

**U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:12-cv-23614-AOR**

Estrada v. Rangel et al
Assigned to: Magistrate Judge Alicia M. Otazo-Reyes
Cause: 29:0201 Fair Labor Standards Act

Date Filed: 10/03/2012
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff

Yesenia Estrada

represented by **Joseph Perea**
J.H. Zidell, P.A.
300-71st Street, Ste 605
Miami Beach, FL 33141
305-934-6215
Fax: 888-229-4968
Email: perealaw@gmail.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

K. David Kelly
J.H. Zidell, PA
J.H. Zidell, PA
300 71st Street, Ste. 605
Miami Beach, FL 33141
305-865-6766
Email: david.kelly38@rocketmail.com
ATTORNEY TO BE NOTICED

Jamie H. Zidell
300 71st Street
Suite 605
Miami Beach, FL 33141
305-865-6766
Fax: 865-7167
Email: ZABOGADO@AOL.COM
ATTORNEY TO BE NOTICED

V.

Defendant

Luz M. Rangel
Language: Spanish
doing business as
King Multiservices

represented by **Luz M. Rangel**
9369 Fountainebleau Blvd.
Apt. J209
Miami, FL 33172
305-409-1174
PRO SE

Defendant

Ricardo Moreno
Language: Spanish

represented by **Ricardo Moreno**
9369 Fountainebleau Blvd.
Apt. J209
Miami, FL 33172
305-409-1175
PRO SE

Counter Claimant

Ricardo Moreno

represented by **Ricardo Moreno**
(See above for address)
PRO SE

Counter Claimant**Luz M. Rangel**represented by **Luz M. Rangel**
(See above for address)
PRO SE

V.

Counter Defendant**Yesenia Estrada**represented by **K. David Kelly**
(See above for address)
*ATTORNEY TO BE NOTICED***Jamie H. Zidell**
(See above for address)
ATTORNEY TO BE NOTICED

| Date Filed | # | Docket Text |
|------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10/03/2012 | <u>1</u> | COMPLAINT against Ricardo Moreno, Luz M. Rangel. Filing fee \$ 350.00 receipt number 113C-5118837, filed by Yesenia Estrada. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summon(s))(Zidell, Jamie) (Entered: 10/03/2012) |
| 10/03/2012 | <u>2</u> | Judge Assignment to Senior Judge Paul C. Huck (bb) (Entered: 10/04/2012) |
| 10/04/2012 | <u>3</u> | Summons Issued as to Ricardo Moreno, Luz M. Rangel. (bb) (Entered: 10/04/2012) |
| 10/11/2012 | <u>4</u> | NOTICE of Court Practice in FLSA Cases and ORDER REFERRING CASE to Magistrate Judge Ted E. Bandstra for Settlement Conference. Signed by Senior Judge Paul C. Huck on 10/11/2012. (csn) (Entered: 10/11/2012) |
| 10/22/2012 | <u>5</u> | SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline by Yesenia Estrada. All Defendants. (Zidell, Jamie) (Entered: 10/22/2012) |
| 10/25/2012 | <u>6</u> | Statement of: Claim by Yesenia Estrada re <u>4</u> Order Referring Case to Magistrate Judge (Cochran, Christopher) (Entered: 10/25/2012) |
| 10/25/2012 | <u>7</u> | NOTICE by Yesenia Estrada re <u>4</u> Order Referring Case to Magistrate Judge <i>Of Filing Plaintiff's Answers to Court Interrogatories</i> (Attachments: # <u>1</u> Appendix Plaintiff's Answers to Court Interrogatories)(Cochran, Christopher) (Entered: 10/25/2012) |
| 10/31/2012 | <u>8</u> | ANSWER and Affirmative Defenses to Complaint, COUNTERCLAIM against Yesenia Estrada by Ricardo Moreno, Luz M. Rangel.(cbr) (Entered: 11/01/2012) |
| 11/01/2012 | <u>9</u> | Plaintiff's MOTION to Dismiss for Lack of Jurisdiction <u>8</u> Answer to Complaint, Counterclaim by Yesenia Estrada. Responses due by 11/19/2012 (Attachments: # <u>1</u> Exhibit Mejia Order, # <u>2</u> Exhibit Palma Order)(Kelly, K.) (Entered: 11/01/2012) |
| 11/02/2012 | <u>10</u> | SCHEDULING ORDER: Jury Trial set for 5/6/2013 09:00 AM in Miami Division before Senior Judge Paul C. Huck. Calendar Call set for 5/1/2013 08:30 AM in Miami Division before Senior Judge Paul C. Huck. Mediation Deadline 3/15/2013. Signed by Senior Judge Paul C. Huck on 11/2/2012. (csn) (Entered: 11/02/2012) |
| 11/15/2012 | <u>11</u> | ORDER/NOTICE of Settlement Conference, (Settlement Conference set for 12/18/2012 10:00 AM in Miami Division before Magistrate Judge Ted E. Bandstra.) Signed by Magistrate Judge Ted E. Bandstra on 11/15/2012. (jua) (Entered: 11/16/2012) |
| 11/19/2012 | <u>12</u> | CERTIFICATE of Interested Party by Yesenia Estrada (Cochran, Christopher) (Entered: 11/19/2012) |
| 11/20/2012 | <u>13</u> | RE: NOTICE of Settlement Conference, (Settlement Conference reset for 1/8/2013 at 10:00 AM in Miami Division before Magistrate Judge Ted E. |

