation is the FLSA employer for Plaintiff's employment period from on or about January 1, 2015 through on or about May 26, 2017.
9. All acts or omissions giving rise to this dispute took place in Dade County.

COUNT I. FEDERAL MINIMUM WAGE VIOLATION

10. This action arises under the laws of the United States. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendants have employed several other similarly situated employees like Plaintiff who worked as waiter(s) and/or the serving staff (i.e. busers, runners, etc.) and other employees that have not been paid minimum wages for work performed in excess of 40 hours weekly from the filing of this complaint back three years.
11. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).
12. 29 U.S.C. § 206 (a) (1) states "Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates: except as otherwise provided in this section, not less than-- \$5.85 an hour, beginning on the 60th day after May 25, 2007; \$6.55 an hour, beginning 12 months after that 60th day; and \$7.25 an hour, beginning 24 months after that 60th day..." [29 U.S.C. § 206 (a) (1)]. On July 24, 2007 Federal minimum wage was raised to \$5.85/hr.

On July 24, 2008, Federal minimum wage was raised to \$6.55/hr. On July 24, 2009, Federal minimum wage was raised to \$7.25/hr.

13. Plaintiff worked for Defendants, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., ENRIQUE BLANCO, and JORGE BLANCO, as a waiter from on or about May 31, 2012 through on or about December 31, 2014, at which time Defendants sold their business to the Corporate Defendant, EL GALLEGO SPANISH RESTAURANT INC.

14. Plaintiff worked for Defendant, EL GALLEGO SPANISH RESTAURANT INC, as a waiter from on or about January 1, 2015 through to on or about May 26, 2017.

15. Defendants' business activities involve those to which the Fair Labor Standards Act applies. Both the Defendants' business and the Plaintiff's work for the Defendants affected interstate commerce for the relevant time period. Plaintiff's work for the Defendants affected interstate commerce for the relevant time period because the materials and goods that Plaintiff used on a constant and/or continual basis and/or that were supplied to him by the Defendants to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiff's work for the Defendants was actually in and/or so closely related to the movement of commerce while he worked for the Defendants that the Fair Labor Standards Act applies to Plaintiff's work for the Defendants.

16. Additionally, Defendants regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendant's business an enterprise covered under the Fair Labor Standards Act.

17. Upon information and belief, the Defendant Corporation, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., had gross sales or business done in excess of \$500,000

annually for the years 2012, 2013, and 2014.

18. Upon information and belief, the Defendant Corporation, EL GALLEGO SPANISH RESTAURANT INC, had gross sales or business done in excess of \$500,000 annually for the years 2015 and 2016.
19. Upon information and belief, the Defendant Corporation EL GALLEGO SPANISH RESTAURANT INC's gross sales or business done is expected to exceed \$125,000 for the first three months of the year 2017 and is expected to exceed \$500,000 for the year 2017.
20. Between the period of on or about May 31, 2012 through on or about December 31, 2014, Plaintiff worked an average of 40 hours a week for Defendants, EL GALLEGO SPANISH TAVERN RESTAURANT, INC., ENRIQUE BLANCO, and JORGE BLANCO. Plaintiff was paid \$1.50/hr for said work in violation of the Fair Labor Standards Act as said payment of \$1.50/hr did not meet the applicable Federal Minimum Wage required for said period of time. Therefore, Plaintiff claims difference between his average hourly rate of \$1.50/hr and the applicable minimum wage for all hours worked.
21. Between the period of on or about January 1, 2015 through on or about May 26, 2017, Plaintiff worked an average of 40 hours a week for Defendant, EL GALLEGO SPANISH RESTAURANT INC. Plaintiff was paid \$1.50/hr for said work in violation of the Fair Labor Standards Act as said payment of \$1.50/hr did not meet the applicable Federal Minimum Wage required for said period of time. Therefore, Plaintiff claims difference between his average hourly rate of \$1.50/hr and the applicable minimum wage for all hours worked.
22. The Defendants wage payment practices to Plaintiff for this time period did not meet the federal minimum wage law requirements as Plaintiff was not paid the required federal minimum wage for all hours worked and is therefore claiming federal minimum wage

violations.

23. Defendants willfully and intentionally refused to pay Plaintiff's minimum wages as required by the Fair Labor Standards Act as Defendants knew of the Federal Minimum Wage requirements of the Fair Labor Standards Act and recklessly failed to investigate whether Defendants' payroll practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiff these wages since the commencement of Plaintiff's employment with Defendants for the time period specified above.

