

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.:

LIDIA M. MARTINEZ
and other similarly-situated individuals,

Plaintiff,

v.

YAMBO, INC.
a/k/a YAMBO RESTAURANT,
ARMANDO PEREZ Sr.
and REYMAR PEREZ, individually,

Defendants,

COMPLAINT
(OPT-IN PURSUANT TO 29 U.S.C § 216(b))

COMES NOW the Plaintiff LIDIA M. MARTINEZ, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants YAMBO, INC. a/k/a YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ, individually and alleges:

JURISDICTION VENUES AND PARTIES

1. This is an action to recover money damages for unpaid minimum and overtime wages, as well as retaliatory damages, under the laws of the United States. This Court has jurisdiction pursuant to Title 28 U.S.C. § 1337 and the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”).

2. Plaintiff LIDIA M. MARTINEZ is a resident of Miami-Dade County, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act.
3. Defendant YAMBO, INC. a/k/a YAMBO RESTAURANT (hereinafter YAMBO RESTAURANT, or Defendant) is a Florida corporation, having place of business in Miami-Dade County, Florida, where Plaintiff worked for Defendant. At all times, Defendant was and is engaged in interstate commerce.
4. The individual Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ were and are now, owners/partners, directors and/or managers of Defendant Corporation YAMBO RESTAURANT. These individual Defendants were employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the “Fair Labor Standards Act” [29 U.S.C. § 203(d)]
5. All the actions raised in this complaint took place in Dade County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. Defendant YAMBO RESTAURANT is a Nicaraguan restaurant, located at 1643 SW 1st Street, Miami Florida 33135, where Plaintiff worked.
7. Defendants YAMBO RESTAURANT ARMANDO PEREZ Sr. and REYMAR A. PEREZ employed Plaintiff LIDIA M. MARTINEZ as a full-time non-exempt restaurant employee from approximately March 2004, to April 9, 2018, or more than 12 years. However, for FLSA purposes the relevant employment period is 155 weeks.
8. Plaintiff worked in the kitchen, and she had duties as a cook and cleaning employee of the night shift.

9. While employed by Defendants, Plaintiff was not paid minimum wages at the mandatory rates. In addition, Plaintiff worked overtime hours that were not properly paid to her.
10. During the relevant employment period Plaintiff had a regular schedule. Usually Plaintiff had Wednesdays off, but she worked 6 days per week. On Mondays, Tuesdays and Thursdays, Plaintiff worked from 6:00 PM to 5:00 AM (11 hours per day); on Fridays, Saturdays, and Sundays, Plaintiff worked from 6:00 PM to 6:00 AM (12 hours daily). Thus, Plaintiff worked consistently and regularly 6 days, 69 hours every week. Plaintiff was unable to take bona-fide lunch periods.
11. Plaintiff was not allowed to clock in and clock out like other employees.
12. During the relevant time of employment, Plaintiff received as compensation, a salary of \$400.00 weekly, Plaintiff was paid strictly with cash, without any record or paystub providing basic information about the real number of paid hours, wage rate paid, overtime hours worked, employment taxes withheld etc. etc.
13. The salary of \$400.00 weekly paid to Plaintiff for 69 working hours weekly, resulted in an hourly rate of \$5.80 which is lower than the Federal mandatory minimum wage of \$7.25. In addition, Plaintiff did not receive any compensation for overtime hours.
14. Therefore, Defendants failed to pay Plaintiff minimum wages for regular hours and overtime hours at the rate of time and a half her regular rate as established by the Fair Labor Standards Act.
15. Plaintiff was not in agreement with her salary and on or about February 26, 2018, she complained to owner/manager REYMAR A. PEREZ about her salary and demanded

to be paid for overtime hours. Defendant REYMAR A. PEREZ refused to pay overtime hours.