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| | | Bandstra.). Signed by Magistrate Judge Ted E. Bandstra on 11/20/2012. (ar2) (Entered: 11/20/2012) |
| 01/08/2013 | 16 | Minute Entry for proceedings held before Magistrate Judge Ted E. Bandstra: Settlement Conference held on 1/8/2013. Case did not settle. (das) (Entered: 01/22/2013) |
| 01/16/2013 | 14 | Case Reassignment of Paired Magistrate Judge pursuant to Administrative Order(s) 2012-98 to Magistrate Judge John J. O'Sullivan. Magistrate Judge Ted E. Bandstra no longer assigned to case. (asl) Modified on 1/18/2013 (asl). (Entered: 01/16/2013) |
| 01/16/2013 | <u>15</u> | ORDER re: <u>9</u> . Defendant shall respond to Plaintiff's Motion to Dismiss Counterclaims by January 22, 2013. Signed by Senior Judge Paul C. Huck on 1/16/2013. (csn) (Entered: 01/16/2013) |
| 01/16/2013 | | Set/Reset Deadlines as to <u>9</u> Plaintiff's MOTION to Dismiss for Lack of Jurisdiction <u>8</u> Answer to Complaint, Counterclaim . Responses due by 1/22/2013 as per <u>15</u> Order (ra) (Entered: 01/17/2013) |
| 01/22/2013 | <u>17</u> | CLERK'S NOTICE of filing Discovery procedures for Magistrate Judge John J. O'Sullivan (vp) (Entered: 01/22/2013) |
| 01/24/2013 | <u>18</u> | NOTICE by Yesenia Estrada re <u>15</u> Order, Set Motion and RRDeadlines/Hearings of <i>Defendants' Non-compliance</i> (Kelly, K.) (Entered: 01/24/2013) |
| 01/25/2013 | <u>19</u> | ORDER granting <u>9</u> Motion to Dismiss Counterclaims. Signed by Senior Judge Paul C. Huck on 1/25/2013.(csn) (Entered: 01/25/2013) |
| 01/30/2013 | 20 | Clerk's Notice of Undeliverable Mail re <u>15</u> Order. US Mail returned for: Ricardo Moreno and Luz M. Rangel . <i>The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (cqs) (Entered: 01/30/2013) |
| 01/31/2013 | <u>21</u> | Request for Clerk to Appoint Mediator(Cochran, Christopher) (Entered: 01/31/2013) |
| 02/01/2013 | <u>22</u> | Clerk's Appointment of Mediator: J. Frost Walker, III added (pt) (Entered: 02/01/2013) |
| 02/11/2013 | <u>23</u> | Notice of Mediation Hearing before Mediator, J. Frost Walker, III, Esq. filed by Yesenia Estrada. Mediation Hearing set for 3/5/2013 10:00 AM (Attachments: # <u>1</u> Text of Proposed Order)(Cochran, Christopher) (Entered: 02/11/2013) |
| 03/05/2013 | <u>24</u> | FINAL MEDIATION REPORT by J. Frost Walker, III. Disposition: Case did not settle.(Walker, John) (Entered: 03/05/2013) |
| 03/22/2013 | 25 | Clerk's Notice of Undeliverable Mail 4 letters returned 16 <u>17</u> <u>19</u> <u>22</u> . US Mail returned for: RICARDO MORENO . <i>The Court has not located an updated address for this party. Notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (lbc) (Entered: 03/22/2013) |
| 03/22/2013 | 26 | Clerk's Notice of Undeliverable Mail 4 letters returned 16 <u>17</u> <u>19</u> <u>22</u> . US Mail returned for: LUZ M. RANGEL . <i>The Court has not located an updated address for this party. Notices from the Court will no longer be sent to this party in this case until a correct address is provided.</i> (lbc) Modified on 3/22/2013 (lbc). (Entered: 03/22/2013) |
| 04/16/2013 | <u>27</u> | Plaintiff's MOTION in Limine by Yesenia Estrada. (Kelly, K.) (Entered: 04/16/2013) |
| 04/20/2013 | <u>28</u> | NOTICE by Yesenia Estrada <i>Of Calendar Conflict</i> (Perea, Joseph) (Entered: 04/20/2013) |
| 04/22/2013 | 29 | Clerks Notice to Filer re <u>28</u> Notice (Other). Attorney Did Not Associate Themselves; ERROR – Filing attorney neglected to associate themselves to the case. The Clerk has added the attorney to the case. It is not necessary to refile this document future filings must comply with the CM/ECF Administrative Procedures |

