

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
CASE NO.:

2018 OCT -4 PM 3:45

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

MIRIAM C. ACOSTA,  
and other similarly-situated individuals,

Plaintiff (s),

v.

6:18CV 1663-ORL-37-GJK

RESTAURANTE & TORTILLERIA  
LA MEXICANA, INC.  
and YEDIC HONORATO,  
individually

Defendants,

\_\_\_\_\_ /

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

COMES NOW the Plaintiff MIRIAM C. ACOSTA, and other similarly-situated individuals, by and through the undersigned counsel, and hereby sues Defendants RESTAURANTE & TORTILLERIA LA MEXICANA, INC., and YEDIC HONORATO individually, and alleges:

1. This is an action to recover money damages for unpaid minimum and overtime wages, under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201-219 (Section 216 for jurisdictional placement) (“the Act”).
2. Plaintiff MIRIAM C. ACOSTA is a resident of Orlando, Florida, within the jurisdiction of this Honorable Court. Plaintiff is a covered employee for purposes of the Act. Plaintiff MIRIAM C. ACOSTA consents to be a party in this action by signing this verified complaint.

3. Defendant RESTAURANTE & TORTILLERIA LA MEXICANA, INC. (hereinafter, TORTILLERIA LA MEXICANA, or Defendant) is a Florida corporation, having place of business in Orlando, Florida, where Plaintiff worked for Defendant. At all times material hereto, Defendant was and is engaged in interstate commerce.
4. The individual Defendant YEDIC HONORATO, was and is now, the owner/partner or manager, and he directed operations of TORTILLERIA LA MEXICANA, INC. This individual Defendant was the employer 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 action raised in this complaint took place in Miami-Dade County Florida, within the jurisdiction of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

6. This cause of action is brought by Plaintiff as a collective action to recover from Defendants overtime compensation, liquidated damages, and the costs and reasonably attorney’s fees under the provisions of Fair Labor Standards Act, as amended, 29 U.S.C. § 201 *et seq* (the “FLA or the “ACT”) on behalf of Plaintiff and all other current and former employees similarly situated to Plaintiff (“the asserted class”) and who worked in excess of forty (40) hours during one or more weeks on or after September 2015, (the “material time”) without being properly compensated.
7. Corporate Defendant TORTILLERIA LA MEXICANA is a retail business operating as a Mexican restaurant, tortilleria, and minimarket or convenience store.

The primary function of this restaurant is to sell Mexican food and other Mexican food items to customers, whether they sit-down, carry out the food, or have it delivered. Defendants also sells alcoholic beverages. This business was located at 2711 Orlando Dr., Sanford, Florida 32773, where Plaintiff worked.

8. Defendants TORTILLERIA LA MEXICANA and YEDIC HONORATO employed Plaintiff MIRIAM C. ACOSTA during 2 periods, for a total of 69 relevant weeks.
9. During her two periods of employment with Defendants, Plaintiff was not paid overtime and minimum wages as established by the Fair Labor Standards Act.
10. Plaintiff worked for Defendants for the time and periods, and wage rates specified bellow:
11. **A.- First period, from approximately September 24, 2015 to March 15, 2016 = 25 relevant weeks**
12. In this period Plaintiff worked as cashier and store attendant for TORTILLERIA LA MEXICANA. Plaintiff was a non-exempt hourly employee, and her wage rate was \$9.00 an hour.
13. Plaintiff had a regular schedule and she worked 6 days per week, from 7:00 or 8:00 AM to 5:00 or 6:00 PM, for an average of 10 hours daily, or 60 hours weekly. Plaintiff was not allowed to take bona-fide lunch breaks.
14. Plaintiff was paid for just 40 hours weekly strictly in cash, without any paystub or record showing days and hours worked, job classification, employment taxes withheld etc.
15. Plaintiff clocked in and out in a very irregular way. However, Defendants could easily track Plaintiff's working hours.

