

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 18-cv-21140

ANIBAL FAJARDO, individually
and on behalf of all similarly situated persons,

Plaintiffs,

vs.

LAS 3K USA, L.L.C., a Florida limited liability
Company; LUISA NIEVES, an individual;
JAIRO AVELLANEDA, an individual,

Defendants.

COMPLAINT

Plaintiff, ANIBAL FAJARDO (hereinafter “Fajardo”), individually and on behalf of all other similarly-situated employees, by and through undersigned counsel, files this Complaint for violations of the minimum wage and overtime provisions of the Fair Labor Standards Act on behalf of himself and other current or former employees similarly-situated to him against Defendants, LAS 3K USA, L.L.C. (hereinafter “Las 3K USA”), LUISA NIEVES (hereinafter “NIEVES”) and JAIRO AVELLANEDA (hereinafter “AVELLANEDA”) (hereinafter collectively referred to as “Defendants”).

In support of the Complaint, Plaintiff, individually and on behalf of all similarly-situated persons, alleges as follows:

INTRODUCTION

1. This action is brought to recover minimum and overtime wages, unpaid wages, liquidated damages and attorney's fees and costs owed to Plaintiff and all other similarly-situated current or former employees of the named Defendants.
2. This case is brought as a collective action under 29 U.S.C. §216(b). It is believed that Defendants have employed other similarly-situated employees like Plaintiff that have not been properly compensated for their minimum and overtime wages for work performed in excess of forty (40) hours per week from the filing of this Complaint back three years.
3. Plaintiff has retained the undersigned counsel to represent him in this action, and pursuant to 29 U.S.C. §216(b), Plaintiff and the opt-in similarly-situated persons are entitled to recover all reasonable attorney's fees and costs incurred in this action.

PARTIES AND JURISDICTION

4. Plaintiff, Anibal Fajardo, was a resident of Miami-Dade County, Florida, at the time that this dispute arose and has continued to reside in Miami-Dade County, Florida since.
5. Plaintiff became employed on or about April 2017 at Las 3K USA as a maintenance man responsible for cleaning the kitchen and restaurant and repairing or maintaining the sound system and appliances at the establishment (for example, the air-conditioning unit). During his employment, Plaintiff was also asked to fill in for absent co-workers and work as a busboy, server or cook in addition to completing his work duties as the maintenance man.
6. Plaintiff remained employed at Las 3K USA until on or about December 2017.
7. At all times material hereto, Defendant Las 3K USA is a Florida limited liability company engaged in business in Miami-Dade County, Florida.
8. At all times material hereto, Defendant Las 3K USA owned and operated Que Chulada.

9. When Defendant Las 3K USA closed Que Chulada, Defendant Las 3K USA began to operate El Capo Brickell restaurant and/or bar.
10. At all times material hereto, both Que Chulada and El Capo Brickell are registered fictitious names by Defendant Las 3K USA in the Florida Department of State Division of Corporations. Both Que Chulada and El Capo Brickell were located 1250 S. Miami Avenue, #101, Miami, Florida 33130.
11. At all times material hereto, Defendant Nieves has been a resident of Miami-Dade County, Florida.
12. At all times material hereto, Defendant Avellaneda has been a resident of Miami-Dade County, Florida.
13. Defendant Nieves ran the day-to-day operations of Las 3K USA, determined the work schedule of the employees, set the rate of pay of employees, controlled the finances and operations of Defendant Las 3K USA, exercised authority to hire and fire employees and was responsible for paying Plaintiff's wages for the relevant time period.
14. Defendant Nieves was Plaintiff's employer as defined by the Fair Labor Standards Act.
15. At all times material hereto, Defendant Avellaneda regularly exercised the authority to hire and fire employees, determined the work schedules of the employees, set the rate of pay of employees, and controlled the finances and operations of Defendant Las 3K USA.
16. Defendant Avellaneda was Plaintiff's employer as defined by the Fair Labor Standards Act.
17. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. §201-219, and 28 U.S.C. §1331, §1337.
18. Venue is proper in this Court, pursuant to 28 U.S.C. §1391, as Defendant Las 3K USA is a Florida limited liability company that maintains offices and regularly conducts business

within the Southern District of Florida, and the individually-named Defendants (Defendant Nieves and Defendant Avellaneda) reside within this District. Venue is also proper because the conduct in violation of the Fair Labor Standards Act occurred within the Southern District.