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| | | and Local Rules by filing a Notice of Attorney Appearance and linking themselves to the case. (asl) (Entered: 04/22/2013) |
| 04/25/2013 | <u>30</u> | NOTICE by Yesenia Estrada re <u>10</u> Scheduling Order, <i>OF NON-COOPERATION BY DEFENDANTS</i> (Attachments: # <u>1</u> Exhibit emails, # <u>2</u> Exhibit W list, # <u>3</u> Exhibit E list, # <u>4</u> Exhibit V form, # <u>5</u> Exhibit Stipulation, # <u>6</u> Exhibit Jury Instructions)(Kelly, K.) (Entered: 04/25/2013) |
| 04/29/2013 | <u>31</u> | Witness List <i>AMENDED</i> by Yesenia Estrada.. (Kelly, K.) (Entered: 04/29/2013) |
| 04/29/2013 | <u>32</u> | NOTICE of Attorney Appearance by K. David Kelly on behalf of Yesenia Estrada (Kelly, K.) (Entered: 04/29/2013) |
| 05/01/2013 | <u>33</u> | Minute Entry for proceedings held before Senior Judge Paul C. Huck: Calendar Call held on 5/1/2013. Court Reporter: Larry Herr, 305-523-5290 / Larry_Herr@flsd.uscourts.gov (wc) (Entered: 05/01/2013) |
| 05/01/2013 | <u>34</u> | ORDER referring case to Magistrate Judge Alicia M. Otazo-Reyes for Trial. Signed by Senior Judge Paul C. Huck on 5/1/2013. (mst) (Entered: 05/01/2013) |
| 05/02/2013 | <u>35</u> | NOTICE by Yesenia Estrada <i>REGARDING CONTINUED DEMAND FOR JURY TRIAL</i> (Kelly, K.) (Entered: 05/02/2013) |
| 05/10/2013 | <u>36</u> | PRETRIAL STIPULATION <i>Jointly Filed</i> by Yesenia Estrada, Ricardo Moreno, Luz M. Rangel (Attachments: # <u>1</u> Exhibit exhibit list, # <u>2</u> Exhibit witness list, # <u>3</u> Exhibit jury instructions, # <u>4</u> Exhibit verdict form, # <u>5</u> Supplement notice of objection)(Perea, Joseph) (Entered: 05/10/2013) |
| 05/14/2013 | <u>37</u> | ORDER Setting Pretrial Conference: Pretrial Conference set for 5/30/2013 at 2:00 PM in the Miami Division before Magistrate Judge Alicia M. Otazo-Reyes. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/14/2013. (nmz) (Entered: 05/14/2013) |
| 05/22/2013 | 38 | CLERK'S NOTICE: This Court's Order setting pretrial conference was mailed to Luz M. Rangel and Ricardo Moreno at the following address: 9369 Fountainebleau Blvd., Apt. J209, Miami, Florida 33172; re <u>37</u> ORDER Setting Pretrial Conference: Pretrial Conference set for 5/30/2013 at 2:00 PM in the Miami Division before Magistrate Judge Alicia M. Otazo-Reyes. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/14/2013. (nmz) (sl) (Entered: 05/22/2013) |
| 05/30/2013 | <u>39</u> | ORDER Setting Status Conference: Status Conference set for 6/19/2013 at 2:00 PM in the Miami Division before Magistrate Judge Alicia M. Otazo-Reyes. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/30/2013. (nmz) (Entered: 05/30/2013) |
| 05/30/2013 | 40 | CLERK'S NOTICE: re <u>39</u> ORDER Setting Status Conference: Status Conference set for 6/19/2013 at 2:00 PM in the Miami Division before Magistrate Judge Alicia M. Otazo-Reyes. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 5/30/2013 – This Court's Order was mailed to Defendants Luz M. Rangel and Ricardo Moreno at 9369 Fontainebleau Blvd., Apt. J209, Miami, FL 33172. (nmz) (sl) (Entered: 05/30/2013) |
| 05/30/2013 | 41 | PAPERLESS Minute Entry for proceedings held before Magistrate Judge Alicia M. Otazo-Reyes: Initial Pretrial Conference held on 5/30/2013. ; APPEARANCES: DAVID KELLEY for the Plaintiff; Defendant RICARDO MORENO – pro se; Defendant LUZ RANGEL – pro se; status conference set for June 19, 2013 at 2:00 P.M. before Magistrate Judge Alicia M. Otazo-Reyes; The defendants require a Spanish interpreter; The Court interpreted in this matter today; The Court shall make inquiry in re pro bono representation for the Defendants (Digital 14:00:02.) (sl) (Entered: 05/30/2013) |
| 06/04/2013 | 42 | PAPERLESS ORDER denying as moot <u>27</u> Motion in Limine in light of the parties' stipulation as stated in the <u>36</u> Pretrial Stipulation. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 6/4/2013. (nmz) (Entered: 06/04/2013) |
| 06/19/2013 | <u>43</u> | ORDER re June 19, 2013 Status Conference. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 6/19/2013. (nmz) (Entered: 06/19/2013) |