16. On or about March 26, 2018, Plaintiff complained again to REYMAR A. PEREZ, Plaintiff demanded to be paid overtime hours. Defendant REYMAR A. PEREZ answered: "We don't pay overtime here, take it or leave it".
17. On or about Saturday, April 7, 2018, Plaintiff requested the day off, because she was sick. The next day Sunday 8, 2018, Plaintiff worked normally all her night shift.
18. The next day, Plaintiff showed up for work, and she was told by the cashier that she was fired. Plaintiff went to talk to ARMANDO PEREZ Sr., but he told her that REYMAR A. PEREZ took the decision to fire Plaintiff. ARMANDO PEREZ Sr. just ratified Plaintiff's termination.
19. At all time during her employment with Defendants, Plaintiff performed her duties satisfactorily. There was no reason other than a retaliatory action to terminate Plaintiff's employment with Defendants.
20. Plaintiff LIDIA M. MARTINEZ seeks to recover any unpaid minimum, and overtime wages, liquidated damages, and any other relief as allowable by law.
21. The additional persons who may become Plaintiffs in this action are employees and/or former employees of Defendants who are and who were subject to the unlawful payroll practices and procedures of Defendants and were not paid overtime wages at the rate of time and one half of their regular rate of pay for all overtime hours worked in excess of forty.

COUNT I:
WAGE AND HOUR FEDERAL STATUTORY VIOLATION;
FAILURE TO PAY OVERTIME; AGAINST ALL DEFENDANTS

22. Plaintiff LIDIA M. MARTINEZ re-adopts each and every factual allegation as stated in paragraphs 1-21 above as if set out in full herein.
23. This action is brought by Plaintiff, and those similarly-situated to recover from the Employers unpaid overtime compensation, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. § 207. 29 U.S.C. § 207 (a)(1) states, "No employer shall employ any of his employees... for a work week longer than 40 hours unless such employee receives compensation for his employment in excess of the hours above-specified at a rate not less than one and a half times the regular rate at which he is employed."
24. Defendant YAMBO RESTAURANT was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a Nicaraguan restaurant. Defendant had more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions by ordering product and supplies produced out of State. Upon information and belief, the annual gross revenue of the Employer/Defendant was at all times material hereto in excess of \$500,000 per annum. By reason of the foregoing, Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.
25. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a restaurant employee and through her

daily activities, Plaintiff regularly handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

26. Defendants YAMBO RESTAURANT ARMANDO PEREZ Sr. and REYMAR A. PEREZ employed Plaintiff LIDIA M. MARTINEZ as a full-time non-exempt restaurant employee from approximately March 2004, to April 9, 2018, or more than 12 years. However, for FLSA purposes the relevant employment period is 155 weeks.
27. Plaintiff worked in the kitchen, and she had duties as a cook and cleaning employee of the night shift.
28. During the relevant employment period Plaintiff had a regular schedule. Usually Plaintiff had Wednesdays off, but she worked 6 days per week. On Mondays, Tuesdays and Thursdays, Plaintiff worked from 6:00 PM to 5:00 AM (11 hours per day); on Fridays, Saturdays, and Sundays, Plaintiff worked from 6:00 PM to 6:00 AM (12 hours daily). Thus, Plaintiff worked consistently and regularly 6 days, 69 hours every week. Plaintiff was unable to take bona-fide lunch periods.
29. Plaintiff was not allowed to clock in and clock out like other employees.
30. During the relevant time of employment, Plaintiff received as compensation, a salary of \$400.00 weekly,
31. In order to avoid the payment for overtime hours, Defendants did not allow Plaintiff to punch in and out, and paid Plaintiff on cash basis, without any record or paystub providing basic information about the real number of paid hours, wage rate paid, overtime hours worked, employment taxes withheld etc. etc.