16. In this period, Defendants failed to pay Plaintiff for 20 overtime hours at the rate of \$13.50 an hour (\$9.00 regular rate).

17. **B.- Second period, from approximately October 16, 2017 to August 20, 2018= 44 weeks relevant weeks**

Within this period Plaintiff had 2 positions with 2 different wage-rate, and 3 different schedules as follows:

18. i.- From October 16, 2017 to January 27, 2018=15 weeks

In this period Plaintiff had the same duties as cashier and store attendant.

19. Plaintiff continued the same schedule of 6 days with an average of 60 hours worked in every week period. Plaintiff worked 20 overtime hours.

20. Plaintiff wage-rate was \$13.00 an hour, Plaintiff was paid with paystubs showing only 40 hours weekly.

21. Plaintiff clocked in and out in a very irregular way. However, Defendants could easily track Plaintiff's working hours.

22. In this period, Defendants failed to pay Plaintiff for 20 overtime hours weekly at the rate of \$19.50 an hour (\$13.00 regular rate).

23. ii.- From January 29, 2018 to August 20, 2018=29 weeks

In this period, Plaintiff's position changed to waitress, and she became a tipped employee earning \$5.23 an hour plus tips.

24. Plaintiff had an irregular schedule. Plaintiff had alternate AM and PM shifts. Plaintiff worked one week the AM shift, and the next one, she worked the PM shift. Consequently, Plaintiff worked 14 weeks of AM shifts, and 15 weeks of PM shifts as follows:



25. a) Morning or AM shift (14 weeks). - When Plaintiff worked the morning shift, every day she performed 3 hours of cooking work plus one hour of general restaurant work. Such duties were not incidental to Plaintiff's position as a waitress. These 4 hours represented non-tippable activities which were paid at \$5.23 an hour. Thus, every week Plaintiff worked the AM shift, she worked at least 20 hours of non-tippable activities that were incorrectly paid at the rate of \$5.23.
26. Plaintiff is entitled to received full minimum wages for at least 20 hours every for every week in which she worked AM shifts.
27. While Plaintiff worked in her AM shift, she had a schedule of 5 days per week from 7:00 or 8:00 AM to 3:00 or 4:00 PM (8 hours daily) for a total of 40 hours or less.
28. b) Afternoon or PM shift (15 weeks). - When Plaintiff worked the PM shift, she performed every day at least 1 hour of janitorial work which was not incidental to her position as a waitress.
29. Plaintiff worked 5 hours weekly of non-tippable janitorial work which was paid at \$5.23 an hour. Thus, every week Plaintiff worked the PM shift, she worked at least 5 hours of non-tippable activities that were incorrectly paid at the rate of \$5.23.
30. Plaintiff is entitled to received full minimum wages for at least 5 hours for every week in which she worked PM shifts.
31. While Plaintiff worked in her PM shift, she had a schedule of 5 days per week from 2:00 PM to 10:30 PM (8.5 hours daily) for a total of 42.5 hours weekly. Plaintiff was unable to take bona-fide lunch hours.

32. Therefore, Plaintiff worked 15 weeks of PM shifts, in which she worked 42.5 hours per week. However, Plaintiff was paid only for only 40 hours. Defendants failed to pay Plaintiff for overtime hours.
33. In addition, within the months on June and July 2018, (during the 2018 FIFA World Cup), Plaintiff worked 4 weeks of 7 days per week, a double shift from 8:00 AM to 9:00 PM, or 11 hours daily, resulting in 78 working hours weekly. This means that in this period Plaintiff worked 4 weeks with 38 overtime hours each. Plaintiff was not compensated for these O/T hours.
34. Plaintiff clocked in and out in a very irregular way, but Defendants were able to keep track of hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid weekly with paystubs that not reflected the real number of hours worked.
35. During her entire period of employment Plaintiff was not properly compensated for hours worked and she is owed minimum and overtime wages.
36. Plaintiff MIRIAM C. ACOSTA intends to recover unpaid minimum wages and overtime hours, liquidated damages, and any other relief as allowable by law.
37. 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 regular or 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 of 29 U.S.C. § 207**  
**(a)(1)FAILURE TO PAY OVERTIME; AGAINST ALL DEFENDANTS**