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| 06/19/2013 | 44 | PAPERLESS Minute Entry for proceedings held before Magistrate Judge Alicia M. Otazo-Reyes: Status Conference held on 6/19/2013 (2:00 P.M. – 3:00 P.M.). APPEARANCES: K. David Kelly, Esq. for the Plaintiff; Defendants – pro se – Luz Rangel and Ricardo Moreno (with the aide of the Spanish Interpreter) (Digital 13:59:28.) (sl) (Entered: 06/20/2013) |
| 06/20/2013 | 45 | CLERK'S NOTICE re <u>43</u> ORDER re June 19, 2013 Status Conference. Signed by Magistrate Judge Alicia M. Otazo-Reyes on 6/19/2013 – This Court's Order was mailed to Defendants Luz M. Rangel and Ricardo Moreno at 9369 Fountainebleau Blvd., Apt. J209, Miami, FL 33172 (nmz) (sl) (Entered: 06/20/2013) |
| 06/24/2013 | <u>46</u> | NOTICE of Compliance <i>and of OF ONGOING EFFORTS, AND FURTHER WITNESS DISCLOSURE DETAILS</i> by Yesenia Estrada re <u>43</u> Order (Attachments: # <u>1</u> Exhibit Email)(Kelly, K.) (Entered: 06/24/2013) |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:

| | |
|--------------------------|---|
| YESENIA ESTRADA, |) |
| |) |
| Plaintiff, |) |
| vs. |) |
| |) |
| LUZ M. RANGEL d/b/a KING |) |
| MULTISERVICES |) |
| RICARDO MORENO, |) |
| |) |
| Defendants. |) |
| _____ |) |

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

Plaintiff, YESENIA ESTRADA, through undersigned counsel, files this Complaint against Defendants, LUZ M. RANGEL d/b/a KING MULTISERVICES and RICARDO MORENO, and alleges:

1. This is an action arising under the Fair Labor Standards Act 29 U.S.C. §§ 201-216.
2. The Plaintiff was a resident of Dade County, Florida at the time that this dispute arose.
3. The Defendant, LUZ M. RANGEL d/b/a KING MULTISERVICES, is a proprietorship doing business under an assumed name that regularly transacts business within Dade County, Florida. Upon information and belief, the Defendant runs the day-to-day operations of her business for the relevant time period and was responsible for paying Plaintiff’s wages for the relevant time period and controlled Plaintiff’s work and schedule and was therefore Plaintiff’s employer as defined by 29 U.S.C. 203 (d) and was the FLSA employer for Plaintiff’s respective period of employment (“the relevant time period”).
4. The Defendant, RICARDO MORENO runs the day-to-day operations of the Defendant

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

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

COUNT I. FEDERAL OVERTIME WAGE VIOLATION

6. This action arises under the laws of the United States.
7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought pursuant to The Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (section #216 for jurisdictional placement).
8. 29 U.S.C. § 207 (a) (1) states, " 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...."
9. Plaintiff worked for the Defendants as a cashier from on or about February 2, 2012 through on or about September 27, 2012.
10. Defendants' business activities involve those to which the Fair Labor Standards Act applies. Both the Defendants' business and the Plaintiff's work for the Defendants affected interstate commerce for the relevant time period. Plaintiff's work for the Defendants affected interstate commerce for the relevant time period because the materials and goods that Plaintiff used on a constant and/or continual basis and/or that were supplied to her by the Defendants to use on the job moved through interstate commerce prior to and/or subsequent to Plaintiff's use of the same. The Plaintiff's work for the Defendants was actually in and/or so closely related to the movement of commerce while she worked for the Defendants that the Fair Labor Standards Act applies to Plaintiff's work for the Defendants.