32. The salary of \$400.00 weekly paid to Plaintiff for 69 working hours weekly, resulted in an hourly rate of \$5.80 which is lower than the Federal mandatory minimum wage of \$7.25.
33. Therefore, Plaintiff was not paid for overtime hours at the rate of time and one-half her regular rate for every hour that she worked in excess of forty (40), in violation of Section 7 (a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 207(a)(1)).
34. Defendants never posted any notice, as required by the Fair Labor Standards Act and Federal Law, to inform employees of their federal rights to overtime and minimum wage payments. Defendants violated the Posting requirements of 29 U.S.C. § 516.4.
35. The records, if any, concerning the number of hours actually worked by Plaintiff and all other employees, and the compensation actually paid to such employees should be in the possession and custody of Defendants. However, upon information and belief, Defendants did not maintain accurate and complete time records of hours worked by Plaintiff and other employees in the asserted class.
36. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid wages are as follows:

*Please note that these amounts are based on a preliminary calculation and that these figures could be subject to modification as discovery could dictate.

a. Total amount of alleged unpaid wages:

Twenty-Two Thousand Eight Hundred Thirty-Four Dollars and 60/100 (\$22,834.60)

b. Calculation of such wages:

Relevant weeks of employment: 155 weeks
Total number of hours worked: 69 hours weekly
Total number of unpaid O/T hours: 29 hours

Paid: \$400.00 weekly: 69 hours weekly= \$5.80 an hour
Federal Minimum wage: \$7.25 applied x 1.5=\$10.88 O/T rate
O/T rate \$10.88- \$5.80 paid= \$5.08 difference

O/T diff. \$5.08 x 29 O/T hours=\$147.32 weekly x 155 weeks=\$22,834.60

Nature of wages (e.g. overtime or straight time):

This amount represents the unpaid overtime difference to the correct rate.

37. At all times material hereto, the Employer/Defendant YAMBO RESTAURANT failed to comply with Title 29 U.S.C. §§ 201-219 and 29 C.F.R. § 516.2 and § 516.4 et seq. in that Plaintiff and those similarly-situated performed services and worked in excess of the maximum hours provided by the Act but no provision was made by the Defendant to properly pay them at the rate of time and one half for all hours worked in excess of forty hours (40) per workweek as provided in said Act.
38. Defendant YAMBO RESTAURANT knew and/or showed reckless disregard of the provisions of the Act concerning the payment of overtime wages as required by the Fair Labor Standards Act and remains owing Plaintiff and those similarly-situated these overtime wages since the commencement of Plaintiff and those similarly-situated employee's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.
39. At the times mentioned, individual Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ were and are now, the owners/partners/officers of YAMBO RESTAURANT. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ, were employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that these individual

Defendants acted directly in the interests of YAMBO RESTAURANT in relation to its employees the employees, including Plaintiff and others similarly situated. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ had financial operational control of the businesses, determined Plaintiff's terms and working conditions of Plaintiff, and they are jointly and severally liable for Plaintiff's damages.

40. Defendants YAMBO RESTAURANT, and ARMANDO PEREZ Sr. and REYMAR A. PEREZ willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States, and remain owing Plaintiff these overtime wages, as set forth above.

41. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LIDIA M. MARTINEZ and those similarly-situated respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff and other similarly-situated and against the Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff LIDIA M. MARTINEZ actual damages in the amount shown to be due for unpaid wages and overtime compensation for hours worked in excess of forty weekly, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and

E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff LIDIA M. MARTINEZ and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT II:
F.L.S.A. WAGE AND HOUR FEDERAL STATUTORY VIOLATION: FAILURE TO PAY MINIMUM WAGE; AGAINST ALL DEFENDANTS

42. Plaintiff LIDIA M. MARTINEZ re-adopts each and every factual allegation as stated in paragraphs 1-21 of this complaint as if set out in full herein.

43. Defendant YAMBO RESTAURANT was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a Nicaraguan restaurant. Defendant had more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions by ordering product and supplies produced out of State. Upon information and belief, the annual gross revenue of the Employer/Defendant was in excess of \$500,000 per annum. Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.

44. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a restaurant employee, through her daily activities, Plaintiff regularly handled and worked on goods and materials that

were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

45. This action is brought by Plaintiff to recover from the Employer unpaid minimum wages, as well as an additional amount as liquidated damages, costs, and reasonable attorney's fees under the provisions of 29 U.S.C. § 201 et seq., and specifically under the provisions of 29 U.S.C. §206. U.S.C. §206 states "Every employer shall pay to each 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, wages at the following rates:

1) except as otherwise provided in this section, not less than—

(A) \$5.85 an hour, beginning on the 60th day after May 25, 2008;

(B) \$6.55 an hour, beginning 12 months after that 60th day; and

(C) \$7.25 an hour, beginning 24 months after that 60th day.