38. Plaintiff MIRIAM C. ACOSTA re-adopts each and every factual allegation as stated in paragraphs 1-37 above as if set out in full herein.
39. 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 one half-times the regular rate at which he is employed."
40. Defendant TORTILLERIA LA MEXICANA 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 retail business operating as Mexican restaurant, tortilleria, and minimarket. 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. Therefore, there is FLSA enterprise coverage.
41. The Plaintiff was employed by an enterprise engaged in interstate commerce, and the Plaintiff's work for the Defendant likewise affects interstate commerce.

Plaintiff was a cashier, shop attendant, and waitress. Plaintiff through her daily activities, regularly completed credit card transactions. Plaintiff handled, or otherwise worked on goods and/or materials that have been moved across State lines at any time in the course of business. Therefore, there is FLSA individual coverage.

42. By reason of the foregoing, Defendant TORTILLERIA LA MEXICANA. was required to comply with the mandates of the FLSA, as it applied to Plaintiff and other similarly situated individuals.

43. Defendant TORTILLERIA LA MEXICANA employed Plaintiff MIRIAM C. ACOSTA as a restaurant worker during two periods, as detailed bellow:

44. **A.- First period, from approximately September 24, 2015 to March 15, 2016 = 25 relevant weeks**

In this period Plaintiff worked as cashier and store attendant for TORTILLERIA LA MEXICANA. Plaintiff was a non-exempt hourly employee, and her wage rate was \$9.00 an hour.

45. Plaintiff had a regular schedule and she worked 6 days per week, an average of 10 hours daily, or 60 hours weekly. Plaintiff was not allowed to take bona-fide lunch breaks.

46. Plaintiff was paid for just 40 hours weekly strictly in cash, without any paystub or record showing days and hours worked, job classification, employment taxes withheld etc.

47. Plaintiff sometimes clocked in and out in a very irregular way. However, Plaintiff could easily track Plaintiff's working hours.

48. In this period, Defendants failed to pay Plaintiff for 20 overtime hours at the rate of \$13.50 an hour (\$9.00 regular rate).

49. **B.- Second period, from approximately October 16, 2017 to August 15, 2018 =44 relevant weeks**

50. Within this period Plaintiff had 2 positions with 2 different wage-rate, and 2 different schedules as follows:

51. i.- From October 16, 2017 to January 27, 2018=15 weeks

52. In this period Plaintiff had the same duties as cashier and store attendant.

53. Plaintiff continued the same schedule of 6 days with an average of 60 hours worked in every week period. Plaintiff worked 20 overtime hours.

54. Plaintiff wage-rate was \$13.00 an hour, Plaintiff overtime rate should be \$19.50 an hour.

55. Plaintiff was paid with paystubs showing only 40 hours weekly.

56. Plaintiff sometimes clocked in and out in a very irregular way. However, Plaintiff could easily track Plaintiff's working hours.

57. In this period, Defendants failed to pay Plaintiff for 20 overtime hours weekly at the rate of \$19.50 an hour (\$13.00 regular rate).

58. ii.- From January 29, 2018 to August 20, 2018=29 weeks

59. In this period, Plaintiff's position changed to waitress, and she became a tipped employee earning \$5.23 an hour plus tips.

60. Plaintiff had an irregular schedule. Plaintiff had alternate AM and PM shifts. Plaintiff worked one week the AM shift, and the next one she worked the PM shift.

61. Consequently, Plaintiff worked 14 weeks of AM shifts, and 15 weeks of PM shifts.

62. Overtime hours during PM shifts:

While Plaintiff worked in her PM shifts, she had a schedule of 5 days per week from 2:00 PM to 10:30 PM (8.5 hours daily) for a total of 42.5 hours weekly. Plaintiff was unable to take bona-fide lunch hours.

