

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

MARCUS CRESPO; JEREMIAH RIVERA;  
ISREAL ALVARENGA; and all  
others similarly situated,

Plaintiffs,

vs.

CASE NO.: 3:16cv1520-J-25 PDB

FILED  
12/8/2016  
CLERK, U. S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE, FLORIDA

STEVE AND TARA'S ITALIAN RESTAURANT, INC.  
doing business as NAPOLI'S PASTARIA; STEVE BARRY,  
individually; and TARA BARRY, individually,

Defendants.

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**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiffs, MARCUS CRESPO; JEREMIAH RIVERA; ISREAL ALVARENGA, on behalf of themselves and other employees and former employees similarly situated, by and through undersigned counsel, file this action against STEVE AND TARA'S ITALIAN RESTAURANT, INC., doing business as Napoli's Pastaria; STEVE BARRY, individually; and TARA BARRY, individually, and in support thereof, states the following:

**JURISDICTION**

1) Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 USC § 201, *et seq.*, hereinafter referred as "FLSA") to recover damages for retaliation and unpaid back wages, an additional amount as liquidated damages, and reasonable attorney's fees and costs.

2) The jurisdiction of the Court over this controversy is based upon 29 USC § 216 (b) and 26 U.S.C. § 7434(a).

3) Further jurisdiction over the state law claims are covered under this Court's supplemental jurisdiction.

### **PARTIES**

4) At all times material hereto, Plaintiffs were and continue to reside within the Middle District of Florida.

5) At all times material hereto, the corporate Defendant, Steve and Tara's Italian Restaurant, Inc., doing business as Napoli's Pastaria (hereinafter Corporate Defendant), was and continues to be a corporation organized under the laws of Florida and engaged in business within the Middle District of Florida.

6) At all times material hereto, the individual Defendants Steve Barry and Tara Barry were residents of the Middle District of Florida, who owned and operated the Corporate Defendant and who regularly exercised the authority to: a) hire and fire employees; b) determine work schedules for employees of the Corporate Defendant; and c) control the finances and operations of the Corporate Defendant. By virtue of having regularly exercised that authority on behalf the Corporate Defendants, the individual Defendants are "employers" as defined by 29 USC 201, *et seq.*

7) At all times material hereto, the Plaintiffs were "engaged in commerce" within the meaning of sections 6 and 7, FLSA and subject to the individual coverage of the FSLA.

8) At all times material hereto, Plaintiffs were “engaged in the production of goods” within the meaning of sections 6 and 7, FLSA and subject to the individual coverage of the FLSA.

9) At all times material hereto, all Defendants were “employers” within the meaning of the FLSA.

10) Defendants continue to be “employers” within the meaning of the FLSA.

11) At all times material hereto, Defendants were “an enterprise engaged in commerce” within the meaning of the FLSA.

12) Based upon information and belief, the annual gross revenue of Defendants was in excess of \$500,000.00 during the relevant time periods.

13) The additional persons who may become Plaintiffs herein were restaurant kitchen workers and other restaurant employees who worked in excess of forty (40) hours during one or more weeks during the relevant time periods, but who did not receive pay at one and one-half times their regular pay for the hours worked in excess of forty (40) hours.

14) At all times material hereto, the work performed by the Plaintiffs was directly essential to Defendants’ restaurant business.

### **STATEMENT OF FACTS**

15) Plaintiffs are all former employees of Defendants, whose duties involved restaurant kitchen work of cooking and cleaning.

16) From at least December 2012, and continuing through the present, Defendants failed to compensate Plaintiffs at a rate of one and one-half times Plaintiffs’ regular pay rate for all hours worked in excess of forty (40) hours in a single work week.

Plaintiffs should be compensated at a rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours in a single work week.

17) Defendants created two (2) sets of hourly employee time records in order to avoid paying overtime pay to Plaintiffs and others similarly situated. While the first set of records shows actual time worked by Plaintiffs (in the vast majority of instances, in excess of 40 hours per week), the second set misrepresents that Plaintiffs only worked 40 hours per week.