Wherefore, Plaintiff requests double damages and reasonable attorney fees from the Defendants, jointly and severally, pursuant to the Fair Labor Standards Act and as cited above, to be proven at the time of trial for all minimum wages still owing from Plaintiff's entire employment period with Defendants or, as much as allowed by the Fair Labor Standards Act -- whichever is greater along with court costs, interest, and any other relief that this Court finds reasonable under the circumstances. *The Plaintiff requests a trial by jury.*

Respectfully Submitted,

J.H. Zidell, Esq.
J.H. Zidell, P.A.
Attorney For Plaintiff
300 71st Street, Suite 605
Miami Beach, Florida 33141
Tel: (305) 865-6766
Fax: (305) 865-7167
Email: ZABOGADO@AOL.COM

By: ___/s/ J.H. Zidell_____
J.H. Zidell, Esq.
Florida Bar Number: 0010121

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

ORLANDO BALUJA and all others similarly
situated under 29 U.S.C. 216(b),
Plaintiff,
vs.
EL GALLEGO SPANISH TAVERN
RESTAURANT, INC.,
EL GALLEGO SPANISH RESTAURANT INC,
ENRIQUE BLANCO,
JORGE BLANCO,
Defendants.

SUMMONS IN A CIVIL ACTION

To:
EL GALLEGO SPANISH TAVERN RESTAURANT, INC.,
Registered Agent: Jorge I. Blanco
7173 SW 8 St or 4011 SW 128 Ave.
Miami, FL 33144 Miami, FL 33175

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it)
— or 60 days if you are the United States or a United States agency, or an officer or employee of
the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an
answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure.
The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and
address are:

J.H. Zidell, Esq.
J.H. Zidell P.A.
300 71st Street, Suite 605
Miami Beach, Florida 33141

If you fail to respond, judgment by default will be entered against you for the relief demanded in the
complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

ORLANDO BALUJA and all others similarly)
situated under 29 U.S.C. 216(b),)

Plaintiff,)

vs.)

EL GALLEGO SPANISH TAVERN)
RESTAURANT, INC.,)
EL GALLEGO SPANISH RESTAURANT INC,)
ENRIQUE BLANCO,)
JORGE BLANCO,)

Defendants.)

_____)

SUMMONS IN A CIVIL ACTION

To:

JORGE BLANCO
7173 SW 8 St
Miami, FL 33144

or

4011 SW 128 Ave.
Miami, FL 33175

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

J.H. Zidell, Esq.
J.H. Zidell P.A.
300 71ST Street, Suite 605
Miami Beach, Florida 33141

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

ORLANDO BALUJA and all others similarly)
situated under 29 U.S.C. 216(b),)
)
Plaintiff,)
vs.)
)
EL GALLEGO SPANISH TAVERN)
RESTAURANT, INC.,)
EL GALLEGO SPANISH RESTAURANT INC,)
ENRIQUE BLANCO,)
JORGE BLANCO,)
)
Defendants.)
_____)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
EL GALLEGO SPANISH RESTAURANT INC
Registered Agent: Ivette Sanchez
7171-7173 SW 8 Street or 4011 SW 128 Ave.
Miami, FL 33144 Miami, FL 33175

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

J.H. Zidell, Esq.
J.H. Zidell P.A.
300 71ST Street, Suite 605
Miami Beach, Florida 33141

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

| | | |
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| ORLANDO BALUJA and all others |) | |
| similarly situated under 29 U.S.C. 216(b), |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | |
| |) | |
| EL GALLEGO SPANISH TAVERN |) | |
| RESTAURANT, INC., |) | |
| EL GALLEGO SPANISH RESTAURANT |) | |
| INC, |) | |
| ENRIQUE BLANCO, |) | |
| JORGE BLANCO, |) | |
| |) | |
| Defendants. |) | |
| |) | |

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

| | | |
|------------------|----|------------------|
| ENRIQUE BLANCO | | |
| 7173 SW 8 Street | or | 4011 SW 128 Ave. |
| Miami, FL 33144 | | Miami, FL 33175 |

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

J.H. Zidell, Esq.
J.H. Zidell P.A.
300 71ST Street, Suite 605
Miami Beach, Florida 33141

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Baluja, Orlando and all others similarly situated under 29 U.S.C. 216(b), DEFENDANTS El Gallego Spanish Tavern Restaurant, Inc., Jorge I. Blanco,

(b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number) J.H. Zidell, P.A. 300 71st St., Suite 605, Miami Beach, FL 33141 phone: 305-865-6766

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III) Citizen of This State Citizen of Another State Citizen or Subject of a Foreign Country PTF DEF 1 1 Incorporated or Principal Place of Business In This State 2 2 Incorporated and Principal Place of Business In Another State 3 3 Foreign Nation PTF DEF 4 4 5 5 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only) [X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE DOCKET NUMBER

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 29 USC §§ 201-216 LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: [] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE June 7, 2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former El Gallego Employee Files Unpaid Wage Lawsuit](#)