19. Defendant Las 3K USA engages in business activities to which the Fair Labor Standard Act applies. Defendant Las 3K USA and the Plaintiff's work for the business affected interstate commerce for the relevant time period because the goods and materials that Plaintiff used and/or handled on a constant and/or continual basis and that were supplied to him by Defendant Las 3K USA to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of same.
20. The Fair Labor Standards Act applies to Plaintiff's work for the Defendants because the work was actually in and/or closely related to the movement of commerce during Plaintiff's employment for the Defendants.
21. Upon information and belief, Defendant Las 3K USA grossed over \$500,000 in sales annually for the relevant time period (2017 and 2018).
22. There are weeks during Plaintiff's period of employment that he did not receive any compensation.
23. Before initiating this lawsuit, Plaintiff made numerous attempts himself to recover the amount of wages owed and due to him.
24. Plaintiff Fajardo brings this lawsuit on behalf of himself and on behalf of other employees who are similarly-situated for unpaid minimum and overtime wages, and unpaid wages and other relief pursuant to the Fair Labor Standards Act.

**COUNT I – VIOLATION OF THE FLSA
FOR FAILURE TO PAY THE MINIMUM WAGE
AGAINST DEFENDANT LAS 3K USA**

25. Plaintiff re-alleges the allegations set forth in paragraphs 1-24 above as if fully set forth herein.
26. At all material times hereto, Plaintiff Fajardo was a non-exempt employee, as defined by the Fair Labor Standards Act.
27. Plaintiff Fajardo worked six or seven days a week depending on the work schedule and the needs of the business as determined by management.
28. Defendant Las 3K USA and Defendant Nieves required Plaintiff to record the number of hours that he worked by using an electronic time-keeping system.
29. During his employment, Plaintiff Fajardo recorded the number of hours that he worked by using the electronic time-keeping system.
30. The time records for the entire period of Plaintiff's employment should be in the possession, custody and control of the Defendants, as required by the Fair Labor Standards Act.
31. The time records, some of which are in Plaintiff's possession, show that Plaintiff Fajardo consistently worked in excess of forty hours a week.
32. The time records referenced in the paragraph above (paragraph 30 of the Complaint) show that Plaintiff worked as much as nearly seventy (70) hours in one workweek.
33. During Plaintiff Fajardo's employment, Plaintiff Fajardo was compensated at weekly pay of \$700.00 (Seven Hundred Dollars) regardless of the number of hours that he worked in a given workweek.
34. Based upon the number of hours worked and the amount of compensation he received each week, Plaintiff Fajardo's regular rate of pay fell below the Florida minimum wage.

35. There were weeks during his period of employment that Plaintiff did not receive any payment at all for the number of hours worked.
36. The Fair Labor Standards Act requires employers to pay employees at least the minimum wage for forty hours or less worked by the employee in a given workweek.
37. The Florida minimum wage rate was \$8.10 in the year 2017.
38. The Florida minimum wage is interpreted in accordance with the Fair Labor Standards Act. *See Fla. Stat. §448.110 and Florida Constitution Art. 10, §24.*
39. Defendants willfully and intentionally refused to pay Plaintiff the minimum wages as required by the Fair Labor Standards act and remain owing Plaintiff minimum wages from April 2017 through the end of his employment.
40. For at least three years prior to filing of this Complaint and continuing, Defendants had a policy and practice of not compensating its non-exempt employees at the minimum wage for forty hours or less of work performed for the benefit of Defendants in a given workweek.
41. Defendants willfully and intentionally refused to pay Plaintiff's minimum wages, as required by the Fair Labor Standards Act, and remains owing Plaintiff these wages for the entire period of Plaintiff's employment.