18) Documentation concerning the number of hours actually worked by Plaintiffs and the compensation actually paid to the Plaintiffs are in the possession, custody and control of Defendants.

19) In and around 2015, Defendants engaged a computer engineer for the sole purpose of "crashing" Defendants' business computer systems, so that Defendants' actual sales information was destroyed, as well as information regarding pay roll and the number of hours employees worked. Defendants' underwent this effort after undersigned counsel informed Defendants that Defendants had failed to pay the required overtime to Plaintiff Marcus Moises Crespo. With regard to the destruction of the payroll and other business records, Defendant Steve Barry admitted that the motivation was to avoid IRS tax liability and avoid overtime liability.

20) Plaintiffs have retained the undersigned to represent Plaintiffs in the instant litigation and have agreed to pay the firm a reasonable fee for its services.

**COUNT I – VIOLATION OF FLSA OVERTIME COMPENSATION**

21) Plaintiffs re-allege paragraphs 1 through 20, as if fully set forth herein.

22) From at least December 2012, through the present, Plaintiffs have worked in excess of forty (40) hours per week and were not compensated at a rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours.

23) Plaintiffs are and were entitled to be paid at the statutory rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours in a week.

24) At all times material hereto, Defendants failed and continue to fail to maintain proper time records as required by the FLSA.

25) Defendants have violated Title 29 USC § 207 from a least 2012 through the present, in that:

a. Plaintiffs worked in excess of forty (40) hours per week for the period of employment with Defendants;

b. No payments and provisions for payment have been made by Defendants to properly compensate Plaintiffs at a rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours in a single work week.

c. Defendants have failed to maintain proper time records as mandated by the FLSA.

26) Defendants were willful and/or had reckless disregard for the overtime provisions of the FLSA, by its utter failure to compensate Plaintiffs at the statutory rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours in a week, when they knew or should have known such was due and owing.

27) Defendants have failed to properly disclose or apprise Plaintiffs of their rights under the FLSA.

28) Due to the intentional, willful, and unlawful acts of Defendants, Plaintiffs suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

29) Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant to 29 USC § 216 (b).

30) At all times material hereto, Defendants failed to comply with Title 29 and Labor Department Regulations, 29 CFR sections 516.2 and 516.4, with respect to those similarly situated to the named Plaintiffs by virtue of the management policy, plan, or decision that intentionally provided for the compensation of such employees as if they were exempt from coverage under 29 USC section 201 and 219, disregarding that fact that they are not exempt.

31) Based upon information and belief, the employees and former employees of Defendants are similarly situated to the named Plaintiffs in that they were paid straight time and expected to work in excess of forty (40) hours per week without being paid at the rate of one and one-half times Plaintiffs' regular pay rate for all hours worked in excess of forty (40) hours in a week.

WHEREFORE Plaintiffs pray that judgment be entered in their favor, and in favor of all those similarly situated, and against the Defendants:

- a. Declaring, via sections 2201 and 2202 of the FLSA that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;

- b. Awarding Plaintiffs overtime compensation in the amount due for time worked in excess of forty (40) hours per work week;
- c. Awarding Plaintiffs liquidated damages, or treble damages in an amount equal to or three times the amount of overtime due;
- d. Awarding Plaintiffs reasonable attorney's fee and costs under section 216 (b).
- e. Awarding Plaintiffs pre-judgment interest and post-judgment interest.

**COUNT II – FLSA RETALIATION**

- 32) The Plaintiffs re-allege paragraphs 1 through 20, as if fully set forth herein.
- 33) Plaintiffs objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation; to wit: Plaintiffs' objections, complaints and protestations regarding Defendants' violations of federal overtime pay law.
- 34) After Plaintiffs complained to individual Defendant Steve Barry about the violation of federal overtime law, Defendants retaliated against Plaintiffs by wrongful termination after years of dedicated service.
- 35) As a direct and proximate of Defendants' conduct, Plaintiffs have suffered.

WHEREFORE Plaintiffs pray that judgment be entered in their favor, and in favor of all those similarly situated, and against the Defendants for compensatory

damages, including but not limited to lost wages, pain and suffering, along with reasonable attorney's fees and costs under the FLSA.

