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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUL 10 2009 ★

BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
MIGUEL AGUI, ALEXANDER REYES, and
JAMES GIPSON, Individually and on
Behalf Of All Other Persons Similarly Situated

Plaintiffs,

-against-

T-MOBILE USA INC., and JOHN DOES #1-10,
Jointly and Severally

Defendants.
-----X

ECF

2009 CV _____

CLASS & COLLECTIVE
ACTION COMPLAINT

DEARIE, CH. J.

LEVY, M.J.

NATURE OF THE ACTION

1. Plaintiffs MIGUEL AGUI ("A gui"), ALEXANDER REYES ("Reyes"), and JAMES GIPSON ("Gipson" and collectively with Agui and Reyes, the "Plaintiffs") allege, on behalf of themselves and all other similarly situated current and former employees of the Defendants who elect to opt into this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216(b), that they are: (i) entitled to unpaid wages from defendants T-MOBILE USA INC. ("T-MOBILE" or the "Corporate Defendant") and JOHN DOES #1-10 (the "Individual Defendants" and, collectively with T-Mobile, the "Defendants") for work performed for which they received no compensation at all; (ii) unpaid wages for overtime work

for which they did not receive overtime premium pay, as required by law, and (iii) entitled to liquidated damages, costs and attorneys fees pursuant to the FLSA, 29 U.S.C. §§201 *et seq.*

2. Plaintiffs further complain on behalf of themselves and a class of all other similarly situated current and former employees of the Defendants, pursuant to Fed.R.Civ.P. 23, that they are entitled to wages from Defendants for work performed for which they received no compensation at all as well as for overtime work for which they did not receive overtime premium pay, as required by New York Labor Law §§ 650 *et seq.*, including Part 142, § 142-2.2 (“Overtime Rate”) of Title 12 of the Official Compilation of Codes, Rules and Regulations promulgated by the Commissioner of Labor pursuant to the Minimum Wage Act (Article 19 of the New York State Labor Law).

3. Plaintiffs further complain on behalf of themselves and a class of all other similarly situated current and former employees of the Defendants, pursuant to Fed.R.Civ.P. 23, that they are entitled to wages from Defendants for work performed for which they received no compensation at all as well as for overtime work for which they did not receive overtime premium pay, as required by California Labor Code and related regulations, Cal. Labor Code §§ 201, 202, 203, 218.5, 226, 226.7, 510, 512, 1174, 1174.5, and 1194, Cal. Wage Order No. 4 (collectively, the “California Wage Laws”).

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337, 1343, and supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. § 1367. In addition, the Court has jurisdiction over Plaintiffs’ claims under the FLSA pursuant to 29 U.S.C. § 216(b).

4. Venue is proper in this district pursuant to 28 U.S.C. §1391.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

6. Plaintiffs Agui and Reyes were, at all relevant times, adult individuals residing in Brooklyn, New York.

7. Plaintiff Gipson was, at all relevant times, an adult individual, residing in Los Angeles, California.

8. Upon information and belief, Defendant T-Mobile USA Inc. is a foreign corporation authorized to do business within the States of New York and California with operating facilities in this district and throughout the United States. T-Mobile USA Inc. is the US operating entity of T-Mobile International AG, the mobile communications subsidiary of Deutsche Telekom AG.

9. Upon information and belief, John Does #1-10 represent the officers, directors and/or managing agents of the Corporate Defendant, whose identities are unknown at this time and who participated in the day-to-day operations of the Corporate Defendants and acted intentionally and maliciously and are “employers” pursuant to the FLSA, 29 U.S.C. §203(d) and regulations promulgated thereunder, 29 C.F.R. §791.2, as well as the New York Labor Law Sec. 2 and the regulations thereunder, as well as the California Wage Order No. 4 and the regulations thereunder and are jointly and severally liable with the Corporate Defendant.

COLLECTIVE ACTION ALLEGATIONS

10. Pursuant to 29 U.S.C. §207, Plaintiffs seek to prosecute their FLSA claims as a collective action on behalf of all persons who are or were formerly employed by Defendants since July 10, 2006 to the entry of judgment in this case (the “Collective Action Period”), who

were non-exempt employees within the meaning of the FLSA and who were not paid wages for all hours worked and overtime compensation at rates not less than one and one-half times the regular rate of pay for hours worked in excess of forty hours per workweek (the “Collective Action Members”).

11. This collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are several thousand members of the collective action who worked for Defendants during the Collective Action Period, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys or knowledge of their claims.

12. Plaintiffs will fairly and adequately protect the interests of the Collective Action Members and have retained counsel that is experienced and competent in the fields of employment law and class action litigation. Plaintiffs have no interests that are contrary to or in conflict with those members of this collective action.

13. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

14. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendants have

acted on grounds generally applicable to all members. Among the common questions of law and fact common to Plaintiffs and other Collective Action Members are:

- a. whether the Defendants employed the Collective Action members within the meaning of the FLSA;
- b. whether the Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs and the Collective Action Members;
- c. what proof of hours worked is sufficient where the employer fails in its duty to maintain time records;
- d. whether Defendants failed to pay the Collective Action Members wages for all hours worked as well as overtime compensation for hours worked in excess of forty hours per workweek, in violation of the FLSA and the regulations promulgated thereunder;
- e. whether Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA;
- f. whether Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, punitive and statutory damages, interest, costs and disbursements and attorneys' fees; and
- g. whether Defendants should be enjoined from such violations of the FLSA in the future.

15. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

CLASS ALLEGATIONS

16. Plaintiffs sue on their own behalf, and on behalf of a class of persons under

Rules 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure.

17. Plaintiffs bring their New York Labor Law claims on behalf of all persons who were employed by Defendant at any time since July 10, 2003 to the entry of judgment in this case (the “New York Class Period”), who were non-exempt employees within the meaning of the New York Labor Laws and have not been paid wages and overtime wages in violation of the New York Labor Laws (the “New York Class”).

18. Plaintiffs bring their California Wage Law claims on behalf of all persons who were employed by Defendant at any time since July 10, 2006 to the entry of judgment in this case (the “California Class Period”), who were non-exempt employees within the meaning of the California Wage Laws and have not been paid wages and overtime wages in violation of the California Wage Laws (the “California Class”).

19. The persons in the Class identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of that number are presently within the sole control of the Defendant, upon information and belief, there are several thousand members of the Class during the Class Period.

20. The claims of Plaintiffs are typical of the claims of the Class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy—particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants.

21. The Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief

with respect to the class as a whole.

22. Plaintiffs have committed themselves to pursuing this action and they have retained competent counsel experienced in employment law and class action litigation.

23. Plaintiffs have the same interests in this matter as all other members of the class and Plaintiffs' claims are typical of the Class.

24. There are questions of law and fact common to the Class which predominate over any questions solely affecting the individual members of the Class, including but not limited to:

- a. whether the Defendants employed the members of the Class within the meaning of the New York Labor Laws and/or the California Wage Laws;
- b. whether the Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs and members of the Class;
- c. what proof of hours worked is sufficient where employers fail in their duty to maintain time records;
- d. whether Defendants failed and/or refused to pay the members of the Class wages for all hours worked including premium pay for hours worked in excess of forty hours per workweek;
- e. whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, interest, costs and disbursements and attorneys' fees; and
- f. whether the Defendants should be enjoined from such violations of the New York Labor Laws and/or the California Wage Laws in the future.

STATEMENT OF FACTS

25. T-Mobile USA Inc. is the US operating entity of T-Mobile International AG, the mobile communications subsidiary of Deutsche Telekom AG. T-Mobile is the fourth largest mobile phone company, in terms of number of subscribers, in the United States with approximately 33.2 million subscribers. T-Mobile employs approximately 36,000 employees across the U.S.

26. Mr. Agui was employed by T-Mobile as a Sales Representative from June 2007 through approximately October 2007, at which time he was promoted to Senior Sales Representative/ Supervisor. During the period in which he worked as a Sales Representative, from on or about June 2007 through October 2007, Mr. Agui was paid a wage of \$10.00 per hour plus a monthly commission based on sales volumes. During the period in which he worked as a Supervisor, from on or about October 2007 through March 2009, Mr. Agui was paid a wage of \$12.00 per hour plus a monthly commission based on sales volumes.

27. Mr. Reyes was employed by T-Mobile as a Sales Representative from January 2008 through approximately June 2008, at which time he was promoted to Senior Sales Representative/ Supervisor. During the period in which he worked as a Supervisor, from on or about June 2008 through April 2009, Mr. Reyes was paid a wage ranging from \$11.00 to \$11.50 per hour plus a monthly commission based on sales volumes.

28. Mr. Gipson was employed by T-Mobile as a Sales Representative from October 2005 through approximately March 2006, at which time he was promoted to Senior Sales Representative/ Supervisor. During the period in which he worked as a Supervisor, from on or about March 2006 through December 2008, Mr. Gipson was paid a wage ranging from \$12.50 to \$13.10 per hour plus a monthly commission based on sales volumes.

29. Throughout the relevant time period, Plaintiffs were typically required to either

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were required to be completed before the Plaintiffs could log into the timekeeping system. During this time, which would typically take approximately ten (10) minutes, Plaintiffs were performing work for Defendants which was not being compensated. In addition, Plaintiffs were told by their managers that it was mandatory that when opening the store, there must be at least two employees present at all times. Plaintiffs were frequently required to arrive early and wait for a second employee to arrive before they were allowed to begin store opening procedures. As such, they were not able to log into the timekeeping system until after the second employee arrived and they had completed opening procedures. Upon closing the store, Plaintiffs were similarly required to perform "off the clock" work for which they were not compensated after logging out of Defendants' timekeeping system.

30. Throughout the relevant period, Plaintiffs were provided with a Company Blackberry or other smart device and were required to review and respond to T-Mobile-related emails and text messages at all hours of the day, whether or not they were punched into T-Mobile's computer-based timecard system. Plaintiffs were also required to take and place telephone calls to other T-Mobile personnel and customers relating to store staffing, sales and/or discounting of handsets, customer satisfaction concerns and other T-Mobile business. Plaintiffs were also required to participate on frequent conference calls, typically at least one time per week, when the store manager was unable to participate on the call. Plaintiffs were frequently required to participate on such conference calls outside their normal forty (40) hour work week and were not compensated for the time spent on the calls.

