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*Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

-----X  
TEODORO CUEVAS LUCERO, *individually  
and on behalf of others similarly situated,*

*Plaintiff,*

**COMPLAINT**

-against-

**COLLECTIVE ACTION UNDER  
29 U.S.C. § 216(b)**

GALLITOS MEXICAN URBAN KITCHEN  
INC. (D/B/A GALLITO'S KITCHEN), BAHAR  
MIT RANA REST CORP. (D/B/A GALLITO'S  
KITCHEN), AQSA FOOD CORP. (D/B/A  
GALLITO'S KITCHEN), BAHAR REST CORP.  
(D/B/A GALLITO'S KITCHEN), and BAHAR H  
KHANDAKAR ,

**ECF Case**

*Defendants.*

-----X

Plaintiff Teodoro Cuevas Lucero (“Plaintiff Cuevas” or “Mr. Cuevas”), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., upon his knowledge and belief, and as against Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), Bahar Mit Rana Rest Corp. (d/b/a Gallito's Kitchen), AQSA Food Corp. (d/b/a Gallito's Kitchen), Bahar Rest Corp. (d/b/a Gallito's Kitchen), (“Defendant Corporations”) and Bahar H Khandakar (“Individual Defendant”) (collectively, “Defendants”), alleges as follows:

**NATURE OF ACTION**

1. Plaintiff Cuevas is a former employee of Defendants Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), Bahar Mit Rana Rest Corp. (d/b/a Gallito's Kitchen), AQSA Food

Corp. (d/b/a Gallito's Kitchen), Bahar Rest Corp. (d/b/a Gallito's Kitchen), and Bahar H Khandakar.

2. Defendants own, operate, or control a Mexican restaurant, located at 140 Montague St, Brooklyn, NY 11201 under the name "Gallito's Kitchen."

3. Upon information and belief, individual Defendant Bahar H Khandakar, serves or served as owner, manager, principal, or agent of Defendant Corporations and, through these corporate entities, operates or operated the restaurant as a joint or unified enterprise.

4. Plaintiff Cuevas was an employee of Defendants.

5. Plaintiff Cuevas was employed as a cook at the restaurant located at 140 Montague St, Brooklyn, NY 11201.

6. At all times relevant to this Complaint, Plaintiff Cuevas worked for Defendants in excess of 40 hours per week, without appropriate minimum wage, overtime, and spread of hours compensation for the hours that he worked.

7. Rather, Defendants failed to maintain accurate recordkeeping of the hours worked, failed to pay Plaintiff Cuevas appropriately for any hours worked, either at the straight rate of pay or for any additional overtime premium.

8. Further, Defendants failed to pay Plaintiff Cuevas the required "spread of hours" pay for any day in which he had to work over 10 hours a day.

9. Furthermore, Defendants repeatedly failed to pay Plaintiff Cuevas wages on a timely basis.

10. Defendants' conduct extended beyond Plaintiff Cuevas to all other similarly situated employees.

11. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Cuevas and other employees to work in excess of forty (40) hours per week without providing the minimum wage and overtime compensation required by federal and state law and regulations.

12. Plaintiff Cuevas now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”), and for violations of the N.Y. Labor Law §§ 190 *et seq.* and 650 *et seq.* (the “NYLL”), and the “spread of hours” and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. tit. 12, § 146-1.6 (herein the “Spread of Hours Wage Order”), including applicable liquidated damages, interest, attorneys’ fees and costs.

13. Plaintiff Cuevas seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question) and the FLSA, and supplemental jurisdiction over Plaintiff Cuevas’s state law claims under 28 U.S.C. § 1367(a).

15. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because all, or a substantial portion of, the events or omissions giving rise to the claims occurred in this district, Defendants maintain their corporate headquarters and offices within this district, and Defendants operate a Mexican restaurant located in this district. Further, Plaintiff Cuevas was employed by Defendants in this district.