**COUNT III - VIOLATION OF FLORIDA'S WHISTLE BLOWER ACT**

- 36) The Plaintiffs re-allege paragraphs 1 through 20, as if fully set forth herein.
- 37) Plaintiffs objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation; to wit: Plaintiffs' objections, complaints and protestations regarding Defendants' violations of federal overtime pay law.
- 38) After Plaintiffs complained to individual Defendant Steve Barry about the violation of federal overtime law, Defendants retaliated against Plaintiffs by wrongful termination after years of dedicated service.
- 39) As a direct and proximate of Defendants' conduct, Plaintiffs have suffered.

WHEREFORE Plaintiffs pray that judgment be entered in their favor, and in favor of all those similarly situated, and against the Defendants for compensatory damages, including but not limited to lost wages, pain and suffering, along with reasonable attorney's fees and costs under Section 448.104, Fla. Stat.

**COUNT IV – VIOLATION OF FLORIDA'S  
DECEPTIVE TRADE PRACTICES ACT**

- 33) The Plaintiffs re-allege the allegations contained in paragraphs 1 through 20, as if fully set forth herein.



34) This is an action pursuant to Chapter 501, Fla. Stat. Among other things, Defendants manipulated time records and payroll data in order to attempt avoidance at federally obligated overtime payments.

35) The willful conduct of the Defendants amounts to “unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce” under the Act. Id.

36) As a direct and proximate result of the Defendants’ conduct, the Plaintiffs have been damaged.

37) Plaintiffs have satisfied all conditions prerequisite to bringing this suit, or such have been waived by the Defendants.

WHEREFORE the Plaintiffs pray this the Court enter judgment in their favor and against the Defendants and award damages pursuant to §501.2075 Fla. Stat., as well as reasonable attorney’s fees and costs, pursuant to §501.2105 Fla. Stat., and any other relief deemed reasonable and necessary by the Court.

**COUNT V - UNJUST ENRICHMENT/ QUANTUM MERUIT**

38) The Plaintiffs re-allege the allegations contained in paragraphs 1 through 20, as if fully set forth herein.

39) The Defendants received the benefit of unpaid work by coercion and deception.

40) The Defendants appreciated the benefit and accepted it.

41) Defendants’ retention of the benefit under circumstances is inequitable.

42) As a direct and proximate cause of the Defendants’ actions and omissions, the Plaintiffs have been damaged.

WHEREFORE the Plaintiffs pray that this the Court enter judgment in their favor and against the Defendants and award damages, including compensatory and collateral damages, and reasonable costs, and any other relief deemed reasonable and necessary by the Court.

**COUNT VI – VIOLATION OF FLORIDA’S MINIMUM WAGE ACT**

43) The Plaintiffs re-allege the allegations contained in paragraphs 1 through 20, as if fully set forth herein.

44) Defendants failed to pay Plaintiffs and other similarly situated employees the Florida Minimum Wage for all hours worked, in violation of the FMWA.

45) Defendants’ violations were knowing, willful and in reckless disregard for the rights of Plaintiffs and others similarly situated.

46) As a direct and proximate result of Defendants’ actions, Plaintiffs have been damaged.

WHEREFORE Plaintiffs pray that judgment be entered in their favor, and in favor of all those similarly situated, and against the Defendants:

- a. Declaring that the acts and practices complained of herein are in violation of the maximum hour provisions of the FMWA;
- b. Awarding Plaintiffs overtime compensation in the amount due for time worked in excess of forty (40) hours per work week;
- c. Awarding Plaintiffs liquidated damages, or treble damages in an amount three times the amount of overtime due;
- d. Awarding Plaintiffs reasonable attorney’s fee and costs.

- e. Awarding Plaintiffs pre-judgment interest and post-judgment interest.

**COUNT VII – CIVIL DAMAGES FOR FRAUDULENT FILING OF INFORMATION RETURNS UNDER 26 U.S.C. Section 7434 (a)**

47) Plaintiffs re-allege and incorporate by reference the allegations contained in paragraphs 1 through 20.