63. In addition, within the months on June and July 2018, (during the 2018 FIFA World Cup), Plaintiff worked 4 weeks of 7 days per week, a double shift from 8:00 AM to 9:00 PM, or 11 hours daily, resulting in 78 working hours weekly. This means that in this period Plaintiff worked 4 weeks with 38 overtime hours each. Plaintiff was not compensated for these O/T hours.

64. Summarizing, from January 29, 2018 to August 20, 2018, Plaintiff worked 11 weeks with 42.5 working hours each, and 4 weeks with 77 working hours each.

65. During the relevant period of employment, Plaintiff worked more than 40 hours every week, but she was not compensated adequately for overtime hours. Plaintiff was paid for just 40 regular hours.

66. Therefore, Defendant failed to pay Plaintiff for overtime hours at the rate of time and one-half his regular rate for every hour that he 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)).

67. Plaintiff clocked in and out in a very irregular way, but Defendants were able to keep track of hours worked by Plaintiff and other similarly situated individuals. Plaintiff was paid weekly with paystubs that not reflected the real number of hours worked.

68. The records, if any, concerning the number of hours actually worked by Plaintiff MIRIAM C. ACOSTA, and all other similarly- situated employees, and the

compensation actually paid to such employees should be in the possession and custody of Defendant. However, upon information and belief, Defendant did not maintain accurate and complete time records of hours worked by Plaintiff and other employees in the asserted class.

69. Defendant violated the record keeping requirements of FLSA, 29 CFR Part 516.

70. 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 rate is higher than Federal minimum wage. As per FLSA regulations the higher minimum wage applies.

a. Total amount of alleged unpaid wages:

Thirteen Thousand Four Hundred Twenty Dollars and 88/100 (\$13,420.88)

b. Calculation of such wages:

Total weeks of employment: more than 69 weeks

Total relevant weeks of employment: 55 weeks

**1.- (A) Overtime First Period from approximately August 15, 2015 to March 15, 2016 (30 weeks)/ Relevant weeks = 25 weeks**

Total number of relevant weeks: 25 weeks

Total number of hours worked weekly: 60 hours

Total number of overtime hours: 20 O/T hours

Total number of unpaid O/T hours: 20 O/T hours

Regular rate: \$9.00 x 1.5 = \$13.50 O/T rate

O/T rate: \$13.50

O/T rate \$13.50 x 20 O/T hours=\$270.00 weekly x 20 weeks=\$5,400.00

**2.- (B) Overtime Second Period from approximately from October 16, 2017 to January 27, 2018=15 weeks**

Total number of relevant weeks: 15 weeks

Total number of hours worked weekly: 60 hours  
Total number of overtime hours: 20 O/T hours  
Total number of unpaid O/T hours: 20 O/T hours  
Regular rate:  $\$13.00 \times 1.5 = \$19.50$  O/T rate  
O/T rate:  $\$19.50$

O/T rate  $\$19.50 \times 20$  O/T hours= $\$390.00$  weekly  $\times 15$  weeks= $\$5,850.00$

**3.- Overtime from approximately January 29, 2018 to August 20, 2018=15 weeks with PM shifts with overtime**

Total number of relevant weeks: 11 weeks  
Total number of hours worked weekly: 42.5 hours  
Total number of overtime hours: 2.5 O/T hours  
Total number of unpaid O/T hours: 2.5 O/T hours  
Regular rate:  $\$5.23$   
Florida minimum wage 2018:  $\$8.25 \times 1.5 = \$12.37$   
O/T rate:  $\$12.37$

O/T rate  $\$12.37 \times 2.5$  O/T hours= $\$30.92$  weekly  $\times 11$  weeks= $\$340.12$

