

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

KEVIN BROWN, On Behalf of HIMSELF)	
and All Others Similarly Situated,)	
)	
<i>Plaintiff,</i>)	COLLECTIVE ACTION
v.)	
)	CASE NO. _____
HISCALL, INC., HISCALL)	
TELECOMMUNICATIONS, INC., and)	JUDGE _____
HISCALL TECHNOLOGIES, INC.,)	
)	
<i>Defendants.</i>)	

COLLECTIVE ACTION COMPLAINT

1. Plaintiff, Kevin Brown, brings this Fair Labor Standards Act (“FLSA”) collective action lawsuit against Hiscall, Inc., Hiscall Telecommunications, Inc., and Hiscall Technologies, Inc., (“Defendants”) on behalf of himself and all similarly situated individuals, pursuant to 29 U.S.C. § 216(b). Plaintiff alleges that he and similarly situated current and former employees of Defendants regularly worked more than 40 hours per week without receiving overtime pay, in violation of the FLSA.

I. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff’s claims because they are brought pursuant to 29 U.S.C. § 216(b) and because they raise a federal question pursuant to 28 U.S.C. § 1331.

3. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendants reside in this judicial district and because the claims arose in this judicial district.

II. PARTIES

4. Plaintiff Kevin Brown is a resident of Murfreesboro, Rutherford County,

Tennessee, is over the age of nineteen (19), and was employed by Defendants from in or around 2009 until in or around May 2016.

5. Defendant Hiscall, Inc. is a Tennessee corporation that is headquartered at 1001 Gentry Circle, Dickson, Tennessee, 37055. Defendant Hiscall, Inc. owns and operates a telecommunications company that, among other things, installs, manages, and repairs telephone, data networking, audio visual, and cable systems. Defendant Hiscall, Inc. also has an office located at 10425 Cogdill Road, Knoxville, Tennessee, 37932.

6. Defendant Hiscall Telecommunications, Inc. is a Tennessee corporation that is headquartered at 1001 Gentry Circle, Dickson, Tennessee, 37055. Defendant Hiscall Telecommunications, Inc. owns and operates a telecommunications company that, among other things, installs, manages, and repairs telephone, data networking, audio visual, and cable systems. Defendant Hiscall Telecommunications, Inc. also has an office located at 10425 Cogdill Road, Knoxville, Tennessee, 37932.

7. Defendant Hiscall Technologies, Inc. is a Tennessee corporation that is headquartered at 1001 Gentry Circle, Dickson, Tennessee, 37055. Defendant Hiscall Technologies, Inc. owns and operates a telecommunications company that, among other things, installs, manages, and repairs telephone, data networking, audio visual, and cable systems. Defendant Hiscall Technologies, Inc. also has an office located at 10425 Cogdill Road, Knoxville, Tennessee, 37932.

8. Defendants employ individuals who are engaged in interstate commerce and/or in the production of goods for interstate commerce or are engaged in handling, receiving, selling, or otherwise working on goods or materials that have been moved in or produced for interstate commerce. As such, Defendants are covered by the FLSA.

III. FACTS

9. Plaintiff worked for Defendants from 2009 until in or around May 2016 as a “System Technician.”

10. As a System Technician, Plaintiff served as a technician who installed, maintained, and performed troubleshooting on telecommunications equipment.

11. Like all of Defendants’ System Technicians, Plaintiff spent the vast majority of his work time at Defendants’ customers’ locations performing the duties described above.

12. Like all of Defendants’ System Technicians, Plaintiff regularly worked over 40 hours per week and never under 40 hours per week.

13. However, as a System Technician, Plaintiff was not paid one and one-half times his regular rate of pay for hours worked in excess of 40 in a workweek.

14. Instead, Defendants paid Plaintiff and all other similarly situated System Technicians a fixed salary, and, whenever they completed the sale of a telecommunications system to a customer, they received a two percent (2%) commission.

15. Plaintiff and other System Technicians are not employees exempt from the overtime provisions of the FLSA.

16. Thus, Defendants’ failure to pay Plaintiff and other System Technicians proper overtime pay for hours over 40 in a week violated the FLSA.

17. Defendants knew and/or acted with reckless disregard of the fact that its failure to pay Plaintiff and other System Technicians proper overtime violated the overtime requirements of the FLSA.

18. Defendants employ other System Technicians and/or technicians who all, like Plaintiff, regularly work more than 40 hours in a workweek, but are paid a salary and

commission and no overtime pay at one and one-half times their regular rates of pay in willful violation of the FLSA.

IV. COLLECTIVE ACTION ALLEGATIONS

19. Plaintiff asserts his FLSA claims pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following potential opt-in plaintiffs:

All System Technicians currently or formerly employed by Defendants at any time since January 5, 2014, who install, maintain, and/or perform troubleshooting on telecommunications equipment at Defendants' customers' locations.

