UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

VIRGILIO GONZALES OSORIO, JOSE NELSON AGUILERA REYES, and all others similarly situated under 29 U.S.C. 216(b), Plaintiffs, vs. JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE, JAIRO A HURTADO, SR., Defendants.	))))))))))))))

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

Plaintiffs, VIRGILIO GONZALES OSORIO and JOSE NELSON AGUILERA REYES, on behalf of themselves and all others similarly situated under 29 U.S.C. 216(b), through undersigned counsel, file this Complaint against Defendants, JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE, and JAIRO A HURTADO, SR., and allege:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. §§ 201-216.

2. The Plaintiffs were residents of Dade County, Florida at the time that this dispute arose.

3. The Defendant JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE, is a limited liability corporation that regularly transacts business within Dade County. Upon information and belief, the Defendant Corporation was the FLSA employer for Plaintiffs' respective period of employment ("the relevant time period").

4. The individual Defendant JAIRO A HURTADO, SR., is a corporate officer and/or owner and/or manager of the Defendant Corporation who ran the day-to-day operations of the Corporate Defendant for the relevant time period and was responsible for paying Plaintiffs'

wages for the relevant time period and controlled Plaintiffs' work and schedule and was therefore Plaintiffs' employer as defined by 29 U.S.C. 203 (d).

5. All acts or omissions giving rise to this dispute took place in Dade County.

COUNT I. FEDERAL OVERTIME WAGE VIOLATION

6. This action arises under the laws of the United States. This case is brought as a collective action under 29 USC 216(b). It is believed that the Defendants have employed several other similarly situated employees like Plaintiffs who have not been paid overtime and/or minimum wages for work performed in excess of 40 hours weekly from the filing of this complaint back three years.

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).

8. 29 U.S.C. § 207 (a) (1) states, "Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

9. Plaintiff VIRGILIO GONZALES OSORIO worked for Defendants as a cook from on or about August 15, 2013 through on or about November 5, 2016.

10. Plaintiff JOSE NELSON AGUILERA REYES worked for Defendants as a cook from on or about July 27, 2012 through on or about November 5, 2016.

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

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

13. Upon information and belief, the Defendant Corporation had gross sales or business done in excess of $500,000 annually for the years 2012, 2013, 2014, and 2015.

14. Upon information and belief, the Defendant Corporation's gross sales or business done exceeded $375,000 for the nine months of the year 2016 and is expected to exceed $500,000 for the year 2016.

15. Between the period of on or about August 15, 2013 through on or about November 5, 2016, Plaintiff VIRGILIO GONZALES OSORIO worked an average of 55 hours a week for Defendants and was paid an average of $13.00 per hour but was never paid the extra half time rate for any hours worked over 40 hours in a week as required by the Fair Labor Standards Act. Plaintiff therefore claims the half time overtime rate for each hour worked

above 40 in a week.

16. Between the period of on or about July 27, 2012 through on or about November 5, 2016, Plaintiff JOSE NELSON AGUILERA REYES worked an average of 55 hours a week for Defendants and was paid an average of $13.00 per hour but was never paid the extra half time rate for any hours worked over 40 hours in a week as required by the Fair Labor Standards Act. Plaintiff therefore claims the half time overtime rate for each hour worked above 40 in a week.

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

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

Respectfully Submitted,

J.H. Zidell, Esq.
J.H. Zidell, P.A.

Attorney For Plaintiffs
300 71st Street, Suite 605
Miami Beach, Florida 33141
Tel: (305) 865-6766
Fax: (305) 865-7167
Email: ZABOGADO@AOL.COM

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

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

VIRGILIO GONZALES OSORIO, JOSE NELSON AGUILERA REYES, and all others similarly situated under 29 U.S.C. 216(b), Plaintiffs, vs. JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE, JAIRO A HURTADO, SR., Defendants. _____	))))))))))))))

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE
Registered Agent: Jairo A Hurtado, Sr.
841 Washington Avenue
Miami Beach, FL 33139

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: _____   _____

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

VIRGILIO GONZALES OSORIO, JOSE NELSON AGUILERA REYES, and all others similarly situated under 29 U.S.C. 216(b),
 	
    Plaintiffs,
  vs.
 	
JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE, JAIRO A HURTADO, SR.,
 	
    Defendants.
_____
	)
	)
	)
	)
	)
	)
	)
	)
	)
	)
	)
	)
	)
	)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)
JAIRO A HURTADO, SR.
841 Washington Avenue
Miami Beach, FL 33139

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: _____

JS 44 (Rev. 12/12) **CIVIL COVER SHEET**

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

I. (a) PLAINTIFFS
OSORIO, VIRGILIO GONZALES, JOSE NELSON AGUILERA REYES, and all others similarly situated under 29 USC 216(b)

DEFENDANTS
JPJE CORP. d/b/a BOLIVAR RESTAURANT & LOUNGE,

(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)*
J.H. Zidell, P.A.
300 71st St., Suite 605, Miami Beach, FL 33141   phone: 305-865-6766

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
☒ 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)*
(For Diversity Cases Only) *and One Box for Defendant)*

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	**PERSONAL INJURY** **PERSONAL INJURY**	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 310 Airplane ☐ 365 Personal Injury -	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 400 State Reapportionment
☐ 130 Miller Act	☐ 315 Airplane Product Product Liability			☐ 410 Antitrust
☐ 140 Negotiable Instrument	Liability ☐ 367 Health Care/			☐ 430 Banks and Banking
☐ 150 Recovery of Overpayment	☐ 320 Assault, Libel & Pharmaceutical		**PROPERTY RIGHTS**	☐ 450 Commerce
& Enforcement of Judgment	Slander Personal Injury		☐ 820 Copyrights	☐ 460 Deportation
☐ 151 Medicare Act	☐ 330 Federal Employers' Product Liability		☐ 830 Patent	☐ 470 Racketeer Influenced and
☐ 152 Recovery of Defaulted	Liability ☐ 368 Asbestos Personal		☐ 840 Trademark	Corrupt Organizations
Student Loans	☐ 340 Marine Injury Product			☐ 480 Consumer Credit
(Excl. Veterans)	☐ 345 Marine Product Liability		**LABOR**	**SOCIAL SECURITY**	☐ 490 Cable/Sat TV
☐ 153 Recovery of Overpayment	Liability **PERSONAL PROPERTY**	☒ 710 Fair Labor Standards	☐ 861 HIA (1395ff)	☐ 850 Securities/Commodities/
of Veteran's Benefits	☐ 350 Motor Vehicle ☐ 370 Other Fraud	Act	☐ 862 Black Lung (923)	Exchange
☐ 160 Stockholders' Suits	☐ 355 Motor Vehicle ☐ 371 Truth in Lending	☐ 720 Labor/Mgmt. Relations	☐ 863 DIWC/DIWW (405(g))	☐ 890 Other Statutory Actions
☐ 190 Other Contract	Product Liability ☐ 380 Other Personal	☐ 740 Railway Labor Act	☐ 864 SSID Title XVI	☐ 891 Agricultural Acts
☐ 195 Contract Product Liability	☐ 360 Other Personal Property Damage	☐ 751 Family and Medical	☐ 865 RSI (405(g))	☐ 893 Environmental Matters
☐ 196 Franchise	Injury ☐ 385 Property Damage	Leave Act		☐ 895 Freedom of Information
	☐ 362 Personal Injury - Product Liability	☐ 790 Other Labor Litigation		Act
	Med. Malpractice	☐ 791 Empl. Ret. Inc.		☐ 896 Arbitration
REAL PROPERTY	**CIVIL RIGHTS** **PRISONER PETITIONS**	Security Act	**FEDERAL TAX SUITS**	☐ 899 Administrative Procedure
☐ 210 Land Condemnation	☐ 440 Other Civil Rights **Habeas Corpus:**		☐ 870 Taxes (U.S. Plaintiff	Act/Review or Appeal of
☐ 220 Foreclosure	☐ 441 Voting ☐ 463 Alien Detainee		or Defendant)	Agency Decision
☐ 230 Rent Lease & Ejectment	☐ 442 Employment ☐ 510 Motions to Vacate		☐ 871 IRS—Third Party 26	☐ 950 Constitutionality of State
☐ 240 Torts to Land	☐ 443 Housing/ Sentence		USC 7609	Statutes
☐ 245 Tort Product Liability	Accommodations **Other:**			
☐ 290 All Other Real Property	☐ 445 Amer. w/Disabilities - ☐ 530 General			
	Employment ☐ 535 Death Penalty		**IMMIGRATION**	
	☐ 446 Amer. w/Disabilities - ☐ 540 Mandamus & Other	☐ 462 Naturalization Application		
	Other ☐ 550 Civil Rights	☐ 465 Other Immigration		
	☐ 448 Education ☐ 555 Prison Condition	Actions		
	☐ 560 Civil Detainee – Conditions of Confinement			

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   ☐ 7 Appeal to District Judge from Magistrate Judgment   ☐ 8 Remanded from Appellate Court

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

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

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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE
DATE   SIGNATURE OF ATTORNEY OF RECORD
November 9, 2016

FOR OFFICE USE ONLY
RECEIPT #   AMOUNT   IFP   JUDGE   MAG JUDGE

Save As...   Print   Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII.   Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**.   Example: U.S. Civil Statute: 47 USC 553
                          Brief Description: Unauthorized reception of cable service

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

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

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

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Bolivar Restaurant & Lounge Served with Overtime Pay Class Action](#)