**4.- Overtime from June to July 2018= 4 weeks,**

Total number of relevant weeks: 4 weeks  
Total number of hours worked weekly: 77 hours  
Total number of overtime hours: 37 O/T hours  
Total number of unpaid O/T hours: 37 O/T hours  
Regular rate:  $\$5.23$   
Florida minimum wage 2018:  $\$8.25 \times 1.5 = \$12.37$   
O/T rate:  $\$12.37$

O/T rate  $\$12.37 \times 37$  O/T hours= $\$457.69$  weekly  $\times 4$  weeks= $\$1,830.76$

Total 1, 2, 3 and 4:  $\$13,420.88$

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

This amount represents the unpaid overtime hours.

71. At all times material hereto, the Employers/Defendants TORTILLERIA LA MEXICANA and YEDIC HONORATO 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.

72. Defendants TORTILLERIA LA MEXICANA and YEDIC HONORATO TORTILLERIA LA MEXICANA 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's employment with Defendant as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.

73. Defendant never posted any notice, as required by the Fair Labor Standards Act to inform employees of their federal rights to overtime and minimum wage payments. Defendant violated the Posting requirements of 29 U.S.C. § 516.4.

74. At the times mentioned, individual Defendant YEDIC HONORATO was owner/partner/manager, and he directed operations of TORTILLERIA LA MEXICANA. Defendant YEDIC HONORATO was the employer of Plaintiff and others similarly situated individuals within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)]. In that, this individual Defendant acted directly in the interests of TORTILLERIA LA MEXICANA in relation to its employees, including Plaintiff and others similarly situated. Defendant YEDIC HONORATO had financial and operational control of the business, provided Plaintiff with her work schedule, determined Plaintiff's terms and conditions of employment, and he is jointly liable for Plaintiff's damages.

75. Defendants TORTILLERIA LA MEXICANA, and YEDIC HONORATO willfully and intentionally refused to pay Plaintiff overtime wages as required by the law of the United States as set forth above and remain owing Plaintiff these overtime wages since the commencement of Plaintiff's employment with Defendant.

76. 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 MIRIAM C. ACOSTA and those similarly-situated individuals respectfully request that this Honorable Court:

- A. Enter judgment for Plaintiff MIRIAM C. ACOSTA and other similarly-situated and against the Defendants TORTILLERIA LA MEXICANA, and YEDIC HONORATO on the basis of Defendants' willful violations of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; and
- B. Award Plaintiff actual damages in the amount shown to be due for unpaid 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 MIRIAM C. ACOSTA 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**

77. Plaintiff MIRIAM C. ACOSTA re-adopts each and every factual allegation as stated in paragraphs 1-41 of this complaint as if set out in full herein.
78. Defendant TORTILLERIA LA MEXICANA 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 retail business operating as Mexican restaurant, tortilleria, and minimarket. 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. Therefore, there is FLSA enterprise coverage.
79. The Plaintiff was employed by an enterprise engaged in interstate commerce, and the Plaintiff's work for the Defendant likewise affects interstate commerce. Plaintiff was a cashier, shop attendant, and waitress. Plaintiff through her daily activities, regularly completed credit card transactions. Additionally, Plaintiff handled, or otherwise worked on goods and/or materials that have been moved across State lines at any time in the course of business. Therefore, there is FLSA individual coverage.

80. This action is brought by Plaintiff MIRIAM C. ACOSTA and those similarly-situated 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 (a) 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.

81. Defendant TORTILLERIA LA MEXICANA employed Plaintiff MIRIAM C. ACOSTA as a restaurant worker during two periods.

82. In the first period, Plaintiff worked as cashier and store attendant from September 24, 2015 to March 15, 2016, or 25 weeks. In the second period, Plaintiff worked from approximately October 16, 2017 to August 20, 2018, or 44 weeks.