46. Defendants YAMBO RESTAURANT ARMANDO PEREZ Sr. and REYMAR A. PEREZ employed Plaintiff LIDIA M. MARTINEZ as a full-time non-exempt restaurant employee from approximately March 2004, to April 9, 2018, or more than 12 years. However, for FLSA purposes the relevant employment period is 155 weeks.

47. Plaintiff worked in the kitchen, and she had duties as a cook and cleaning employee of the night shift.

48. While employed by Defendants, Plaintiff was not paid minimum wages at the mandatory rates.

49. During the relevant employment period Plaintiff had a regular schedule. Usually Plaintiff had Wednesdays off, but she worked 6 days per week. On Mondays, Tuesdays

and Thursdays, Plaintiff worked from 6:00 PM to 5:00 AM (11 hours per day); on Fridays, Saturdays, and Sundays, Plaintiff worked from 6:00 PM to 6:00 AM (12 hours daily). Thus, Plaintiff worked consistently and regularly 6 days, 69 hours every week. Plaintiff was unable to take bona-fide lunch periods.

50. Plaintiff was not allowed to clock in and clock out like other employees.
51. During the relevant time of employment, Plaintiff received as compensation, a salary of \$400.00 weekly, Plaintiff was paid strictly with cash, without any record or paystub providing basic information about the real number of paid hours, wage rate paid, overtime hours worked, employment taxes withheld etc. etc.
52. The salary of \$400.00 weekly paid to Plaintiff for 69 working hours weekly, resulted in an hourly rate of \$5.80 which is lower than the Federal mandatory minimum wage of \$7.25.
53. Therefore, Defendants failed to pay Plaintiff minimum wages for regular hours and overtime hours at the rate of time and a half her regular rate as established by the Fair Labor Standards Act.
54. The records, if any, concerning the number of hours actually worked by Plaintiff and all other employees, and the compensation actually paid to such employees should be in the possession and custody of Defendants. However, upon information and belief, Defendants did not maintain accurate and complete time records of hours worked by Plaintiff and other similarly situated employees.
55. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.

56. Prior to the completion of discovery and to the best of Plaintiff's knowledge, at the time of the filing of this complaint, Plaintiff's good faith estimate of unpaid wages are as follows:

*Please note that these amounts are based on a preliminary calculation and that these figures could be subject to modification as discovery could dictate.

*Florida minimum wage is higher than the Federal minimum wage. As per FLSA regulations, the higher minimum wage applies.

a. Total amount of alleged unpaid wages:

Twenty-Four Thousand Four Hundred Thirty-Six Dollars and 35/100 (\$24,436.35)

b. Calculation of such wages:

Total relevant weeks of employment: 155 weeks

1.- Minimum wages for 2015 to 2016= 89 weeks @ \$8.05 an hour

Relevant weeks of employment: 89 weeks

Total number of hours worked: 69 hours weekly

Total number of paid hours: 69 hours

Paid: \$400.00 weekly: 69 hours weekly= \$5.80 an hour

Federal Minimum wage: \$7.25

Florida minimum wage applied: \$8.05-\$5.80 paid=\$2.25 difference

Min. wage difference $\$2.25 \times 69 \text{ hours} = \$155.25 \times 89 \text{ weeks} = \$13,817.25$

2.- Minimum wages for 2017= 52 weeks @ \$8.10 an hour

Relevant weeks of employment: 52 weeks

Total number of hours worked: 69 hours weekly

Total number of paid hours: 69 hours

Paid: \$400.00 weekly: 69 hours weekly= \$5.80 an hour

Federal Minimum wage: \$7.25

Florida minimum wage applied: \$8.10-\$5.80 paid=\$2.30 difference

Min. wage difference $\$2.30 \times 69 \text{ hours} = \$158.70 \times 52 \text{ weeks} = \$8,252.40$