11. Plaintiff was directly engaged in interstate commerce while working for the Defendants as Plaintiff regularly sent money by international wire transfer as part of her work for Defendants.
12. Upon information and belief, the Defendants had gross sales or business done in excess of \$500,000 annually for the years 2009, 2010, and 2011.
13. Upon information and belief, the Defendants' gross sales or business done exceeded \$375,000 for the first nine months of the year 2012 and is expected to exceed \$500,000 for the year 2012.
14. Furthermore, Defendants regularly employed two or more employees for the relevant time period who handled goods or materials that travelled through interstate commerce, or used instrumentalities of interstate commerce, thus making Defendants' business an enterprise covered under the Fair Labor Standards Act.
15. Between the period of on or about February 2, 2012 through on or about September 27, 2012, Plaintiff worked an average of 55 hours per week and was paid an average of \$4.62 per hour, but was never paid the extra half time rate for the hours worked over 40 as required by the Fair Labor Standards Act. Plaintiff therefore claims the halftime overtime rate at the applicable minimum wage rate of \$7.25/hr for each overtime hour worked.
16. Defendants willfully and intentionally refused to pay Plaintiff's overtime wages as required by the Fair Labor Standards Act as Defendants knew of the overtime requirements of the Fair Labor Standards Act and recklessly failed to investigate whether Defendants' payroll practices were in accordance with the Fair Labor Standards Act. Defendants remain owing Plaintiff these wages since the commencement of Plaintiff's employment for the time period specified above.

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

COUNT II. FEDERAL MINIMUM WAGE VIOLATION

COMES NOW PLAINTIFF, through Counsel, and re-adopts the factual and jurisdictional statements in paragraphs 1-16 above and further states:

17. 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)]. On July 24, 2007 Federal minimum wage was raised to \$5.85/hr. On July 24, 2008, Federal minimum wage was raised to \$6.55/hr. On July 24, 2009, Federal minimum wage was raised to \$7.25/hr.
18. Between the period of on or about February 2, 2012 through on or about September 27, 2012, Plaintiff worked an average of 55 hours a week for the Defendants. Plaintiff was paid an average of \$4.62/hr for said work in violation of the Fair Labor Standards Act as said payment of \$4.62/hr did not meet the applicable Federal Minimum Wage required for said period of time. Therefore, Plaintiff claims the difference between the amount that she received and the applicable minimum wage rate of \$7.25/hr for all hours worked for Defendants.
19. The Defendants' wage payment practices to Plaintiff for this time period did not meet the federal minimum wage law requirements as Plaintiff was not paid the required federal

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
YESENIA ESTRADA

DEFENDANTS
LUZ M. RANGEL d/b/a KING MULTISERVICES
RICARDO MORENO

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

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

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
J.H. Zidell P.A., 300 71st Street, Suite 605, Miami Beach, Florida 33141.
Tel: (305) 865-6766

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 201-216

Brief description of cause:

Claim for overtime and minimum wages

VII. 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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/03/2012

/s/ J.H. Zidell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

YESENIA ESTRADA,)
)
Plaintiff,)
vs.)
)
LUZ M. RANGEL d/b/a KING)
MULTISERVICES)
RICARDO MORENO,)
)
Defendants.)
)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Luz M. Rangel
1257 W. 68th Street, Unit A
Hialeah, Florida 33014

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: _____

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

YESENIA ESTRADA,)
)
Plaintiff,)
vs.)
)
LUZ M. RANGEL d/b/a KING)
MULTISERVICES)
RICARDO MORENO,)
)
Defendants.)
)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Ricardo Moreno
1257 W. 68th Street, Unit A
Hialeah, Florida 33014

A lawsuit has been filed against you.

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

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

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

CLERK OF COURT

Date: _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-CIV-23614-HUCK/BANDSTRA

YESENIA ESTRADA,

Plaintiff,

v.

LUZ M. RANGEL d/b/a KING
MULISERVICES and RICARDO
MORENO,

Defendants.

**NOTICE OF COURT PRACTICE IN FAIR LABOR STANDARDS ACT CASES AND
REFERRAL TO MAGISTRATE JUDGE FOR SETTLEMENT CONFERENCE**

THIS CAUSE is before the Court upon a *sua sponte* examination of the record. The Court notes that this is a Fair Labor Standards Act case in which the Plaintiff seeks unpaid wages. In order to assist the Court in the management of the case, and in an effort to foster its early and cost effective resolution, the parties are hereby Ordered that:

1. *Each* Plaintiff shall file a statement of claim setting forth the amount of alleged unpaid wages, the calculation of such wages, and the nature of the wages (*e.g.* overtime or regular) **within 15 days** from the date below. **Each Plaintiff shall promptly serve a copy of this notice, their FLSA statement, and copies of all documents supporting his/her claim (*e.g.* time slips, pay stubs) on Defendant's counsel** when counsel for the Defendant first appears in the case or at the time of filing of the statement if Defendant's counsel has already appeared in the case.

2. **Within 25 days of the date of this Order**, each Plaintiff shall answer the Court's Interrogatories (attached to this Order) under oath or penalty of perjury and file the answers with the Court entitled "Notice of Filing Answers to Court's Interrogatories." Each Plaintiff shall serve a copy of these answers on Defendant's counsel when counsel for the Defendant first appears in the case or at the time of filing of the answers if Defendant's counsel has already appeared in the case.

