

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO:**

HECTOR FILET, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

CYPO CAFÉ, INC., and  
RAFAEL M. MOLEDO, individually,

Defendants.

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**COLLECTIVE ACTION COMPLAINT**

Plaintiff, Hector Filet (“Plaintiff”), by and through undersigned counsel, hereby sues Defendants, Cypo Café, Inc. (Defendant “Cypo”) and Rafael M. Moledo (Defendant “Moledo”) (Cypo and Moledo hereinafter collectively referred to as “Defendants”), and allege as follows:

**JURISDICTION AND VENUE**

1. This is an action to recover money damages for unpaid overtime wages under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (§ 216 for jurisdictional placement) (“the FLSA”).<sup>1</sup>
2. At all times material hereto, Plaintiff performed non-exempt duties as dishwasher and cook on behalf of the Defendants in Miami-Dade County, Florida, within the jurisdiction and venue of this Court.

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<sup>1</sup> Prior to filing this Complaint, Plaintiff commenced the process of filing a Charge of Discrimination with the United States Equal Employment Opportunity Commission (“EEOC”). At such time as the EEOC completes its investigation of the allegations set out in Mr. Filet’s Charge, and/or issues a Right-to-Sue Letter, Plaintiff reserves the right to amend this Complaint to include counts of employment discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e *et seq.*, the American With Disabilities Act, 42 U.S.C. §12101, *et seq.*, and the Florida Civil Rights Act of 1992, as amended, F.S. §760.01 *et seq.*

3. Plaintiff was hired by Defendants on or about March 24, 2014.
4. Based upon the information preliminarily available, and subject to discovery in this cause, Defendants did not compensate Plaintiff and all similarly situated employees for all overtime hours worked in a work week.
5. Defendants directly or indirectly acted in the interest of an employer towards Plaintiff and all similarly situated employees at all material times, including without limitation directly or indirectly controlling the terms of employment of Plaintiff and all similarly situated employees.
6. At all times material hereto, Defendants managed, owned and/or operated a business for profit in Miami-Dade County, Florida, and regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees, and control the finances and operations of such business. By virtue of such control and authority, Defendants were an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. §201 *et seq.*
7. At all material times during previous last three years, Defendant Cypo has had annual gross revenues of not less than \$500,000.00.
8. At all material times during the last three years, Defendant Cypo has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of §3(s)(1) of the Act, in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

9. By reason of the foregoing, Defendant Cypo is and was, during all times hereafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in §§ 3(r) and 3(s) of the FLSA, 29 U.S.C. §§ 203(r) and 203(s).
10. Defendant Moledo owns and/or operates Cypo in Miami-Dade County, Florida, and employ persons such as Plaintiff and other similarly situated employees to work on his behalf in providing labor for his business.
11. Defendant Moledo is within the personal jurisdiction and venue of this Court.
12. At all times material hereto, Defendant Moledo, managed, owned and operated a company for profit in Miami-Dade County, Florida and regularly exercised the authority to control the terms and conditions of Plaintiff's employment. For example, Defendant Moledo had the ability to hire and fire the Plaintiff, determine the work schedule of the Plaintiff, set the rate of pay of the Plaintiff, and control the finances and operations of his business. By virtue of such control and authority, Defendant Moledo was an employer of Plaintiff as such term is defined by 29 U.S.C. § 203(d)
13. Alternatively, the Plaintiff worked in interstate commerce so as to fall within the protections of the Act.
14. The records, if any, concerning the number of hours worked by Plaintiff and all other similarly situated employees are in the possession and custody of the Defendants.
15. The records, if any, concerning the compensation actually paid to Plaintiff and all other similarly situated employees are in the possession and custody of the Defendants.
16. Pursuant to 29 U.S.C. §216(b), Plaintiff and similarly situated employees are entitled to recovery of reasonable attorneys' fees and costs.

17. At all times pertinent to this complaint, Defendants failed to comply with Title 29 U.S.C. §§ 201–209 in that Plaintiff performed services and labor for Defendants for which Defendants made no provision to pay Plaintiff compensation to which he was lawfully entitled for the period of time each day he performed labor on behalf of Defendants.
18. The additional persons who may become Plaintiffs in this action are Defendants’ non-exempt employees who have worked in excess of Forty (40) hours during one or more work weeks on or after July 2014, and did not receive time and one-half of their regular rate of pay for all of the hours they worked over Forty (40) in one or more work weeks.
19. Defendants’ actions involve a company-wide unlawful pay policy with the uniform result that Plaintiff and all similarly situated employees are denied their proper compensation.
20. Defendants knowingly violated the law by engaging in a uniform practice where they failed to pay their employees for overtime hours.
21. Plaintiff has retained the law firm of Jonathan S. Minick, P.A. to represent him and has incurred attorneys’ fees and costs in bringing this action.