**PARTIES**

*Plaintiff*

16. Plaintiff Teodoro Cuevas Lucero (“Plaintiff Cuevas” or “Mr. Cuevas”) is an adult individual residing in Kings County, New York.

17. Plaintiff Cuevas was employed by Defendants at Gallito's Kitchen from approximately November 2015 until on or about October 2017.

18. Plaintiff Cuevas consents to being a party plaintiff pursuant to 29 U.S.C. § 216(b), and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

*Defendants*

19. At all relevant times, Defendants owned, operated, or controlled a Mexican restaurant, located at 140 Montague St, Brooklyn, NY 11201 under the name “Gallito's Kitchen.”

20. Upon information and belief, Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 140 Montague St, Brooklyn, NY 11201.

21. Upon information and belief, Bahar Mit Rana Rest Corp. (d/b/a Gallito's Kitchen) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 140 Montague St, Brooklyn, NY 11201.

22. Upon information and belief, AQSA Food Corp. (d/b/a Gallito's Kitchen) is a domestic corporation organized and existing under the laws of the State of New York. Upon

information and belief, it maintains its principal place of business at 140 Montague St, Brooklyn, NY 11201.

23. Upon information and belief, Bahar Rest Corp. (d/b/a Gallito's Kitchen) is a domestic corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 140 Montague St, Brooklyn, NY 11201.

24. Defendant Bahar H Khandakar is an individual engaging (or who was engaged) in business in this judicial district during the relevant time period. Defendant Bahar H Khandakar is sued individually in his capacity as owner, officer and/or agent of Defendant Corporations. Defendant Bahar H Khandakar possesses operational control over Defendant Corporations, an ownership interest in Defendant Corporations, and controls significant functions of Defendant Corporations. He determines the wages and compensation of the employees of Defendants, including Plaintiff Cuevas, establishes the schedules of the employees, maintains employee records, and has the authority to hire and fire employees.

### **FACTUAL ALLEGATIONS**

#### *Defendants Constitute Joint Employers*

25. Defendants operate a Mexican restaurant located in the Brooklyn Heights section of Brooklyn in New York City.

26. Individual Defendant, Bahar H Khandakar, possesses operational control over Defendant Corporations, possesses ownership interests in Defendant Corporations, and controls significant functions of Defendant Corporations.

27. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method, and share control over the employees.

28. Each Defendant possessed substantial control over Plaintiff Cuevas's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Cuevas, and all similarly situated individuals, referred to herein.

29. Defendants jointly employed Plaintiff Cuevas (and all similarly situated employees) and are Plaintiff Cuevas's (and all similarly situated employees') employers within the meaning of 29 U.S.C. 201 *et seq.* and the NYLL.

30. In the alternative, Defendants constitute a single employer of Plaintiff Cuevas and/or similarly situated individuals.

31. Upon information and belief, Individual Defendant Bahar H Khandakar operates Defendant Corporations as either alter egos of himself and/or fail to operate Defendant Corporations as entities legally separate and apart from himself, by among other things:

- a) failing to adhere to the corporate formalities necessary to operate Defendant Corporations as Corporations,
- b) defectively forming or maintaining the corporate entities of Defendant Corporations, by, amongst other things, failing to hold annual meetings or maintaining appropriate corporate records,
- c) transferring assets and debts freely as between all Defendants,
- d) operating Defendant Corporations for his own benefit as the sole or majority shareholder,
- e) operating Defendant Corporations for his own benefit and maintaining control over these corporations as closed Corporations,
- f) intermingling assets and debts of his own with Defendant Corporations,

g) diminishing and/or transferring assets of Defendant Corporations to avoid full liability as necessary to protect his own interests, and

h) Other actions evincing a failure to adhere to the corporate form.

32. At all relevant times, Defendants were Plaintiff Cuevas's employers within the meaning of the FLSA and New York Labor Law. Defendants had the power to hire and fire Plaintiff Cuevas, controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for Plaintiff Cuevas's services.

