

**IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

GILBERTO CINTO,)	
)	
and)	
)	
JOSE MORALES)	
)	
On behalf of themselves and others similarly-situated)	
)	
Plaintiffs,)	
)	Case No.
)	
v.)	
)	
BDR HOSPITALITY, LLC,)	
)	
and)	
)	
WILLIAM ORELLANA,)	
)	
Defendants.)	
)	
)	
)	
)	

Serve: BDR Hospitality, LLC
James E. Moyler, Title Managing Member
533 Fair Fax Way
Williamsburg, VA 23185

Serve: WILLIAM ORELLANA
533 Fair Fax Way
Williamsburg, VA 23185

COLLECTIVE ACTION COMPLAINT

COME NOW Plaintiffs, GILBERTO CINTO (“CINTO”), and JOSE MORALES (“MORALES”), by counsel, on behalf of themselves and all others similarly situated, and file this Collective Action Complaint against Defendants BDR HOSPITALITY, LLC (“BDR”), and

WILLIAM ORELLANA (“Orellana”) pursuant to the Fair Labor Standards Act of 1938, as amended. 29 U.S.C. § 201, et seq. (“FLSA”).

PRELIMINARY STATEMENT

1. Plaintiffs, who are Spanish-speaking workers with little or no fluency in either spoken or written English, bring this action on behalf of themselves and a class of other similarly-situated employees (the “Plaintiff Class”) to require Defendants to pay back wages owed to them and to the Plaintiff Class, which Defendants failed to pay in violation of § 7 of the FLSA. The named Plaintiffs and the Plaintiff Class are collectively referred to herein as “Plaintiffs.” Plaintiffs seek permanent injunctive relief and damages for themselves and all class members.
2. From on or about June 2016 until on or about August 2016, the named Plaintiffs were employed jointly by Defendants BDR Hospitality, LLC, and William Orellana. Plaintiffs’ work for Defendants was to perform carpentry, cleaning, and flooring work at Millennium Hotel Durham located at 2800 Campus Walk Ave., Durham, NC 27705 (“the hotel”). Similarly-situated employees have been employed by Defendants to perform these tasks for periods beginning on or about June 2016, through on or about August 2016. Defendants employed between 45 and 50 employees at the hotel to perform these manual tasks. Plaintiffs and other similarly-situated employees routinely worked more than 40 hours per week. The named Plaintiffs worked more than 60 hours a week for a period beginning on or before June 2014 and ending on or after August 2016. Defendants failed to pay Plaintiffs and other similarly-situated employees an overtime premium of

one and one-half times their regular rates of pay for their hours worked over 40 in any workweek.

JURISDICTION AND VENUE

3. This Court has jurisdiction of Plaintiffs' claims pursuant to 29 U.S.C. § 201, *et seq.*; 29 U.S.C. § 216, 28 U.S.C. § 1331 and 28 U.S.C. § 1337(a).
4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(ii) because the Defendants transact business in this District, Defendants employed the named Plaintiffs and the Class Plaintiffs in this District, and some of the actions complained of were conducted within this District.

PARTIES

5. Plaintiffs Gilberto Cinto, and Jose Morales, (hereinafter "named Plaintiffs") are former non-exempt employees of Defendants who earned, but did not receive, compensation at the overtime rate of 1 ½ times their regular rates of pay for hours worked over 40 in some or all the weeks they worked for Defendants.
6. The class of similarly-situated employees (hereinafter "Class Plaintiffs") are or were non-exempt employees of Defendants who earned but did not receive an overtime premium for hours they worked over 40 in some or all the weeks they worked for Defendants.
7. The named Plaintiffs and the Plaintiff Class were during all relevant times "employees" as that term is defined by 29 U.S.C. §203 (e).
8. The work of the named Plaintiffs and the Plaintiff Class regularly involved them in commerce between States ("interstate commerce"). The FLSA covers individual workers,

like the named Plaintiffs and the members of the Plaintiff Class, who are "engaged in commerce or in the production of goods for commerce."

9. The Defendant BDR is a foreign corporation formed and existing under the laws of the State of Delaware and, during Plaintiffs' employment, Defendant BDR was an employer as defined by 29 U.S.C. §203 (d). Defendant was a "joint employer" of Plaintiffs with Defendant Orellana and was a "person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. §203 (d).
10. Defendant BDR has had two (2) or more employees who have regularly handled and worked on goods and/or materials that have been moved in or produced for commerce, such as machines, equipment, tools, supplies and cleaning products that were transported or produced out-of-state.
11. Defendant Orellana at all times hereto was the "employer" as that term is defined by 29 U.S.C. §203 (d). In particular, Defendant Orellana, who is employed by Defendant BDR as a Title Manager, appeared on a frequent, almost daily basis at worksites where Plaintiffs and other similarly-situated employees worked, and controlled significant aspects of the operations of Defendant BDR, including the hiring and firing of employees.
12. At all times relevant, Defendant Orellana has had two (2) or more employees who have regularly handled and worked on goods and/or materials that have been moved in or produced for commerce, such as machines, equipment, tools, supplies and cleaning supplies that were transported or produced out-of-state.
13. In establishing the unlawful pay scheme at issue in this case and in misclassifying the Plaintiffs and other similarly-situated employees as independent contractors, Defendants BDR and Orellana were motivated by their desire to avoid paying an overtime premium to Plaintiffs and other similarly-situated employees as required by the FLSA.