WHEREFORE, Plaintiff and all others similarly-situated respectfully request that this Court award them the amount owed in minimum wages, liquidated damages and reasonable attorney's fees and costs, pursuant to the Fair Labor Standards Act.

**COUNT II – VIOLATION OF THE FLSA
FOR FAILURE TO PAY OVERTIME WAGES
AGAINST DEFENDANT LAS 3K USA**

42. Plaintiff re-alleges the allegations set forth in paragraphs 1-41 above, as if fully set forth herein.

43. From April 2017 until the end of his employment, Plaintiff worked in excess of forty (40) hours per week for which he was not compensated as required by the Fair Labor Standards Act.

44. The Fair Labor Standards Act requires employers to pay overtime at the statutory rate of one and one-half times the regular rate of pay.

45. Plaintiff, in accordance with the FLSA, should have been paid at the rate of one and one-half for all hours worked in excess of forty (40) hours per week.

46. Instead, Plaintiff was compensated seven hundred dollars (\$700) a week, regardless of the number of hours reflected on the time records.

47. Defendants knew or should have known that Plaintiff was permitted and required to work overtime for Defendants.

48. At all times material hereto, Defendants maintained time records of the number of overtime hours worked by Plaintiff.

49. Defendants did not compensate him for the number of hours of overtime worked, as reflected on Plaintiff's time records.

50. Defendants failed and/or refused to compensate Plaintiff for the hours he worked in excess of forty (40) at rates not less than one and one-half times his regular rate of pay.

51. Defendants willfully and intentionally refused to pay Plaintiff overtime wages as required by the Fair Labor Standards act and remain owing Plaintiff overtime wages for the entire period of his employment.

WHEREFORE, Plaintiff and all others similarly-situated respectfully request that this Court award them the amount owed in overtime wages, liquidated damages and reasonable attorney's fees and costs, pursuant to the Fair Labor Standards Act.

**COUNT III – INDIVIDUAL LIABILITY FOR FLSA
VIOLATIONS AGAINST DEFENDANT LUISA NIEVES**

52. Plaintiff realleges the allegations set forth in paragraphs 1-51 above, as if fully set forth herein.

53. The individual Defendant, LUISA NIEVES, is an FLSA employer, as defined in 29 U.S.C. §203(d), as she ran the day-to-day operations of Las 3K USA, determined the work schedule of the employees, set the rate of pay of employees, controlled the finances and operations of Defendant Las 3K USA, exercised authority to hire and fire employees and was responsible for paying Plaintiff's wages for the relevant time period.

54. As an FLSA employer, Defendant LUISA NIEVES is jointly and severally liable to Plaintiff, together with the corporate Defendant for the unpaid minimum and overtime wages alleged in this Complaint.

WHEREFORE, Plaintiff and all others similarly-situated respectfully request that this Court award them the unpaid minimum, overtime and unpaid wages owed in addition to liquidated damages and reasonable attorney's fees and costs from Defendant Nieves pursuant to the Fair Labor Standards Act. In the event that Plaintiff or all others similarly-situated do not recover liquidated damages, then Plaintiff will seek an award of prejudgment interest.

**COUNT IV – INDIVIDUAL LIABILITY FOR FLSA
VIOLATIONS AGAINST DEFENDANT AVELLANEDA**

55. Plaintiff re-alleges the allegations contained in paragraphs 1-54 above as if fully set forth herein.

56. The individual Defendant, JAIRO AVELLANEDA, is an FLSA employer, as defined in 29 U.S.C. §203(d), as he was responsible for the finances and operations of Defendant Las 3K USA, determined the work schedule of the employees, set the rate of pay of employees,

exercised authority to hire and fire employees and was responsible for paying Plaintiff's wages for the relevant time period.

57. As an FLSA employer, Defendant Avellaneda is jointly and severally liable to Plaintiff, together with the corporate Defendant for the unpaid minimum and overtime wages alleged in this Complaint.