3.- Minimum wages for 2017= 14 weeks @ \$8.25 an hour

Relevant weeks of employment: 14 weeks

Total number of hours worked: 69 hours weekly

Total number of paid hours: 69 hours

Paid: \$400.00 weekly: 69 hours weekly= \$5.80 an hour
Federal Minimum wage: \$7.25
Florida minimum wage applied: \$8.25-\$5.80 paid=\$2.45 difference

Min. wage difference \$2.45 x 69 hours=\$169.05 x 14 weeks= \$2,366.70

Total #1, #2, and #3= \$24,436.35

c. Nature of wages:

This amount represents unpaid minimum wages at Florida minimum wage rate.

57. Defendant YAMBO RESTAURANT unlawfully failed to pay minimum wages to Plaintiff. Plaintiff seeks to recover any unpaid wages accumulated from the date of hire and/or from 3 (three) years from the date of the filing of this complaint.
58. Defendant knew and/or showed reckless disregard of the provisions of the Act concerning the payment of minimum wages as required by the Fair Labor Standards Act and remains owing Plaintiff these minimum wages since the commencement of Plaintiff employment with Defendant as set forth above, and Plaintiff is entitled to recover double damages.
59. At the times mentioned, individual Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ were and are now, the directors and/or owners of YAMBO RESTAURANT. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ, were employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that these individual Defendants acted directly in the interests of YAMBO RESTAURANT in relation to its the employees, including Plaintiff and others similarly situated. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ had financial operational control of the businesses,

determined Plaintiff's terms and working conditions of Plaintiff, and they are jointly and severally liable for Plaintiff's damages.

60. Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ willfully and intentionally refused to pay Plaintiff minimum wages as required by the law of the United States and remains owing Plaintiff these minimum wages as set forth above.

61. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LIDIA M. MARTINEZ and others similarly situated employees respectfully requests that this Honorable Court:

- A. Enter judgment for Plaintiff and against the Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ, on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and other Federal Regulations; and
- B. Award Plaintiff LIDIA M. MARTINEZ actual damages in the amount shown to be due for unpaid minimum wages, with interest; and
- C. Award Plaintiff an equal amount in double damages/liquidated damages; and
- D. Award Plaintiff reasonable attorneys' fees and costs of suit; and
- E. Grant such other and further relief as this Court deems equitable and just and/or available pursuant to Federal Law.

JURY DEMAND

Plaintiff LIDIA M. MARTINEZ and those similarly-situated demand trial by jury of all issues triable as of right by jury.

COUNT III:
FEDERAL STATUTORY VIOLATION PURSUANT TO 29 U.S.C. 215 (a)(3)
RETALIATORY DISCHARGE; AGAINST ALL DEFENDANTS

62. Plaintiff LIDIA M. MARTINEZ re-adopts each and every factual allegation as stated in paragraphs 1-21 of this complaint as if set out in full herein.

63. Defendant YAMBO RESTAURANT was and is engaged in interstate commerce as defined in §§ 3 (r) and 3(s) of the Act, 29 U.S.C. § 203(r) and 203(s)(1)(A). Defendant is a Nicaraguan restaurant. Defendant had more than two employees recurrently engaged in commerce or in the production of goods for commerce by regularly and recurrently using the instrumentalities of interstate commerce to accept and solicit funds from non-Florida sources; by using electronic devices to authorize credit card transactions by ordering product and supplies produced out of State. Upon information and belief, the annual gross revenue of the Employer/Defendant was in excess of \$500,000 per annum. Defendant's business activities involve those to which the Fair Labor Standards Act applies. Therefore, there is FLSA enterprise coverage.

64. Plaintiff and those similarly-situated were employed by an enterprise engage in interstate commerce. Particularly, Plaintiff was a restaurant employee, through her daily activities, Plaintiff regularly handled and worked on goods and materials that were moved across State lines at any time in the course of business. Therefore, there is individual coverage.

65. 29 U.S.C. § 206 (a) (1) states "...an employer must pay a minimum wage of \$5.15/hr to an employee who is engaged in commerce...." [29 U.S.C. § 206 (a) (1)].