33. In each year from 2015 to 2017, Defendants, both separately and jointly, had a gross annual volume of sales of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

34. In addition, upon information and belief, Defendants and/or their enterprise were directly engaged in interstate commerce. As an example, numerous items that were used in the restaurant on a daily basis are goods produced outside of the State of New York.

*Individual Plaintiff*

35. Plaintiff Cuevas is a former employee of Defendants who was employed as a cook.

36. Plaintiff Cuevas seeks to represent a class of similarly situated individuals under 29 U.S.C. 216(b).

*Plaintiff Teodoro Cuevas Lucero*

37. Plaintiff Cuevas was employed by Defendants from approximately November 2015 until on or about October 2017.

38. Defendants employed Plaintiff Cuevas as a cook.

39. Plaintiff Cuevas regularly handled goods in interstate commerce, such as food and other supplies produced outside the State of New York.

40. Plaintiff Cuevas's work duties required neither discretion nor independent judgment.

41. Throughout his employment with Defendants, Plaintiff Cuevas regularly worked in excess of 40 hours per week.

42. From approximately November 2015 until on or about January 2016, Plaintiff Cuevas worked as a cook from approximately 2:00 p.m. until on or about 10:30 p.m., 4 days a week and from approximately 9:00 a.m. until on or about 10:30 p.m., 2 days a week (typically 61 hours per week).

43. From approximately February 2016 until on or about October 2017, Plaintiff Cuevas worked as a cook from approximately 11:00 a.m. until on or about 10:30 p.m., 4 days a week and from approximately 9:00 a.m. until on or about 10:30 p.m., 2 days a week (typically 73 hours per week).

44. Throughout his employment, Defendants paid Plaintiff Cuevas his wages in cash.

45. From approximately November 2015 until on or about January 2016, Defendants paid Plaintiff Cuevas a fixed salary of \$700 per week.

46. From approximately February 2016 until on or about October 2017, Defendants paid Plaintiff Cuevas a fixed salary of \$800 per week.

47. For approximately one full week and two extra days of the following week, Defendants did not pay Plaintiff Cuevas any wages for his work.

48. Plaintiff Cuevas's pay did not vary even when he was required to stay later or work a longer day than his usual schedule.

49. For example, Defendants required Plaintiff Cuevas to start working two to three hours prior to his scheduled start time and up to one and a half hours past his scheduled departure time



on Holidays or when there were catering orders, and did not pay him for the additional time he worked.

50. Defendants never granted Plaintiff Cuevas any breaks or meal periods of any kind.

51. Defendants required Plaintiff Cuevas to sign a document, the contents of which he was not allowed to review in detail and that they did not allow him to keep, in order to release his weekly pay.

52. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Cuevas regarding overtime and wages under the FLSA and NYLL.

53. Defendants did not provide Plaintiff Cuevas an accurate statement of wages, as required by NYLL 195(3).

54. Defendants did not give any notice to Plaintiff Cuevas, in English and in Spanish (Plaintiff Cuevas's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

55. Defendants required Plaintiff Cuevas to purchase "tools of the trade" with his own funds—including shirts, aprons and kitchen shoes.

*Defendants' General Employment Practices*

56. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Cuevas (and all similarly situated employees) to work in excess of 40 hours a week without paying him appropriate minimum wage, spread of hours pay, and overtime compensation as required by federal and state laws.

57. Plaintiff Cuevas was a victim of Defendants' common policy and practices which violate his rights under the FLSA and New York Labor Law by, *inter alia*, not paying him the wages he was owed for the hours he worked.

58. Defendants' pay practices resulted in Plaintiff Cuevas not receiving payment for all his hours worked, and resulting in Plaintiff Cuevas's effective rate of pay falling below the required minimum wage rate.

59. Defendants habitually required Plaintiff Cuevas to work additional hours beyond his regular shifts but did not provide him with any additional compensation.

60. Defendants willfully disregarded and purposefully evaded recordkeeping requirements of the FLSA and NYLL by failing to maintain accurate and complete timesheets and payroll records.