20. Plaintiff and the putative members of this collective action are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) because, among other things: (1) Defendants did not pay Plaintiff and the potential opt-in plaintiffs proper overtime when they worked more than 40 hours per week; and (2) Defendants misclassified Plaintiff and the potential opt-in plaintiffs as exempt from the overtime provisions of the FLSA.

21. Virtually all of the legal and factual issues that will arise in litigating the collective claims are common to Plaintiff and those he seeks to represent. These issues include (1) whether Plaintiff and the potential opt-in plaintiffs are eligible to receive overtime compensation under the FLSA; and (2) whether Defendants have actually paid Plaintiff and the potential opt-in plaintiffs overtime at one and one-half time their regular rates for hours over 40.

V. CAUSE OF ACTION – FAILURE TO PAY OVERTIME

22. All previous paragraphs are incorporated as though fully set forth herein.

23. Plaintiff and the potential opt-in plaintiffs are employees entitled to the FLSA's protections.

24. Plaintiff and the potential opt-in plaintiffs are not exempt from receiving FLSA overtime benefits because, among other things, they are not "executive," "administrative," or

“professional” employees, as those terms are defined under the FLSA. *See* 29 C.F.R. §§ 541.0, *et seq.*

25. Defendants are employers covered by the FLSA.

26. The FLSA requires that covered employees receive overtime compensation “not less than one and one-half times” their regular rate of pay.

27. Defendants have violated the FLSA by failing to compensate Plaintiff and the potential opt-in plaintiffs for all hours above 40 worked in a workweek at a rate equal to or above one and one-half times their regular rates of pay.

28. In violation of the FLSA, Defendants have acted willfully and with reckless disregard of clearly applicable FLSA provisions.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief on behalf of himself and all others similarly situated:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. Prompt notice of this litigation, pursuant to 29 U.S.C. § 216(b), to all potential members of the collective action;

C. A finding that Defendants have violated the FLSA;

D. A finding that Defendants’ wage and hour violations have been willful;

E. A judgment against Defendants and in favor of Plaintiff and those he seeks to represent for compensation for all unpaid and underpaid wages that Defendants have failed and refused to pay in violation of the FLSA;

F. Prejudgment interest to the fullest extent permitted under the law;

G. Liquidated damages to the fullest extent permitted under the FLSA;

H. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the FLSA and Federal Rule of Civil Procedure 54(d); and,

I. Such other and further relief as this Court deems just and proper in equity and under the law.

Date: January 5, 2017

Respectfully submitted,

/s/ David W. Garrison

DAVID W. GARRISON (TN Bar No. 24968)

TIMOTHY L. MILES (TN Bar No. 21605)

JOSHUA A. FRANK (TN Bar No. 33294)

BARRETT JOHNSTON MARTIN & GARRISON, LLC

Bank of America Plaza

414 Union Street, Suite 900

Nashville, TN 37219

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tmiles@barrettjohnston.com

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEVIN BROWN, On Behalf of HIMSELF and All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Barrett Johnston Martin & Garrison, LLC
414 Union Street, Suite 900 Nashville, TN 37219
(615) 244-2202

DEFENDANTS

HISCALL, INC., HISCALL TELECOMMUNICATIONS, INC., and HISCALL TECHNOLOGIES, INC.

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

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

Attorneys (If Known)

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

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

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216(b)

Brief description of cause:
Recovery of unpaid wages under the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 01/05/2017 SIGNATURE OF ATTORNEY OF RECORD: /s/ David W. Garrison

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

KEVIN BROWN, On Behalf of HIMSELF and All
Others Similarly Situated

Plaintiff

v.

HISCALL, INC., HISCALL TELECOMMUNICATIONS,
INC., and HISCALL TECHNOLOGIES, INC.

Defendant

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) HISCALL TECHNOLOGIES, INC.
c/o Registered Agent: Gary Luffman
891 Sam Vineyard Road
Bon Aqua, Tennessee 37025-5065

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:

David W. Garrison
Barrett Johnston Martin & Garrison, LLC
414 Union Street, Suite 900
Nashville, Tennessee 37219

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

KEITH THROCKMORTON

Date: JAN - 5 2017



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:

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

KEVIN BROWN, On Behalf of HIMSELF and All
Others Similarly Situated

Plaintiff

v.

HISCALL, INC., HISCALL TELECOMMUNICATIONS,
INC., and HISCALL TECHNOLOGIES, INC.

Defendant

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David W. Garrison
Barrett Johnston Martin & Garrison, LLC
414 Union Street, Suite 900
Nashville, Tennessee 37219

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.

KEITH THROCKMORTON

CLERK OF COURT



Signature of Clerk or Deputy Clerk

JAN - 5 2017

Date: _____

Civil Action No. _____

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tennessee Telecom Companies Hit with Unpaid Overtime Class Action](#)
