

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No.:

EDUARDO ACOSTA, and similarly situated
individuals,

Plaintiffs,

vs.

LYCA TEL, LLC, a New Jersey Corporation,

Defendant.

COMPLAINT

Plaintiff, EDUARDO ACOSTA (hereinafter “ACOSTA” or “Plaintiff”), and similarly situated individuals, sue Defendant, LYCA TEL, LLC (hereinafter “LYCA TEL” or “Defendant”), and states:

1. ACOSTA and similarly situated individuals bring this action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, et seq., (hereinafter “the Act”) to recover unpaid back wages, and an additional equal amount as liquidated damages, reasonable attorneys’ fees and costs.

2. Jurisdiction of this action is conferred upon the court by section 16 (b) of the Act, 29 U.S.C. § 216 (b).

3. All acts or omissions giving rise to this dispute took place in the Southern District of Florida.

PARTIES

4. ACOSTA, is an individual, a resident of Miami-Dade County, Florida, and was an employee of LYCA TEL from in or about November 2015 through December 9, 2016.

5. At all times material to this Complaint, ACOSTA was an employee of LYCA TEL who was non-exempt from the overtime provisions of the Act.

6. LYCA TEL is a New Jersey corporation doing business in Miami-Dade County, Florida at all times relevant to this Complaint.

7. ACOSTA was engaged in commerce or the production of goods for commerce within the meaning of Section 3(b) and (j), respectively, of the Act, 29 U.S.C. § 203(b) and (j), while working for LYCA TEL and at all times material to this Complaint.

8. Upon information and belief, LYCA TEL's gross revenues for 2015 exceeded \$500,000 for that year.

9. Upon information and belief, LYCA TEL's gross revenues for 2016 exceeded \$500,000 for that year.

10. Upon information and belief, LYCA TEL regularly orders goods and materials that come from outside the State of Florida.

11. By reason of the foregoing, LYCA TEL was during all times hereinafter mentioned, an enterprise engaged in commerce or in the production of goods for commerce as defined in Section 3(r) of the Act, 29 U.S.C. § 203(r) and 203(s).

12. Plaintiff consents to being a party-plaintiff in this lawsuit.

FACTUAL ALLEGATIONS

13. Defendant is in the business of selling SIM cards, which is a memory circuit used in cell phones that carries information necessary for a cell phone to operate on a given network.

14. Plaintiff worked on selling Defendant's products, including SIM cards.

15. ACOSTA began working for LYCA TEL on or about November 2015.

16. Plaintiff and similarly situated individuals were paid on an hourly basis.

17. LYCA TEL offered that ACOSTA be paid commissions and ACOSTA sold LYCA TEL's products in reliance of that promise.

18. ACOSTA was supposed to be paid commissions as well but did not receive those commissions.

19. Plaintiff and similarly situated individuals often worked more than forty (40) hours per week but were not paid time and half for those hours worked over forty (40) hours per week.

20. ACOSTA complained about LYCA TEL's failure to pay overtime and commissions and was terminated on or about December 9, 2016 as a result of his complaints.

COUNT I -- VIOLATION OF FAIR LABOR STANDARDS ACT
(FAILURE TO PAY OVERTIME WAGES)

21. Federal law, 29 U.S.C. §207(a)(1), states that "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 a rate of at least one and a half times the employee's regular rate."

22. At all times since the three years preceding the filing of this Complaint, LYCA TEL willfully employed Plaintiff and/or similarly situated individuals in the aforesaid enterprise, in commerce or in the production of goods for commerce, or employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce as

described above, for many workweeks longer than 40 hours, and failed and refused to compensate Plaintiff for such work in excess of 40 hours at rates not less than one and one-half times the regular rate at which he was employed, contrary to the provisions of Section 7(a) of the Act, 29 USC § 207(a).

23. Defendant is an employer under the Act.

24. Defendant willfully and intentionally failed to pay Plaintiff and similarly situated individuals the statutory overtime rate as required by the laws of the United States as set forth above and remains owing his back wages.

25. As a result of the under payments of wages alleged above, LYCA TEL is indebted to Plaintiff and similarly situated individuals in the amount of the unpaid overtime compensation. Plaintiff propose to obtain the necessary records and information to determine the amount of the underpayment to Plaintiff by appropriate discovery proceedings to be promptly taken in this cause.