61. Defendants' time keeping system did not accurately reflect the actual hours that Plaintiff Cuevas worked.

62. Defendants required Plaintiff Cuevas to sign a document the contents of which he was not allowed to review in order to release his wages

63. Plaintiff Cuevas was paid his wages in cash.

64. Defendants failed to post at the workplace, or otherwise provide to employees, the required postings or notices to employees regarding the applicable wage and hour requirements of the FLSA and NYLL.

65. Upon information and belief, these practices by Defendants were done willfully to disguise the actual number of hours Plaintiff Cuevas (and similarly situated individuals) worked, and to avoid paying Plaintiff Cuevas properly for his full hours worked.

66. Defendants engaged in their unlawful conduct pursuant to a corporate policy of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

67. Defendants' unlawful conduct was intentional, willful, in bad faith, and caused significant damages to Plaintiff Cuevas and other similarly situated former workers.

68. Defendants failed to provide Plaintiff Cuevas and other employees with accurate wage statements at the time of their payment of wages, containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

69. Defendants failed to provide Plaintiff Cuevas and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

### **FLSA COLLECTIVE ACTION CLAIMS**

70. Plaintiff Cuevas brings his FLSA minimum wage, overtime compensation, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons (the "FLSA Class members"), i.e., persons who

are or were employed by Defendants or any of them, on or after the date that is three years before the filing of the complaint in this case (the “FLSA Class Period”).

71. At all relevant times, Plaintiff Cuevas and other members of the FLSA Class were similarly situated in that they had substantially similar job requirements and pay provisions, and have been subject to Defendants’ common practices, policies, programs, procedures, protocols and plans including willfully failing and refusing to pay them the required minimum wage, overtime pay at a one and one-half their regular rates for work in excess of forty (40) hours per workweek under the FLSA, and willfully failing to keep records required by the FLSA.

72. The claims of Plaintiff Cuevas stated herein are similar to those of the other employees.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE MINIMUM WAGE PROVISIONS OF THE FLSA**

73. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

74. At all times relevant to this action, Defendants were Plaintiff Cuevas’s employers within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Cuevas (and the FLSA Class Members), controlled the terms and conditions of their employment, and determined the rate and method of any compensation in exchange for their employment.

75. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

76. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act, 29 U.S.C. § 203 (r-s).

77. Defendants failed to pay Plaintiff Cuevas (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

78. Defendants' failure to pay Plaintiff Cuevas (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

79. Plaintiff Cuevas (and the FLSA Class members) were damaged in an amount to be determined at trial.

### **SECOND CAUSE OF ACTION**

#### **VIOLATION OF THE OVERTIME PROVISIONS OF THE FLSA**

80. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

81. Defendants, in violation of 29 U.S.C. § 207(a)(1), failed to pay Plaintiff Cuevas (and the FLSA Class members) overtime compensation at a rate of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

82. Defendants' failure to pay Plaintiff Cuevas (and the FLSA Class members), overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

83. Plaintiff Cuevas (and the FLSA Class members) were damaged in an amount to be determined at trial.

### **THIRD CAUSE OF ACTION**

#### **VIOLATION OF THE NEW YORK MINIMUM WAGE ACT**

84. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

85. At all times relevant to this action, Defendants were Plaintiff Cuevas's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire

Plaintiff Cuevas, controlled the terms and conditions of his employment, and determined the rates and methods of any compensation in exchange for his employment.

86. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff Cuevas less than the minimum wage.

87. Defendants' failure to pay Plaintiff Cuevas the minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

88. Plaintiff Cuevas was damaged in an amount to be determined at trial.

#### **FOURTH CAUSE OF ACTION**

##### **VIOLATION OF THE OVERTIME PROVISIONS**

##### **OF THE NEW YORK STATE LABOR LAW**

89. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

90. Defendants, in violation of N.Y. Lab. Law § 190 *et seq.*, and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Cuevas overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a work week.