66. 29 U.S.C. § 207 (a) (1) states, "if an employer employs an employee for more than forty hours in any work week, the employer must compensate the employee for hours in excess of forty at the rate of at least one and one-half times the employee's regular rate..."

67. Likewise, 29 U.S.C. 215(a)(3) states... it shall be unlawful for any person— “to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceeding,.....”

68. Defendants YAMBO RESTAURANT ARMANDO PEREZ Sr. and REYMAR A. PEREZ employed Plaintiff LIDIA M. MARTINEZ as a full-time non-exempt cook from approximately March 2004, to April 9, 2018, or more than 12 years. However, for FLSA purposes the relevant employment period is 155 weeks.

69. While employed by Defendants, Plaintiff was not paid minimum wages at the mandatory rates. In addition, Plaintiff worked overtime hours that were not properly paid to her.

70. During the relevant employment period Plaintiff had a regular schedule. Plaintiff worked consistently and regularly 6 days, 69 hours every week. Plaintiff was unable to take bona-fide lunch periods.

71. Plaintiff was not allowed to clock in and clock out like other employees.

72. During the relevant time of employment, Plaintiff received as compensation, a salary of \$400.00 weekly.

73. In order to avoid the payment for overtime hours, Defendants did not allow Plaintiff to punch in and out, and paid Plaintiff on cash basis, without any record or paystub providing basic information about the real number of paid hours, wage rate paid, overtime hours worked, employment taxes withheld etc. etc.
74. The salary of \$400.00 weekly paid to Plaintiff for 69 working hours weekly, resulted in an hourly rate of \$5.80 which is lower than the Federal mandatory minimum wage of \$7.25. In addition, Plaintiff did not receive any compensation for overtime hours.
75. Therefore, Defendants failed to pay Plaintiff minimum wages for regular hours and overtime hours at the rate of time and a half her regular rate as established by the Fair Labor Standards Act.
76. Plaintiff was not in agreement with her salary and on or about February 26, 2018, she complained to owner/manager REYMAR A. PEREZ about her salary and demanded to be paid for overtime hours. Defendant REYMAR A. PEREZ refused to pay overtime hours.
77. On or about March 26, 2018, Plaintiff complained again to REYMAR A. PEREZ, Plaintiff demanded to be paid overtime hours. Defendant REYMAR A. PEREZ answered: "We don't pay overtime here, take it or leave it".
78. These complaints constituted protected activity under FLSA, 29 U.S.C. 215(a)(3).
79. On or about Saturday, April 7, 2018, Plaintiff requested the day off, because she was sick. The next day Sunday 8, 2018, Plaintiff worked normally all her night shift.
80. The next day, Plaintiff showed up for work, and she was told by the cashier that she was fired. Plaintiff went to talk to ARMANDO PEREZ Sr., but he told her that

REYMAR A. PEREZ took the decision to fire Plaintiff. ARMANDO PEREZ Sr. just ratified Plaintiff's termination.

81. At all time during her employment with Defendants, Plaintiff performed her duties satisfactorily. There was no reason other than a retaliatory action to terminate Plaintiff's employment with Defendants.

82. The termination of Plaintiff LIDIA M. MARTINEZ by the Defendants, was directly and proximately caused by Defendants' unjustified retaliation against her, because of her multiple complains about overtime payment, in violation of Federal Law.

83. Plaintiff's termination came just in closed proximity after Plaintiff's participation in protected activity on or about Monday March 26, 2018.

84. At the times mentioned, individual Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ were and are now, the directors and/or owners of YAMBO RESTAURANT. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ, were employers of Plaintiff and others similarly situated within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)], in that these individual Defendants acted directly in the interests of YAMBO RESTAURANT in relation to its the employees, including Plaintiff and others similarly situated. Defendants ARMANDO PEREZ Sr. and REYMAR A. PEREZ had financial operational control of the businesses, determined Plaintiff's terms and working conditions of Plaintiff, and they are jointly and severally liable for Plaintiff's damages.

85. Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ willfully and maliciously retaliated against Plaintiff because she engaged in protected activity.