83. During her second period of employment Plaintiff had 2 positions with 2 different wage-rate, and 2 different schedules as follows:

84. i.- From October 16, 2017 to January 27, 2018=15 weeks

85. Plaintiff worked 15 weeks as a cashier and store attendant and she was paid at the rate of \$13.00 an hour.

86. ii.- From January 29, 2018 to August 20, 2018=29 weeks

87. In this period, Plaintiff's position changed to waitress, and she became a tipped employee earning \$5.23 an hour plus tips.

88. While working as a waitress during the second period, Defendant failed to pay Plaintiff full minimum wages for hours worked that were not incidental to Plaintiff's position as a waitress.

89. Plaintiff had an irregular schedule. Plaintiff had alternate AM and PM shifts. Plaintiff worked one week the AM shift, and the next one, she worked the PM shift. Consequently, Plaintiff worked 14 weeks of AM shifts, and 15 weeks of PM shifts as follows:

90. a) Morning or AM shift (14 weeks). - When Plaintiff worked the morning shift, every day she performed 3 hours of cooking work plus one hour of general restaurant work which was not incidental to her position as a waitress. These 4 hours represented non-tippable activities which were paid at \$5.23 an hour. Thus, every week Plaintiff worked the AM shift, she worked at least 20 hours of non-tippable activities that were incorrectly paid at the rate of \$5.23.

91. Plaintiff is entitled to received full minimum wages for at least 20 hours every for every week in which she worked AM shifts.

92. While Plaintiff worked in her AM shift, she had a schedule of 5 days per week from 7:00 or 8:00 AM to 3:00 or 4:00 PM (8 hours daily) for a total of 40 hours or less weekly.

93. b) Afternoon or PM shift (15 weeks). - When Plaintiff worked the PM shift, she performed every day at least 1 hour of janitorial work which was not incidental to her position as a waitress.
94. Plaintiff worked 5 hours weekly of non-tippable janitorial work which was paid at \$5.23 an hour. Thus, every week Plaintiff worked the PM shift, she worked at least 5 hours of non-tippable activities that were incorrectly paid at the rate of \$5.23.
95. Plaintiff is entitled to received full minimum wages for at least 5 hours for every week in which she worked PM shifts.
96. While Plaintiff worked in her PM shift, she had a schedule of 5 days per week from 2:00 PM to 10:30 PM (8.5 hours daily) for a total of 42.5 hours weekly. Plaintiff was unable to take bona-fide lunch hours.
97. Therefore, Defendants failed to pay Plaintiff minimum wages, in violation of the Fair Labor Standards Act of 1938 (29 U.S.C. §206 (a)).
98. 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, since management did not keep any time-keeping method.
99. Defendants violated the record keeping requirements of FLSA, 29 CFR Part 516.
100. Upon information and belief, Defendant 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. Defendant violated the Posting requirements of 29 U.S.C. § 516.4.

101. 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 \$8.25, which is higher than Federal minimum wage. As per FLSA regulations the higher minimum wage applies

a. Total amount of alleged unpaid minimum wages:

One Thousand Seventy-Two Dollars and 10/100 (\$1,072.10)

b. Calculation of such wages:

Total relevant weeks: 29 weeks

i.- Minimum wages during AM shifts = 14 weeks

Total number of weeks: 14 weeks

Total number of hours paid at the incorrect rate: 20 hours weekly

Rate paid: \$5.23

Florida Minimum Wage 2018: \$8.25-\$5.23 rate paid=\$3.02 difference

\$3.02 Min. wage difference x 20 hours = \$60.40 weekly x 14 weeks =  
\$845.60

ii.- Minimum wages during PM shifts = 15 weeks

Total number of weeks: 15 weeks

Total number of hours paid at the incorrect rate: 5 hours weekly

Rate paid: \$5.23

Florida Minimum Wage 2018: \$8.25-\$5.23 rate paid=\$3.02 difference

\$3.02 Min. wage difference x 5 hours = \$15.10 weekly x 15 weeks =  
\$226.50

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

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

102. Plaintiff was not paid full minimum wages for a substantial number of hours during the relevant period. Therefore, Defendants unlawfully failed to pay minimum wages to Plaintiff.