WHEREFORE, Plaintiff and similarly situated individuals demand judgment awarding them and similarly situated individuals all such legal and/or equitable relief that will effectuate the purpose of the Act including, but not limited, to back pay and prejudgment interest, liquidated damages, reasonable attorney fees, pursuant to the Act, 29 U.S.C. § 216 (b), along with court costs, witness fees and other miscellaneous costs of the litigation, and any other relief that this court finds will reasonable under the circumstances. ACOSTA also request retrospective and prospective injunctive relief pursuant to 29 U.S.C § 217 requiring Defendant to pay overtime owed to its employees and an Order prohibiting Defendant from violating the FLSA in the future.

COUNT II

BREACH OF CONTRACT UNPAID COMMISSIONS OWED TO EDUARDO ACOSTA

26. Defendant's failure to pay ACOSTA the agreed upon commissions amounts to a

breach of contract.

27. As a result of Defendant's breach, ACOSTA has incurred general damages and is entitled to recover the unpaid commissions, as well as prejudgment interest to partially compensate his for the loss of use of the funds that were due.

28. ACOSTA is owed commissions.

WHEREFORE, ACOSTA requests judgment against Defendant LYCA TEL for his unpaid commissions and other damages, together with costs of suit and reasonable attorney's fees pursuant to Fla. Stat. § 448.08, and such other and further relief as the court may deem proper.

COUNT III

FLSA RETALIATION

29. 29 U.S.C. § 215(a)(3) of the FLSA states that it is a violation to "discharge or in any other manner discriminates against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee."

30. The motivating factor that caused Plaintiff's adverse employment action (termination) as described above was Plaintiff's complaint regarding not being properly paid pursuant to the FLSA and wage and hour law.

31. Defendant LYCA TEL's conduct was in direct violation of the FLSA, and, as a direct result, Plaintiff has been damaged.

WHEREFORE, Plaintiff respectfully prays for the following relief against Defendant LYCA TEL:

A. Adjudge and decree that Defendant LYCA TEL has violated the FLSA and has

done so willfully, intentionally and with reckless disregard for Plaintiff's rights;

B. Enter judgment against the Defendant LYCA TEL for all back wages from the date of discharge to the present date and an equal amount of back wages as liquidated damages;

C. Enter judgment against the Defendant LYCA TEL for all front wages;

D. Enter an award against Defendant LYCA TEL and award Plaintiff compensatory damages for mental anguish, personal suffering, and loss of enjoyment of life;

E. Award Plaintiff the costs of this action, together with reasonable attorneys' fees;
and;

F. Grant Plaintiff's a Trial By Jury.

JURY DEMAND

ACOSTA demand trial by jury on all issues so triable.

Respectfully submitted,

GARY A. COSTALES, P.A.
1200 Brickell Avenue, Suite 1440
Miami, Florida 33131
(305) 375-9510 Ext. 314
(305) 375-9511 (facsimile)

/s Gary A. Costales
Gary A. Costales, Esq.
Florida Bar No. 0948829

JS 44 (Rev. 2/08)

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.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS
 EDUARDO ACOSTA

DEFENDANTS
 LYCATEL, LLC, a Florida Corporation,

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

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
 GARY A. COSTALES, P.A., 1200 Brickell Avenue, Suite 1440
 Miami, Florida 33131
 (305) 375-9510 Ext. 314 (305) 375-9511 (facsimile)

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

Attorneys (If Known)

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
 1 U.S. Government Plaintiff
 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant
 4 Diversity (Indicate Citizenship of Parties in Item III)

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input checked="" type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)
 1 Original Proceeding 2 Removed from State Court 3 Re-filed- (see VI below) 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. RELATED/RE-FILED CASE(S). (See instructions second page):
 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):
 Action for overtime pursuant to 29 USC Sec 207 and 215
 LENGTH OF TRIAL via 3 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 SIGNATURE OF ATTORNEY OF RECORD DATE January 17, 2017 3/9/17

FOR OFFICE USE ONLY
 AMOUNT _____ RECEIPT # _____ IFP _____

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

EDUARDO ACOSTA, and similarly situated individuals,

Plaintiff

v.

LYCA TEL, LLC, a Florida Corporation,

Defendant

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)
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)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Registered Agent for Lyca Tel, LLC
Corporate Creations Network Inc
11380 Prosperity Farms Road #221E
Palm Beach Gardens, FL 33410

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:

Gary A. Costales, Esq.
Gary A. Costales, P.A.
1200 Brickell Ave., Suite 1440
Miami, FL 33131
(305) 375-9510

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [LYCA TEL Knocked with Unpaid Wage Lawsuit](#)