14. Based on information and belief, at all relevant times Defendants' annual gross sales volume as defined by the FLSA has exceeded \$500,000 per year.

COLLECTIVE ACTION ALLEGATIONS

15. Pursuant to 29 U.S.C. § 216(b), Plaintiffs bring this action on behalf of themselves and an opt-in class of all persons who were or are hourly non-exempt employees and who earned, but did not receive, compensation for time worked, including but not limited to overtime pay from Defendants.

- a) The named Plaintiffs are adequate class representatives because they are directly impacted by Defendants' actions. The interests of the named Plaintiffs are not antagonistic to, or in conflict with, the interests of the class as a whole. The attorney representing the class is experienced in representing clients in federal litigation.
- b) Common questions of law and fact are involved, including questions posed by Plaintiffs' allegations that Defendants failed to pay an overtime premium in violation of § 7 of the FLSA to former non-exempt employees of Defendants who earned, but did not receive, overtime pay from Defendants.
- c) Claims of the named Plaintiffs are typical of the claims of the class because all class members and the named Plaintiffs are affected by Defendants' conduct.
- d) Defendants have acted on grounds generally applicable to the class, thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.
- e) Common questions of law or fact predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

- f) The named Plaintiffs are similarly situated to the class members in terms of job responsibilities, title, and employment dates as they were or are all laborers who provided manual services to the Defendants, and who were denied compensation for time and one-half overtime wages by Defendants.

FACTS

16. Defendant BDR hired the named Plaintiffs and the members of the Plaintiff Class by retaining the services of Defendant Orellana.
17. Plaintiffs and the members of the Plaintiff Class provide or have provided manual labor at Millennium Hotel Durham located at 2800 Campus Walk Ave., Durham, NC 27705.
18. The named Plaintiffs regularly worked more than forty hours in almost every week they worked during their employment by Defendants.
19. Defendants failed to maintain time records for all of Plaintiffs' hours worked¹.
20. Defendants improperly designated the named Plaintiffs and Class Plaintiffs as independent contractors, when in fact Defendant BDR and Defendant Orellana shared, agreed to allocate responsibility for, or otherwise codetermined—formally or informally, directly or indirectly—the essential terms and conditions of the employment of the named

¹ § 211(c) Records

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, **keep, and preserve** such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder. The employer of an employee who performs substitute work described in section [207 \(p\)\(3\)](#) of this title may not be required under this subsection to keep a record of the hours of the substitute work.

Plaintiffs and Class Plaintiffs. *See Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125 (4th Cir. 2017).

- a) Formally or as a matter of practice, the joint employers Defendants BDR and Orellana jointly determined, shared, or allocated the power to direct, control, or supervise the named Plaintiffs, whether by direct or indirect means. Defendant BDR employed a supervisor named “Donovan Klingman” as Plaintiffs’ manager, and Defendant BDR routinely gave Plaintiffs indirect orders and instructions through Donovan Klingman. Donovan Klingman inspected Plaintiffs’ work every day and gave them specific, daily instructions as to the manner and means for completing their work.
- b) Formally or as a matter of practice, Defendants jointly determined, shared, or allocated the power to—directly or indirectly—hire or fire the Plaintiffs or modify the terms or conditions of their employment. Defendants jointly determined Plaintiffs’ working hours, and Defendant BDR established when Plaintiffs should start and stop work. Defendant BDR provided Plaintiffs with the same timesheets provided to employees who were formally and officially BDR employees. Defendant BDR provided workers’ compensation insurance for Plaintiff Morales. Defendant BDR determined the hourly rates paid to Plaintiffs Morales and Cinto.
- c) The work of Plaintiffs was always performed on premises owned or controlled by Defendant BDR, namely at Millennium Hotel Durham located at 2800 Campus Walk Ave., Durham, NC 27705.
- d) Formally and as a matter of practice Defendant BDR provided the facilities, equipment, tools, or materials necessary to complete the work performed by

Plaintiffs. For example, Defendant BDR provided Plaintiff Morales with all supplies, tools and equipment needed for painting, including paint, paint brushes, drop cloths and turpentine. Defendant BDR provided Plaintiff Cinto with all equipment and supplies required for framing work, including finishing mixture, metal framing, and all chemicals used for framing.