3. Defendants shall file a response to Plaintiff's statement and provide Plaintiff **with**

copies of all documents supporting its defenses within 15 days of service of Plaintiff's statement.

4. **Referral to Magistrate for Settlement Conference.** Pursuant to Rule 1 of the Magistrate Rules of the Southern District of Florida, the parties shall conduct a Settlement Conference before Magistrate Judge Ted E. Bandstra **within 15 days after the date that Defendant's Response is due.** Plaintiff's counsel must confer with defense counsel and contact Magistrate Judge Bandstra's Chambers **on or before the date that Defendant's Response is due** to schedule a date for the Settlement Conference. Magistrate Judge Bandstra will issue an Order Scheduling Settlement Conference outlining the time and requirements for the Settlement Conference. The Settlement Conference date may not be extended without prior approval from Magistrate Judge Bandstra.

5. **Consent to Magistrate for Disposition of Case.** Pursuant to 28 U.S.C. § 636(c) and the Magistrate Rules of the Local Rules of the Southern District of Florida, the parties may consent to the conduct of all further proceedings, including a jury or non-jury trial and the entry of a final judgment, in this case by the United States Magistrate Judge (consent form attached). The parties shall confer regarding the consent to magistrate **within 10 days after the Defendant's Response is due.** In the event that the parties consent to the conduct of all further proceedings by a Magistrate Judge, the action shall be referred to Magistrate Judge Bandstra for disposition and the above-referenced settlement conference shall be held before either Magistrate Judge William C. Turnoff or Magistrate Judge Peter R. Palermo, as designated by the Court.

6. Except as provided under Local Rule 16.2.E for public-sector entities, the appearance of counsel and each party or representatives of each party with full authority to enter into a full and complete compromise and settlement is mandatory. Appearance shall be in person; telephonic appearance is prohibited, unless approved by Magistrate Judge Bandstra. If insurance is involved, an adjustor with authority up to the policy limits or the most recent demand, whichever is lower, shall attend.

7. All discussions, representations and statements made at the mediation conference shall be confidential and privileged.

8. **Settlement.** If the case is settled, counsel must inform the Court **within 3 days** by calling Chambers. Upon notice of settlement, Magistrate Judge Bandstra shall prepare a report and

recommendation as to whether any settlement is a “fair and reasonable resolution of a bona fide dispute” over FLSA issues. *See Lynn’s Food Stores, Inc. v. United States*, 679 F. 2d 1350, 1354-55 (11th Cir. 1982).

9. **Non-compliance with Order and Rules of Court.** Non-compliance with any provision of this Order, the Federal Rules of Civil Procedure, and/or the Local Rules of Court, may subject the offending party to **sanctions or dismissal**. It is the duty of all counsel to take all actions necessary to comply with this Order to ensure an expeditious resolution of this matter.

DONE and ORDERED in Chambers, Miami, Florida, on October 11, 2012.



Paul C. Huck
United States District Judge

Copies furnished to:
All Counsel of Record
Magistrate Judge Ted E. Bandstra

COURT'S INTERROGATORIES TO PLAINTIFF

1. During what period of time were you employed by the Defendant?
2. Who was your immediate supervisor?
3. Did you have a regularly scheduled work period? If so, specify.
4. What was your title or position? Briefly describe your job duties.
5. What was your regular rate of pay?
6. What is the nature of your claim (check all that apply)?

____ Off the clock work (i.e., Defendant failed to record, or prohibited you from recording, all of your working time)

____ Misclassification (i.e., Defendant mistakenly classified you as exempt from overtime)

____ Miscalculation (i.e., Defendant failed to correctly calculate your compensation)

____ Other (Please describe): _____

7. Provide an accounting of your claim, including:
 - (a) dates
 - (b) regular hours worked
 - (c) over-time hours worked
 - (d) pay received versus pay claimed
 - (e) total amount claimed
8. If you have brought this case as a collective action:
 - (a) Describe the class of employees you seek to include in this action.
 - (b) Has an opt-in notice been filed for every potential opt-in Plaintiff who has identified him/herself as a person who wishes to join this action?
9. Please specify all attorney's fees and costs incurred to date. With respect to attorney's fees, please provide the hourly rate(s) sought and the number of hours expended by each person who has billed time to this case.
10. When did you (or your attorney) first complain to your employer about alleged violations of the FLSA?
11. Was this complaint written or oral? (If a written complaint, please attach a copy.)

12. What was your employer's response? (If a written response, please attach a copy.)
Do not respond to this question to the extent, if any, that such response might violate evidentiary rules regarding disclosure of the nature or terms of a settlement discussion. In such a situation, it shall suffice to state that discussions occurred and the matter was not resolved to your satisfaction.