48) By failing to properly record all wage payments made to Plaintiffs and similarly situated employees, account for these payments, and pay FICA and other applicable employment taxes on their behalf during the relevant time period, Defendants filed fraudulent information returns for Plaintiffs and similarly situated employees with the IRS, in violation of 26 U.S.C. § 7434 (a).

49) Defendants' failure to properly record all wage payments made to Plaintiff account for these payments to the IRS, and pay FICA and other applicable employment taxes on their behalf were willful and have caused harm to Plaintiffs

50) Under the Internal Revenue Code, "[if] any person willfully files a fraudulent information return with respect to payments purported to be made to any other person, such other person may bring a civil action for damages against the person so filling such return." 26 U.S.C. § 7434 (a).

WHEREFORE Plaintiffs pray that the Court enter Judgment against Defendants and in favor of Plaintiffs:

- a) Costs attributable to resolving deficiencies, civil damages for each Plaintiff, and damages resulting from Plaintiffs' additional tax debt, and Plaintiffs' time and expenses associated with any necessary corrections;

- b) That Defendants be ordered to take all necessary measures to correct the information returns at issue;
- c) Costs and attorney's fees and any other relief deemed appropriate by the Court.

**NOTICE OF INTENT TO PURSUE PUNATIVE DAMAGES**

Pursuant to section 768.28, Plaintiffs provide notice of their intent to amend the complaint to include a claim for punitive damages, under the supplemental claims herein, once record evidence of such is established.

**JURY DEMAND**

51) Plaintiffs hereby request a jury on all issues so triable.

Respectfully submitted,

/s/ Earl M. Johnson, Jr.  
Earl M. Johnson, Jr., Esq.  
Florida Bar No. 006040  
Post Office Box 40091  
Jacksonville, Florida 32203  
(904) 356-5252 Telephone  
(904) 394-3288 Facsimile  
[jaxlawfl@aol.com](mailto:jaxlawfl@aol.com)

/s AlexKing  
Alex King, Esq.  
Florida Bar No.: 0086034  
200 E. Forsyth Street  
Jacksonville, Florida 32202  
Tel: (904) 355-7777  
[Alex@HodgesKing.com](mailto:Alex@HodgesKing.com)  
[Pleadings@HodgesKing.com](mailto:Pleadings@HodgesKing.com)

Trial Attorneys for Plaintiffs

Dated: December 8, 2016

JS 44 (Rev. 11/15)

**CIVIL COVER SHEET**

3:16CV1520-J-25 PDB

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.)

<p><b>I. (a) PLAINTIFFS</b>                  MARCUS CRESPO; JEREMIAH RIVERA;                  ISREAL ALVARENGA</p> <p>(b) County of Residence of First Listed Plaintiff <b>DUVAL</b>                  (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)                  Earl M. Johnson, Jr.                  PO 40091, Jacksonville, FL 32203 (904) 356-5252</p>	<p><b>DEFENDANTS</b>                  STEVE AND TARA'S RESTAURANT,                  doing business as NAPOLI'S; STEVE BARRY,                  Individually and TARA BARRY, Individually                  County of Residence of First Listed Defendant <b>ST. JOHNS</b>                  (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:10%;"><input checked="" type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" 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
Citizen of This State	<input checked="" type="checkbox"/> 1	<input checked="" 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)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**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

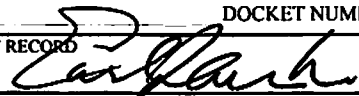
**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**FAR LABOR STANDARDS ACT**

Brief description of cause:  
**overtime compensation**

**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: 11/30/2016    SIGNATURE OF ATTORNEY OF RECORD: /s/ Earl M. Johnson, Jr. 

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT: 400.<sup>00</sup>    APPLYING IFP \_\_\_\_\_    JUDGE: 25    MAG. JUDGE: PDB

JAX022357

**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.Cv.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; NOTE: 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 clerk(s) 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 six 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.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 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.
- VI. 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
- VII. 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 actual dollar amount 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.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**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: [Napoli's Pastaria Boiled with Unpaid Overtime Class Action](#)

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