WHEREFORE, Plaintiff and all others similarly-situated respectfully request that this Court award them the unpaid minimum, overtime and unpaid wages owed in addition to liquidated damages and reasonable attorney's fees and costs from Defendant Avellaneda pursuant to the Fair Labor Standards Act. In the event that Plaintiff or all others similarly-situated do not recover liquidated damages, then Plaintiff will seek an award of prejudgment interest.

DEMAND FOR JURY TRIAL

Plaintiff and all others similarly-situated request a trial by jury.

Dated: March 26, 2018

Respectfully submitted,

s/Ena T. Diaz

Ena T. Diaz
FL Bar No: 0090999
ENA T. DIAZ, P.A.
*Counsel for the Plaintiff and
all other similarly-situated persons*
999 Ponce De Leon Blvd., Suite 720
Coral Gables, Florida 33134
Ph. 305-377-8828
Fax 305-356-1311
ediaz@enadiazlaw.com

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 ANIBAL FAJARDO

DEFENDANTS LAS 3K USA, L.L.C., LUISA NIEVES, and JAIRO AVELLANEDA

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

County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number) Ena T. Diaz, Esq., 999 Ponce de Leon Blvd., Suite 720, Coral Gables, FL 33134; Ph. (305) 377-8828

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

(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)

- 1 U.S. Government Plaintiff Federal Question (U.S. Government Not a Party) [X] 3
2 U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III) [] 4

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

- Citizen of This State PTF [] 1 DEF [] 1
Citizen of Another State PTF [] 2 DEF [] 2
Citizen or Subject of a Foreign Country PTF [] 3 DEF [] 3
Incorporated or Principal Place of Business In This State PTF [] 4 DEF [] 4
Incorporated and Principal Place of Business In Another State PTF [] 5 DEF [] 5
Foreign Nation PTF [] 6 DEF [] 6

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

CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes checkboxes for various legal categories like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

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

- 1 Original Proceeding [X]
2 Removed from State Court []
3 Re-filed (See VI below) []
4 Reinstated or Reopened []
5 Transferred from another district (specify) []
6 Multidistrict Litigation Transfer []
7 Appeal to District Judge from Magistrate Judgment []
8 Multidistrict Litigation - Direct File []
9 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 U.S.C. 201-219; unpaid minimum, overtime, and unpaid wages

LENGTH OF TRIAL via 3 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 March 26, 2018

SIGNATURE OF ATTORNEY OF RECORD

Ena T. Diaz

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP


JUDGE

MAG JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida 

ANIBAL FAJARDO

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Plaintiff(s)

v.

Civil Action No. _____

LAS 3K USA, L.L.C., LUISA NIEVES, and
JAIRO AVELLANEDA

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* LAS 3K USA, L.L.C.
c/o Barakat Law, P.A.
2701 Ponce de Leon Blvd., Suite 202
Coral Gables, FL 33134

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:

Ena T. Diaz, Esq.
Ena T. Diaz, P.A.
999 Ponce de Leon Blvd., Suite 720
Coral Gables, FL 33134

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: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ANIBAL FAJARDO

Plaintiff(s)

v.

LAS 3K USA, L.L.C., LUISA NIEVES, and JAIRO AVELLANEDA

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LUISA NIEVES 340 West Flagler Street, #801 Miami, FL 33130

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:

Ena T. Diaz, Esq. Ena T. Diaz, P.A. 999 Ponce de Leon Blvd., Suite 720 Coral Gables, FL 33134

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:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title


Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida 

ANIBAL FAJARDO

Plaintiff(s)

v.

LAS 3K USA, L.L.C., LUISA NIEVES, and
 JAIRO AVELLANEDA

Defendant(s)

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* JAIRO AVELLANEDA
 1015 Park Centre Blvd.
 Miami Gardens, FL 33169

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:

Ena T. Diaz, Esq.
 Ena T. Diaz, P.A.
 999 Ponce de Leon Blvd., Suite 720
 Coral Gables, FL 33134

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: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Las 3K USA Hit with Ex-Maintenance Worker's FLSA Lawsuit](#)