21. Plaintiffs were “economically dependent” on Defendants BDR and Orellana such that they are properly classified as employees instead of independent contractors of the joint employers, Defendants BDR and Orellana.
- a) The joint employers Defendants BDR and Orellana exercised a high degree of control over the manner in which the Plaintiffs’ work was performed, directed their daily tasks, instructed them to perform specific tasks, and prioritized their tasks.
 - b) Plaintiffs’ duties consisted entirely of routine, manual work, and they had absolutely no opportunities for profit or loss dependent on their managerial skill.
 - c) Plaintiffs had no investment in equipment or material and did not employ any other workers.
 - d) The degree of skill required for Plaintiffs’ work was minimal.
 - e) For the period of their employment there was a permanent and exclusive working relationship between Plaintiffs and Defendants.
 - f) To a very high degree the services rendered by Plaintiffs are an integral part of Defendants’ business.

OVERTIME COMPENSATION

22. Defendants routinely and consistently required the named Plaintiffs and Class Plaintiffs to work over forty hours per week.
23. The FLSA requires an employer to pay its employees at a rate of at least one and one-half times their regular rate of pay for time worked in one work week over forty hours. This is commonly known as the time-and-a-half pay for overtime work.
24. Despite working overtime, the named Plaintiffs and Class Plaintiffs were not paid time and one-half pay from Defendants for overtime worked.

CAUSE OF ACTION

(Fair Labor Standards Act)

25. The foregoing paragraphs are included herein as though fully set forth herein.
26. Defendants regularly engages in commerce and its employees handle and use goods, which have moved in interstate commerce.
27. At all relevant times, Defendants were and are employers within the meaning of the FLSA and are subject to the provisions of the FLSA.
28. The named Plaintiffs and Class Plaintiffs at all relevant times were employees of Defendants, as defined by the FLSA.
29. During the time that the named Plaintiffs and the Class Plaintiffs were employed by Defendants, the named Plaintiffs and Class Plaintiffs performed regular, scheduled overtime work for which no additional compensation was paid to them by Defendants in violation of the provisions of the FLSA. More specifically, Defendants violated § 7 of the FLSA by failing to pay time and one-half overtime wages to hourly non-exempt

employees, including the named Plaintiffs and the members of the Plaintiff Class who earned overtime pay.

30. Upon information and belief, the Defendants' pay system was unilaterally imposed upon the named Plaintiffs and the Class Plaintiffs.

31. The Defendants' failure to properly administer a scheme of compensation violates the overtime provisions of the FLSA and the regulations thereunder.

32. As a result of the Defendants' willful and knowing failure to properly compensate the named Plaintiffs and Class Plaintiffs, those Plaintiffs have suffered substantial delays in receipt of wages owed and damages.

33. The Defendants' failure to properly administer a compensation scheme for overtime was a willful and knowing violation of the FLSA.

34. Pursuant to 29 U.S.C. §§ 207 and 216, Defendants owe the named Plaintiffs and Class Plaintiffs compensation for their overtime work, an additional equal amount as liquidated damages, together with an additional sum for attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, the named Plaintiffs and Class Plaintiffs seek judgment against Defendants as follows:

1. That the Court certify the instant suit as an opt-in class action under 29 U.S.C. § 216(b);
2. That the Court declare the rights and duties of the parties consistent with the relief sought by Plaintiffs;
3. That the Court issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;

4. That Defendants be enjoined from further violations of the Fair Labor Standards Act;
5. That the named Plaintiffs and Class Plaintiffs recover unpaid overtime wages together with an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
6. That the named Plaintiff and the Class Plaintiffs recover an award of reasonable attorney's fees, costs, and expenses;
7. That the Court order the Defendants to make whole the named Plaintiffs and Class Plaintiffs by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;
8. Plaintiffs further pray for such additional relief as the interests of justice may require.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,

GILBERTO CINTO and JOSE MORALES on behalf of themselves and all others similarly situated,

By Counsel

By: /s/
THOMAS F. HENNESSY (VSB No. 32850)
Counsel for Plaintiffs
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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.)

I. (a) PLAINTIFFS
 GILBERTO CINTO and JOSE MORALES

(b) County of Residence of First Listed Plaintiff _____
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Thomas F. Hennessy, The Hennessy Law Firm, PLLC
 4015 Chain Bridge Road, Suite G, Fairfax, Virginia 22030
 T: (703) 865-8836 F: (703) 865-7633 E: thennessy@virginiawage.net

DEFENDANTS
 BDR HOSPITALITY, LLC and WILLIAM ORELLANA

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)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 Fair Labor Standards Act, 29 U.S.C. 201, et seq.

Brief description of cause:
 Claims for unpaid overtime compensation, liquidated damages, and attorney's fees

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/13/2018
 SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Operators of Millennium Hotel Durham Facing Unpaid Overtime Lawsuit](#)