Name

Signature

State of Florida

County of _____

Before me, the undersigned authority, on this day, personally appeared _____, who being first duly sworn, deposes and says that he/she has read the foregoing Answers to Interrogatories, knows the contents of same, and to the best of his/her knowledge and belief, the same are true and correct.

SWORN TO AND SUBSCRIBED before me on this _____ day of _____,
2012.

Notary Public

FORM CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. _____**

_____,

Plaintiff,

vs.

_____,

Defendant.

_____ /

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of Title 28, United States Code, Section 636(c), the parties to the above-captioned civil matter hereby waive their right to proceed before a District Judge of this Court and consent to have a Magistrate Judge conduct any and all further proceedings in the case (including the trial) and order the entry of judgment.

Attorney Name (Bar Number)
Attorney E-mail Address
Firm Name
Street Address
City, State, Zip Code
Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx
Attorney for Plaintiff [Party Name(s)]

Attorney Name (Bar Number)
Attorney E-mail Address
Firm Name
Street Address
City, State, Zip Code
Telephone: (xxx)xxx-xxxx
Facsimile: (xxx)xxx-xxxx
Attorney for Defendant [Party Name(s)]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-23614-CIV-HUCK/BANDSTRA

| | |
|--------------------------|---|
| YESENIA ESTRADA, |) |
| |) |
| Plaintiff, |) |
| vs. |) |
| |) |
| LUZ M. RANGEL d/b/a KING |) |
| MULTISERVICES |) |
| RICARDO MORENO, |) |
| |) |
| Defendants. |) |
| _____ |) |

PLAINTIFF’S STATEMENT OF CLAIM

Now come(s) the Plaintiff(s) through the undersigned and file(s) the above-described Statement of Claim as follows:

Federal Minimum Wage Claim (2/2/12-9/27/12):

Federal minimum wage: \$7.25
Amount paid: \$4.62 per hour (based on an average of \$250 per week)
Amount owed per hour: \$2.63
Weeks: 34
Hours per week: 54
Total wages unpaid and liquidated damages: \$4,828.68 x 2 = \$9,657.36

Federal Overtime Half-time Claim (2/2/12-9/27/12):

Amount of half time overtime rate per hour not compensated (based on Federal minimum wage):
\$3.63
Weeks: 34
Overtime hours per week: 14
Total wages unpaid and liquidated damages: \$1,727.88 x 2 = \$3,455.76

Total Federal Claim: \$13,113.12

*Plaintiff seeks all fees and costs under the FLSA.
**Plaintiff reserves the right to seek minimum wage damages under the Florida Constitution and statutes as applicable.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 12-23614-CIV-HUCK/BANDSTRA

| | |
|--------------------------|---|
| YESENIA ESTRADA, |) |
| |) |
| Plaintiff, |) |
| vs. |) |
| |) |
| LUZ M. RANGEL d/b/a KING |) |
| MULTISERVICES |) |
| RICARDO MORENO, |) |
| |) |
| Defendants. |) |
| _____ |) |

**PLAINTIFF’S NOTICE OF FILING ANSWERS TO COURT’S
INTERROGATORIES**

COMES NOW, the Plaintiff, by and through the undersigned counsel, and
Notices filing of answers to the Court’s Interrogatories, pursuant to this Court’s Notice of
Court Practice in Fair Labor Standards Act Cases. [D.E. 4].

**Respectfully submitted,
CHRISTOPHER COCHRAN, ESQ.
J.H. ZIDELL, P.A.
ATTORNEY FOR PLAINTIFF
300 71ST STREET, #605
MIAMI BEACH, FLA. 33141
PH: 305-865-6766
FAX: 305-865-7167
EMAIL: CNC02G@GMAIL.COM
F.B.N. 0084088
BY: _____/s/ Christopher Cochran_____
CHRISTOPHER COCHRAN, ESQ.**

**CERTIFICATE OF SERVICE:
I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THE
FOREGOING WAS SENT ON OCTOBER 25, 2012, PURSUANT TO E-FILING
TO:**

(No counsel has appeared yet)

**BY: _____/s/ Christopher Cochran_____
CHRISTOPHER COCHRAN, ESQ.**

COURT'S INTERROGATORIES TO PLAINTIFF

1. During what period of time were you employed by the Defendant?

Plaintiff was employed by Defendants from February 2, 2012 until September 27, 2012.

2. Who was your immediate supervisor?

Ricardo Moreno was Plaintiff's immediate supervisor.

3. Did you have a regularly scheduled work period? If so, specify.

Monday through Thursday Plaintiff worked from 9 am until 7 pm. On Friday through Saturday, Plaintiff worked from 9 am until 7:30 pm.