91. Defendants' failure to pay Plaintiff Cuevas overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

92. Plaintiff Cuevas was damaged in an amount to be determined at trial.

#### **FIFTH CAUSE OF ACTION**

##### **VIOLATION OF THE SPREAD OF HOURS WAGE ORDER**

##### **OF THE NEW YORK COMMISSIONER OF LABOR**

93. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

94. Defendants failed to pay Plaintiff Cuevas one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Cuevas's spread of hours exceeded ten hours in violation of NYLL §§ 650 *et seq.* and 12 N.Y.C.R.R. §§ 146-1.6.

95. Defendants' failure to pay Plaintiff Cuevas an additional hour's pay for each day Plaintiff Cuevas's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

96. Plaintiff Cuevas was damaged in an amount to be determined at trial.

### **SIXTH CAUSE OF ACTION**

#### **VIOLATION OF THE NOTICE AND RECORDKEEPING**

#### **REQUIREMENTS OF THE NEW YORK LABOR LAW**

97. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

98. Defendants failed to provide Plaintiff Cuevas with a written notice, in English and in Spanish (Plaintiff Cuevas's primary language), containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by NYLL §195(1).

99. Defendants are liable to Plaintiff Cuevas in the amount of \$5,000, together with costs and attorneys' fees.

**SEVENTH CAUSE OF ACTION**

**VIOLATION OF THE WAGE STATEMENT PROVISIONS**

**OF THE NEW YORK LABOR LAW**

100. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

101. With each payment of wages, Defendants failed to provide Plaintiff Cuevas with an accurate statement listing each of the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL 195(3).

102. Defendants are liable to Plaintiff Cuevas in the amount of \$5,000, together with costs and attorneys' fees.

**EIGHTH CAUSE OF ACTION**

**RECOVERY OF EQUIPMENT COSTS**

103. Plaintiff Cuevas repeats and realleges all paragraphs above as though fully set forth herein.

104. Defendants required Plaintiff Cuevas to pay, without reimbursement, the costs and expenses for purchasing and maintaining equipment and "tools of the trade" required to perform



his job, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R. § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

105. Plaintiff Cuevas was damaged in an amount to be determined at trial.

**NINTH CAUSE OF ACTION**

**VIOLATION OF THE TIMELY PAYMENT PROVISIONS**

**OF THE NEW YORK LABOR LAW**

106. Plaintiff Cuevas repeats and realleges all paragraphs above as though set forth fully herein.

107. Defendants did not pay Plaintiff Cuevas on a regular weekly basis, in violation of NYLL §191.

108. Defendants are liable to Plaintiff Cuevas in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Cuevas respectfully requests that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members apprising them of the pendency of this action, and permitting them to promptly file consents to be Plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Cuevas and the FLSA Class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Cuevas and the FLSA Class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Cuevas's and the FLSA Class members' compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violations of the provisions of the FLSA were willful as to Plaintiff Cuevas and the FLSA Class members;

(f) Awarding Plaintiff Cuevas and the FLSA Class members damages for the amount of unpaid minimum wage, overtime compensation, and damages for any improper deductions or credits taken against wages under the FLSA as applicable;

(g) Awarding Plaintiff Cuevas and the FLSA Class members liquidated damages in an amount equal to 100% of his damages for the amount of unpaid minimum wage and overtime compensation, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the minimum wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Cuevas;

(i) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Cuevas;

(j) Declaring that Defendants violated the spread-of-hours requirements of the NYLL and supporting regulations as to Plaintiff Cuevas;

(k) Declaring that Defendants violated the timely payment provisions of the NYLL as to Plaintiff Cuevas;

(l) Declaring that Defendants violated the notice and recordkeeping requirements of the NYLL with respect to Plaintiff Cuevas's compensation, hours, wages and any deductions or credits taken against wages;

(m) Declaring that Defendants' violations of the New York Labor Law and the spread of hours wage order were willful as to Plaintiff Cuevas;

