

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

LORENZO VERANES, individually,
and on behalf of all other employees of Defendants
similarly situated,

Plaintiffs,

vs.

DIAZ SUPERMARKET OPA LOCKA, INC.,
a Florida corporation, and **JIMMY DIAZ**, individually,

Defendants.

**COMPLAINT FOR VIOLATION OF
THE FAIR LABOR STANDARDS ACT**

COMES NOW Plaintiff LORENZO VERANES (“Plaintiff”), by and through his undersigned counsel, and files this Complaint for Violation of the Fair Labor Standards Act against Defendants DIAZ SUPERMARKET OPA LOCKA, INC., (“DIAZ SUPERMARKET”), a Florida corporation, and JIMMY DIAZ (“DIAZ”), individually and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff, who was employed by DIAZ SUPERMARKET from sometime in 2012 through August 21, 2017, brings this action against DIAZ SUPERMARKET, and JIMMY DIAZ on behalf of himself and others similarly situated, to redress the deprivation of rights secured to Plaintiff and to recover unpaid overtime compensation, liquidated damages, attorney’s fees and costs pursuant to the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201(b), *et seq.* (hereinafter the “FLSA”).
2. Jurisdiction of this action is conferred on this Court by 29 U.S.C. §216(b)

and by the provisions of 28 U.S.C. §1337 relating to “any civil action or proceeding arising under an act of Congress regulating commerce.”

3. Venue is proper with this Court because the acts and omissions set forth herein occurred within the territorial jurisdiction and district of this Court.

4. At all times material hereto, the Plaintiff was a resident of the County of Miami-Dade, Florida.

5. At all times material hereto, DIAZ SUPERMARKET was a company doing business in Florida with its business address at 151 Opa Locka Boulevard, Opa Locka, Florida 33054, within the jurisdiction and district of this Court, and operates a supermarket in Miami-Dade County, Florida, within the jurisdiction and district of this Court.

6. During the time period from approximately 2012 through August 21, 2017, DIAZ SUPERMARKET employed Plaintiff LORENZO VERANES and others similarly situated as an “at-will”, nonexempt, employee as at DIAZ SUPERMARKET in Miami-Dade County, Florida.

7. Plaintiff is informed and believes that at all times material hereto, Defendant JIMMY DIAZ was a resident of the County of Miami-Dade, State of Florida.

8. At all times material hereto, Defendant JIMMY DIAZ was an officer and/or an administrator or manager of DIAZ SUPERMARKET and a direct or indirect supervisor and employer of Plaintiff and others similarly within the meaning of 29 U.S.C. §203(d) in that Defendant JIMMY DIAZ acted directly in the interest of DIAZ SUPERMARKET in relation to its employees, including Plaintiff and other employees of DIAZ SUPERMARKET similarly situated.

9. Plaintiff is informed and believes and hereby alleges that during the relevant time periods material hereto, DIAZ SUPERMARKET's gross annual revenues were in excess of \$500,000.00. See Dobbins v. Scriptfleet, Inc., 2012 WL 601145, at *2 (M.D.Fla. Feb. 23, 2012) (Bucklew, J.) (allegation, on information and belief, that defendants' annual gross sales exceeded \$500,000 was sufficient to withstand dismissal); Roberts v. Caballero & Castellanos, PL, 2010 WL 114001, at *3 (S.D.Fla. Jan. 11, 2010) (Moore, J.) (allegation that plaintiff "was of the belief that [defendant] grossed in excess of \$500,000 annually" was sufficient to withstand dismissal).

10. At all times material hereto, DIAZ SUPERMARKET was engaged in interstate commerce within the meaning of 29 U.S.C. §§203(b), 203(l), 203(j), 203(r), 203(s) 206(a) and 207(a). Specifically, at all times material hereto, DIAZ SUPERMARKET operated a supermarket which purchased goods in interstate commerce, and handled credit card transactions, and is thus subject to the FLSA. In fact, Plaintiff is informed and believes that a majority of the goods sold by DIAZ SUPERMARKET were produced outside of the state of Florida.

11. By reason of the foregoing, DIAZ SUPERMARKET was all times hereafter mentioned engaged in commerce as defined in 29 U.S.C. §§203(r) and 203(s).

12. At all times material hereto, Plaintiff and others similarly situated in performing their job duties, were engaged in commerce within the meaning of 29 U.S.C. §§203(b), 203(l), 203(o), 203(r), 203(s), 206(a) and 207(a). The work performed by Plaintiff and others similarly situated was directly essential to the business of DIAZ SUPERMARKET, i.e., working in various positions in DIAZ SUPERMARKET business, which was directly essential to the business operated by DIAZ

SUPERMARKET. Furthermore, Plaintiff was engaged in handling goods in commerce because Plaintiff and the other at-will employees employed by DIAZ SUPERMARKET regularly and recurrently handled goods produced outside of the State of Florida. See 29 C.F.R. §779.114.

13. At all times material hereto, Plaintiff and others similarly situated did not have a clear understanding as to how they were to be compensated with respect to their work.