86. The Defendants' termination of Plaintiff's employment, was in direct violation of 29 U.S.C. 215 (a) (3) and, as a direct result, Plaintiff has been damaged.

87. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay a reasonable attorneys' fee.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff LIDIA M. MARTINEZ respectfully requests that this Honorable Court:

- A. Issue a declaratory judgment that Defendants' acts, policies, practices and procedures complained of herein violated provisions of the Fair Labor Standards Act;
- B. Enter judgment against Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ that Plaintiff recovers compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b);
- C. That Plaintiff recovers an award of reasonable attorney fees, costs, and expenses.
- D. Order the Defendants YAMBO RESTAURANT, ARMANDO PEREZ Sr. and REYMAR A. PEREZ to make whole the Plaintiff by providing appropriate back pay and other benefits wrongly denied in an amount to be shown at trial and other affirmative relief;
- E. Plaintiff LIDIA M. MARTINEZ further prays for such additional relief as the interests of justice may require.

JURY DEMAND

Plaintiff LIDIA M. MARTINEZ demands trial by jury of all issues triable as of right by jury.

Dated: April 17, 2018

Respectfully submitted,

By: /s/ Zandro E. Palma
ZANDRO E. PALMA, P.A.
Florida Bar No.: 0024031
9100 S. Dadeland Blvd.
Suite 1500
Miami, FL 33156
Telephone: (305) 446-1500
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zep@thepalmlawgroup.com
Attorney 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 LIDIA M. MARTINEZ **DEFENDANTS** YAMBO, INC., ARMANDO PEREZ Sr. and REYMAR PEREZ

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Attorneys (If Known)

The Law Office of Zandro E. Palma, P.A.
9100 S. Dadeland Blvd., Ste 1500, Miami, FL 33156 (305-446-1500)

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

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	<input type="checkbox"/> 1 Citizen of This State	<input type="checkbox"/> 1 PTF	<input type="checkbox"/> 1 DEF	<input type="checkbox"/> 4 PTF	<input type="checkbox"/> 4 DEF
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<input type="checkbox"/> 2 Citizen of Another State	<input type="checkbox"/> 2 PTF	<input type="checkbox"/> 2 DEF	<input type="checkbox"/> 5 PTF	<input type="checkbox"/> 5 DEF
		<input type="checkbox"/> 3 Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 PTF	<input type="checkbox"/> 3 DEF	<input type="checkbox"/> 6 PTF	<input type="checkbox"/> 6 DEF

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

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Re-filed (See VI below)	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation Transfer	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File	<input type="checkbox"/> 9 Remanded from Appellate Court
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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): 49 U.S.C

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: April 17, 2018 SIGNATURE OF ATTORNEY OF RECORD: Zandro E. Palma, Esq.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LIDIA M. MARTINEZ

Plaintiff

v.

YAMBO, INC., ARMANDO PEREZ, Sr.
and REYMAR PEREZ

Defendant

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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* ARMANDO PEREZ, SR.

PEREZ, ARMANDO, Sr.
1642 S.W. FLAGLER TERRACE
MIAMI, FL 33135

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LIDIA M. MARTINEZ

Plaintiff

v.

YAMBO, INC., ARMANDO PEREZ, Sr. and REYMAR PEREZ

Defendant

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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) REYMAR PEREZ

1642 S.W. FLAGLER TERRACE
MIAMI, FL 33135

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:

The Law Office of Zandro E. Palma, P.A.
9100 South Dadeland Boulevard
Suite 1500
Miami, FL 33156

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

LIDIA M. MARTINEZ

Plaintiff

v.

YAMBO, INC., ARMANDO PEREZ SR. and REYMAR PEREZ

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) YAMBO, INC. through its Registered Agent:

PEREZ, ARMANDO, Sr. 1642 S.W. FLAGLER TERRACE MIAMI, FL 33135

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:

The Law Office of Zandro E. Palma, P.A. 9100 South Dadeland Boulevard Suite 1500 Miami, FL 33156

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Fmr. Yambo Restaurant Employee Sues to Recover Allegedly Unpaid Wages](#)