4. What was the title of your position? Briefly describe your job duties.

Plaintiff was a cashier. Plaintiff's duties included sending money wires to South and Central America, sending packages to Colombia, sell pre-paid phone cards for use with Cuba, Colombia, Guatemala, and Honduras, and recharging cell phones to make phone calls to South and Central American countries. Plaintiff also made bank deposits.

5. What was your regular rate of pay?

As computed by the average hourly rate in the complaint, Plaintiff initially was paid \$300 per week until March 29, 2012. On March 30, 2012, Plaintiff's pay was reduced to \$200 per week. On May 19, 2012, Plaintiff's pay was raised to \$250 per week. Plaintiff reserves the right to amend this answer pending further discovery.

6. What is the nature of your claim (check all that apply)?

Off the clock work (i.e. Defendant failed to record, or prohibited you from recording, all of your working time)

Misclassification (i.e., Defendant mistakenly classified you as exempt from overtime)

Miscalculation (i.e. Defendant failed to correctly calculate your compensation)

Other (Please describe): Plaintiff has a good faith belief based on the current evidence without discovery that Defendants have not properly recorded hours or correctly calculated compensation based on my hourly work).

7. Providing an accounting of your claim, including:

- (a) Dates
- (b) Regular hours worked
- (c) Over-time hours worked
- (d) Pay received versus pay claimed
- (e) Total amount claimed

Plaintiff refers to her most recent Complaint and statement of claim. Her computation is set out as:

Federal Minimum Wage Claim (2/2/12-9/27/12):

Federal minimum wage: \$7.25

Amount paid: \$4.62 per hour (based on an average of \$250 per week)

Amount owed per hour: \$2.63

Weeks: 34

Hours per week: 54

Total wages unpaid and liquidated damages: $\$4,828.68 \times 2 = \$9,657.36$

Federal Overtime Half-time Claim (2/2/12-9/27/12):

Amount of half time overtime rate per hour not compensated (based on Federal minimum wage): \$3.63

Weeks: 34

Overtime hours per week: 14

Total wages unpaid and liquidated damages: $\$1,727.88 \times 2 = \$3,455.76$

Total Federal Claim: \$13,113.12

*Plaintiff seeks all fees and costs under the FLSA.

**Plaintiff reserves the right to seek minimum wage damages under the Florida Constitution and statutes as applicable.

8. If you have brought this case as a collective action:
- (a) Describe the class of employees you seek to include in this action.
 - (b) Has an opt-in notice been filed for every potential opt-in Plaintiff who has identified him/herself as a person who wishes to join this action?

Plaintiff does not seek to bring this as a collective action.

9. Please specify all attorney's fees and costs incurred to date. With respect to attorney's fees, please provide the hourly rate(s) sought and the number of hours expended by each person who has billed time to this case.

Costs:

Filing fee: \$350

Service of Process: $\$35 \times 3 = \70

Attorney's fees:

J.H. Zidell - $\$325 \text{ per hour} \times 1.7 \text{ hours} = \552.50

K.David Kelly - $\$300 \text{ per hour} \times .2 \text{ hours} = \60

Christopher Cochran - $\$200 \text{ per hour} \times 1.3 \text{ hours} = \260

10. When did you (or your attorney) first complain to your employer about alleged violations of the FLSA?

Plaintiff complained to Ricardo in March 2012.

11. Was this complaint written or oral? (If a written complaint, please attach a copy.)

Oral.

12. What was your employer's response? (If a written response, please attach a copy.) Do not respond to this question to the extent, if any, that such response might violate evidentiary rules regarding disclosure of the nature or terms of a settlement discussion. In such a situation, it shall suffice to state that discussions occurred and the matter was not resolved to your satisfaction.

Ricardo said he would compensate Plaintiff for the extra hours she did work and for the low weekly pay, but he never did.

Yecenia Peña Estrada.
Name

[Signature]
Signature

State of Florida
County of Miami Dade

Before me, the undersigned authority, on this day, personally appeared FDL, who being first duly sworn, deposes and says that he/she has read the foregoing Answers to Interrogatories, knows the contents of same, and to the best of his/her knowledge and belief, the same are true and correct.

SWORN TO AND SUBSCRIBED before me on this 25 day of October, 2012.

Notary Public
[Signature]

INTERPRETER'S ACKNOWLEDGEMENT:

On October 25, 2012, MARY WALLER, personally known to me, affirmed that the foregoing was translated for YECENIA PENA ESTRADA and that he fully understood and affirmed the contents of the foregoing.

[Signature]
(Interpreter's Signature)

[Signature]
NOTARY PUBLIC / STAMP

CARIDAD SIUTA
Commission # DD 999626
Expires July 26, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

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[Faint handwritten text]

FOL

51 22 October 12

[Handwritten signature]

October 22, 2012
MAYNARD
JENNIFER M. MANNING

[Handwritten signature]

[Handwritten signature]