103. Defendants 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 remain owing Plaintiff and those similarly-situated these minimum wages since the commencement of Plaintiff and those similarly-situated employee's employment with Defendants as set forth above, and Plaintiff and those similarly-situated are entitled to recover double damages.

104. At the times mentioned, individual Defendant YEDIC HONORATO was owner/partner/manager, and he directed operations of TORTILLERIA LA MEXICANA. Defendant YEDIC HONORATO was the employer of Plaintiff and others similarly situated individuals within the meaning of Section 3(d) of the "Fair Labor Standards Act" [29 U.S.C. § 203(d)]. In that, this individual Defendant acted directly in the interests of TORTILLERIA LA MEXICANA in relation to its employees, including Plaintiff and others similarly situated. Defendant YEDIC HONORATO had financial and operational control of the business, provided Plaintiff with her work schedule, determined Plaintiff's terms and conditions of employment, and he is jointly liable for Plaintiff's damages.

105. Defendants TORTILLERIA LA MEXICANA and YEDIC HONORATO willfully and intentionally refused to pay Plaintiff MIRIAM C. ACOSTA and all other similarly situated employees, minimum wages as required by the law of the United States and remain owing Plaintiff and those similarly situated these



minimum wages since the commencement of Plaintiff's employment with Defendants as set forth above.

106. Plaintiff, and other similarly situated employees, seeks to recover for minimum wage violations accumulated for the relevant time of employment. Plaintiff has retained the law offices of the undersigned attorney to represent her in this action and is obligated to pay reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MIRIAM C. ACOSTA and those similarly-situated respectfully request that this Honorable Court:

- A. Enter judgment for Plaintiff MIRIAM C. ACOSTA and other similarly-situated and against the Defendants TORTILLERIA LA MEXICANA and YEDIC HONORATO 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 MIRIAM C. ACOSTA actual damages in the amount shown to be due for unpaid minimum wages.
- 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 MIRIAM C. ACOSTA demands trial by jury of all issues triable as of right by jury.

Dated: October 3, 2018

Respectfully submitted,

By: /s/ Zandro E. Palma  
ZANDRO E. PALMA, P.A.  
Florida Bar No.: 0024031  
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Miami, FL 33156  
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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
CASE NO.:

MIRIAM C. ACOSTA,  
and other similarly-situated individuals,

Plaintiff (s),

v.

RESTAURANTE & TORTILLERIA  
LA MEXICANA, INC.  
and YEDIC HONORATO,  
individually

Defendants,

\_\_\_\_\_ /

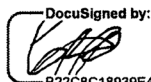
**VERIFICATION OF COMPLAINT**

The undersigned, for herself declares:

I am the Plaintiff in the above-styled action. I have read the forgoing complaint consisting of (22) pages and know the contents thereof. With respect to the causes of action alleged by me, the same is true by my own knowledge, except as to those matters which are therein stated on information and belief, and, as to those matters, I believe them to be true. I have reviewed this document and have had it translated to me from English to Spanish.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the forgoing is true and correct.

Date: 10/3/2018

DocuSigned by:  
  
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\_\_\_\_\_  
MIRIAM C. ACOSTA

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
MIRIAM C. ACOSTA
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
Zandro E. Palma, P.A.
9100 South Dadeland Blvd., Suite 1500
Miami, FL 33156

DEFENDANTS
RESTAURANTE & TORTILLERIA
LA MEXICANA, INC. ET AL.
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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

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

Table with 5 main columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each column contains a list of legal categories with checkboxes.

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

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.
Brief description of cause:

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: 10/03/2018
SIGNATURE OF ATTORNEY OF RECORD: Zandro E. Palma

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Restaurante & Tortilleria La Mexicana Facing Unpaid OT, Minimum Wage Suit](#)

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