(n) Awarding Plaintiff Cuevas damages for the amount of unpaid minimum wage and overtime compensation, and for any improper deductions or credits taken against wages, as well as awarding spread of hours pay under the NYLL as applicable

(o) Awarding Plaintiff Cuevas damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(p) Awarding Plaintiff Cuevas liquidated damages in an amount equal to one hundred percent (100%) of the total amount of minimum wage, overtime compensation, and spread of hours pay shown to be owed pursuant to NYLL § 663 as applicable; and liquidated damages pursuant to NYLL § 198(3);

(q) Awarding Plaintiff Cuevas and the FLSA Class members pre-judgment and post-judgment interest as applicable;

(r) Awarding Plaintiff Cuevas and the FLSA Class members the expenses incurred in this action, including costs and attorneys' fees;

(s) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(t) All such other and further relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Cuevas demands a trial by jury on all issues triable by a jury.

Dated: New York, New York  
March 13, 2018

MICHAEL FAILLACE & ASSOCIATES, P.C.

By:           /s/ Michael Faillace            
Michael Faillace [MF-8436]  
60 East 42nd Street, Suite 4510  
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*Attorneys for Plaintiff*

# MICHAEL FAILLACE & ASSOCIATES, P.C.

Employment and Litigation Attorneys

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Email: [Faillace@employmentcompliance.com](mailto:Faillace@employmentcompliance.com)

March 9, 2018

BY HAND

To: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff. (Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes).

Name / Nombre:

Teodoro Cuevas Lucero

Legal Representative / Abogado:

Michael Faillace & Associates, P.C.

Signature / Firma:

  
\_\_\_\_\_

Date / Fecha:

March 9, 2018

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

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Michael A. Faillace, Michael Faillace & Associates, P.C. 60 East 42nd Suite 4510 New York, NY 10165

DEFENDANTS

GALLITOS MEXICAN URBAN KITCHEN INC. (D/B/A GALLITO'S KITCHEN), et al.

County of Residence of First Listed Defendant Kings (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, 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, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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, 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): Plaintiff seeks unpaid overtime wages pursuant to The Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. Brief description of cause: unpaid overtime wages

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 03/13/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Faillace

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, Michael Faillace, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? NO
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? N/A

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

- Yes
- No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

- Yes (If yes, please explain)
- No

I certify the accuracy of all information provided above.

Signature: /s/ Michael Faillace

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Gallitos Mexican Urban Kitchen Inc. 140 Montague St Brooklyn, NY 11201

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: Michael A. Faillace MICHAEL FAILLACE & ASSOCIATES, P.C. 60 East 42nd Street, Suite 4510 New York, New York 10165

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

for the

Eastern District of New York

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bahar Mit Rana Rest Corp. 140 Montague St Brooklyn, NY 11201

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:

Michael A. Faillace MICHAEL FAILLACE & ASSOCIATES, P.C. 60 East 42nd Street, Suite 4510 New York, New York 10165

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:

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AQSA Food Corp. 140 Montague St Brooklyn, NY 11201

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: Michael A. Faillace MICHAEL FAILLACE & ASSOCIATES, P.C. 60 East 42nd Street, Suite 4510 New York, New York 10165

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

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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*

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bahar Rest Corp. 140 Montague St Brooklyn, NY 11201

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:

Michael A. Faillace MICHAEL FAILLACE & ASSOCIATES, P.C. 60 East 42nd Street, Suite 4510 New York, New York 10165

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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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*

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

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

TEODORO CUEVAS LUCERO, individually and on behalf of others similarly situated,

Plaintiff(s)

v.

Gallitos Mexican Urban Kitchen Inc. (d/b/a Gallito's Kitchen), et al.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Bahar H Khandakar 140 Montague St Brooklyn, NY 11201

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:

Michael A. Faillace MICHAEL FAILLACE & ASSOCIATES, P.C. 60 East 42nd Street, Suite 4510 New York, New York 10165

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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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

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**Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Gallito's Kitchen Hit with Collective Action Seeking Allegedly Unpaid Wages](#)

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