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION ON BEHALF OF PLAINTIFF**  
**AGAINST ALL DEFENDANTS**

22. Plaintiffs re-allege and incorporates herein by reference, all allegations contained in Paragraphs 1 through 21 above.
23. Plaintiff and similarly situated employees are entitled to be paid time and one-half of their regular rate of pay for each hour worked in excess of Forty (40) hours per work week.
24. Plaintiff was employed by Defendants from approximately March 24, 2014 through May 27, 2017.

25. While employed by the Defendants, Plaintiff worked an average of six (6) days per week, and worked approximately seventy-five (75) hours each week.
26. At the time of his termination, Defendants paid Plaintiff a weekly salary of \$650.00 per week, regardless of the number of hours the Plaintiff worked.
27. Plaintiff was not compensated at an overtime rate by Defendants for the hours he worked in excess of forty (40) per week.
28. Defendants knowingly and willfully failed to pay Plaintiff and similarly situated employees at time and one half of their regular rate of pay for all hours worked in excess of forty (40) hours per week.
29. The failure of Defendants to compensate Plaintiff and similarly situated employees at their given rate of pay for all hours worked is in violation of the FLSA.
30. Defendants, therefore, are liable to Plaintiff and similarly situated employees in the amount of their unpaid hours and overtime compensation.
31. By reason of the said intentional, willful, and unlawful acts of Defendants, Plaintiff and similarly situated employees have suffered damages plus incurring costs and reasonable attorneys' fees.
32. As a result of Defendants' willful violations of the Act, Plaintiff and similarly situated employees are entitled to liquidated damages.

WHEREFORE, Plaintiff, and those similarly situated, demand judgment against the Defendants, joint and severally, for the payment of compensation for all overtime hours at one and one-half their regular rate of pay for the hours worked for which Plaintiff has not been properly compensated, liquidated damages, reasonable attorneys' fees and costs of suit, and for all other appropriate relief including prejudgment interest.

**DEMAND FOR JURY TRIAL**

33. Plaintiff demands trial by jury as to all issues so triable.

Dated: July 20, 2017

Respectfully submitted,

s/Jonathan S. Minick  
Jonathan S. Minick, Esq.  
FBN: 88743  
E-mail: [jminick@jsmlawpa.com](mailto:jminick@jsmlawpa.com)  
Jonathan S. Minick, P.A.  
1850 SW 8<sup>th</sup> Street, Suite 307  
Miami, Florida 33135  
Phone: (786) 441-8909  
Facsimile: (786) 523-0610  
Counsel for Plaintiff

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 HECTOR FILET, on behalf of himself and all others similarly situated,

DEFENDANTS CYPO CAFÉ, INC., and RAFAEL M. MOLEDO, individually

(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.

(c) Attorneys (Firm Name, Address, and Telephone Number) Jonathan S. Minick, P.A., 1850 SW 8th Street, Suite 307, Miami, Florida 33137, 786-441-8909

Attorneys (If Known)

(d) Check County Where Action Arose: 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
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

- 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
4 4
5 5
6 6

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

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 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 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 NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION 29 USC 216(b) - Unpaid overtime wages 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):

LENGTH OF TRIAL via 5 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: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE 7/20, 2017 SIGNATURE OF ATTORNEY OF RECORD Jonathan Minick

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.** Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

**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.

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

HECTOR FILET, on behalf of himself
and all others similarly situated

Plaintiff(s)

v.

CYPO CAFÉ, INC., and
RAFAEL M. MOLEDO, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CYPO CAFE, INC.
c/o Registered Agent, SANDRA L. OLIVEIRA
7438 COLLINS AVE.
MIAMI BEACH, FL 33141

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:

Jonathan S. Minick, Esq.
Jonathan S. Minick, P.A.
1850 SW 8th Street, Suite 307
Miami, Florida 33135

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))*

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:

**Print**

**Save As...**

**Reset**

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

UNITED STATES DISTRICT COURT

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HECTOR FILET, on behalf of himself
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Plaintiff(s)

v.

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RAFAEL M. MOLEDO individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) RAFAEL M. MOLEDO
7438 COLLINS AVE.
MIAMI BEACH, FL 33141

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:

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Jonathan S. Minick, P.A.
1850 SW 8th Street, Suite 307
Miami, Florida 33135

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. \_\_\_\_\_

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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)*:

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:

**Print**

**Save As...**

**Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Cypo Café Hit with Overtime Lawsuit Filed by Former Dishwasher/Cook](#)

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