COUNT I
VIOLATION OF THE OVERTIME PAY PROVISIONS OF THE
FAIR LABOR STANDARDS ACT BY DEFENDANTS

14. Plaintiff realleges and reaffirms Paragraphs 1 through 13 as if fully set out in this Count I.

15. During the period of time from sometime in 2012 through August 21, 2017, Plaintiff worked for DIAZ SUPERMARKET.

16. Plaintiff's work schedule was from 7:00 a.m. to 3:00 p.m Monday to Saturday (approximately 8.00 hours per day) and from 6:00 a.m to 9:00 p.m on Sundays (approximately 15.00 hours per day). During the mentioned period of time, Plaintiff worked as much as sixty-three (63) hours per week for the Defendants. Plaintiff was paid a salary of \$600.00 per week, until approximately October 22, 2016, and a cash wage of \$10.00 per hour until August 21, 2017. Furthermore, he was only paid a maximum of forty (40) hours per week, despite the fact that he worked more than forty (40) hours per week.

17. As such, Plaintiff is owed \$15,445.08 in overtime wages, plus liquidated damages pursuant to 29 U.S.C. §201(b), et seq.

18. Defendants knew or should have known that Plaintiff and others similarly situated suffered or were permitted to work for DIAZ SUPERMARKET as defined in 29 U.S.C. §203(g).

19. Other employees of Defendants similarly situated to Plaintiff were subjected to the same practices as Plaintiff and worked similar hours and were not compensated as required by the FLSA.

20. Defendants failed and/or refused to compensate Plaintiff and others similarly situated for such work at the federally mandated overtime wages, contrary to the provisions of 29 U.S.C. §207(a).

21. At all times material hereto, Defendants knew that the herein described refusals and/or failures were prohibited by the FLSA and intentionally and willfully violated the FLSA as cited herein and/or showed reckless disregard for whether the herein described refusals and/or failures were in violation of the FLSA.

22. At all times material hereto, Defendants failed to maintain proper time records as mandated by the FLSA regarding the hours worked by Plaintiff and others similarly situated.

PRESUIT DEMAND

23. On December 20, 2017, Plaintiff, through undersigned counsel, sent (via Certified Mail) a written demand to Defendants, as owners, managers and administrators of DIAZ SUPERMARKET, pursuant to Patel v. Wargo, 803 F.2d 632, 637-38 (11th Cir. 1986); Donovan v. Agnew, 712 F.2d 1509, 1511 (1st Cir.1983); Perez v. Palermo Seafood, Inc., 548 F.Supp.2d 1340, 1346 (S.D. Fla., 2008) demanding that the Defendants pay the amounts owed to the Plaintiff. Defendants, however, failed and

refused to pay the amounts owed to Plaintiff.

PLAINTIFF'S DEMAND FOR JURY TRIAL

24. Plaintiff, by and through his undersigned counsel, hereby demands a jury trial of all issues so triable.

WHEREFORE, Plaintiff respectfully request that a judgment be entered in his favor against Defendants as follows:

(a) Permanently enjoin the Defendants, their agents, officers and employees from engaging in all practices found by this Court to be in violation of the FLSA;

(b) Awarding Plaintiff compensation for all hours that he worked for Defendants, but for which he was not compensated at the statutory federally mandated overtime wages;

(c) Awarding Plaintiff liquidated damages;

(d) Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of this litigation pursuant to 29 U.S.C. §216(b); and

(e) Ordering any other further relief that this Court may deem just and proper.

Respectfully submitted this 8th day of March, 2018.

FOWLER RODRIGUEZ LLP

By: s/Santiago J. Padilla
Santiago J. Padilla, Esq.
(Fla. Bar No.: 037478)
E-Mail: spadilla@frfirm.com

Santiago J. Padilla, Esq.
Fowler Rodriguez LLP
355 Alhambra Circle, Suite 801
Coral Gables, Florida 33134
Telephone: (786) 364-8400
Facsimile: (786) 364-8401

JS 44 (Rev. 06/17)

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.)

I. (a) PLAINTIFFS

LORENZO VERANES, individually, and on behalf of all other employees of Defendants similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Santiago J. Padilla, Esq.

Fowler Rodriguez, LLP, 355 Alhambra Circle, Suite 801
Coral Gables, Florida 33134 Tel: (786)364-8463 Fax: (786) 364-8400

DEFENDANTS

DIAZ SUPERMARKET OPA LOCKA, INC., a Florida corporation, and JIMMY DIAZ, an individual

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

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

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

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

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

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act of 1938, as amended, 29 U.S.C.

Brief description of cause:
Action for Failure to pay 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

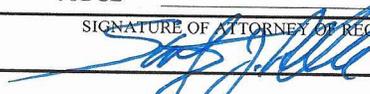
(See instructions):

JUDGE

DOCKET NUMBER

DATE
03/08/18
FOR OFFICE USE ONLY

SIGNATURE OF ATTORNEY OF RECORD



RECEIPT # _____ AMOUNT _____ APPLICANT IFF _____ JUDGE _____ MAG. JUDGE _____

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LORENZO VERANES, individually, and on behalf of all other employees of Defendants similarly situated,

Plaintiff(s)

v.

DIAZ SUPERMARKET OPA LOCKA, INC., a Florida corporation, and JIMMY DIAZ, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) DIAZ SUPERMARKET OPA LOCKA, INC., c/o Jimmy Diaz, Registered Agent 1239 N.E. 8th Street Homestead, Florida 33033-4502

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:

Santiago J. Padilla, Esq. Fowler Rodriguez, LLP 355 Alhambra Circle, Suite 801 Coral Gables, Florida 33134 Tel: (786) 364-8445 Fax: (786) 364-8401

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

Civil Action No. _____

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

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_____, 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:

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: [Diaz Supermarket Hit with Unpaid Overtime Lawsuit](#)