31. Throughout the relevant period, Plaintiffs typically had two days off of work per week, but they were required to respond to emails, texts, phone calls, participate on conference calls and to review T-Mobile materials on their days off of work and at times that they were not "punched in" to the T-Mobile timesheet program. Because they weren't punched into the timesheet program, Plaintiffs did not receive regular wages or overtime compensation for work performed. When Plaintiffs complained to the store managers regarding the issue, they were told that there was nothing that could be done, and that they'd just have to accept working the extra hours as a part of T-Mobile's standard business practices.

32. While Plaintiffs were classified as non-exempt hourly employees, they were typically required to spend 10-15 hours per week reviewing and responding to email, texts, phone calls, participating on conference calls and studying/reviewing corporate documents for which they were not paid any compensation.

33. In addition to requiring T-Mobile sales associates, sales representatives and supervisors to review and respond to emails and texts, to take and place telephone calls, prepare schedules and to participate on conference calls, Plaintiffs were also required to review large amounts of corporate information and to prepare for special events. Plaintiffs were required to perform much of this work outside of their normally scheduled work hours and received no compensation for work performed outside the store.

34. Throughout the relevant period, Plaintiffs were required to give their T-Mobile business cards, which listed their mobile phone number and email address, to customers. Plaintiffs would typically receive telephone calls from customers throughout the week, frequently when they were not at work and punched into the timekeeping system, requesting information regarding the customers' plans and phones. Plaintiffs were instructed by their

managers to try to resolve customer problems over the phone, even when they were off the clock and their time was not being recorded.

35. During the course of Plaintiffs' employment, Defendants launched a product known as "T-Mobile At Home." This product frequently required home installation for customers. Plaintiffs were required to travel to customer homes to deliver, install and troubleshoot the products after they had had punched out at night. During this time, Plaintiffs were not paid regular wages or overtime for work performed during the delivery and installation of the "At Home" products.

36. Throughout the relevant period, Plaintiffs frequently picked up lunch and immediately returned to the T-Mobile store and continued to work throughout their "lunch break," notwithstanding the fact that a store manager frequently punched them out for at least a 30 minute "lunch period."

37. Upon information and belief, Defendant T-Mobile employs approximately thirty-two thousand employees and the over 1,000 company stores employed thousands of sales associates, sales representatives and supervisors, who were similarly required to perform "off the clock" opening and closing duties, review and respond to emails and text messages on their PDAs, receive and place telephone calls from T-Mobile employees and customers, participate on conference calls and review and prepare company materials for upcoming events and releases. These T-Mobile employees similarly were not paid wages or overtime for hours worked outside the store on company business, as required by the Fair Labor Standards Act.

38. Plaintiffs brings their FLSA claims on behalf of themselves and all similarly situated persons who have worked for Defendants in non-exempt positions from July 10, 2006 through the date of the final judgment in this matter.

39. Plaintiffs were required to work for Defendants well in excess of forty (40) hours per week, frequently requiring Plaintiffs to work from ten to fifteen (10-15) hours of overtime per week without any additional regular or overtime compensation.

40. Plaintiffs' work was performed in the normal course of the Defendants' business and was integrated into the business of Defendants.

41. The work performed by Plaintiffs required little skill and no capital investment.

42. Plaintiffs did not supervise other employees and their job duties did not include managerial responsibilities or the exercise of independent business judgment.

43. Plaintiffs often worked in excess of 40 hours a week, yet the Defendants willfully failed to pay Plaintiffs' compensation for hours worked in excess of forty hours per week, including overtime compensation of one and one-half times their regular hourly rate in violation of the FLSA, the New York Labor Laws, the supporting New York State Department of Labor regulations, and California Wage Laws.

44. In addition to the Plaintiffs, during the time period Defendants usually employed tens of thousands of other similarly situated employees simultaneously.

45. Throughout that time and, upon information and belief, both before that time (throughout the Class Period) and continuing until today, the Defendants have likewise employed other individuals, like the Plaintiffs (the Collective Action Members/the Class) in positions that required little skill and no capital.

46. Such individuals have worked in excess of 40 hours a week yet the Defendants have likewise willfully failed to pay them for all hours worked as well as wages for overtime compensation of one and one-half times their regular hourly rate, in violation of the FLSA, the New York Labor Laws and California Wage Laws.

47. As stated, the exact number of such individuals is presently unknown but within the sole knowledge of the Defendants and can be ascertained through appropriate discovery.

48. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiffs' own employment, while Defendants employed Plaintiffs and the Collective Action Members/the Class, the Defendants routinely required Plaintiffs and the Collective Action Members/the Class to work well in excess of forty (40) hours per week, yet Defendants maintained a policy of not approving or paying for hours worked in excess of forty hours per week.

49. Throughout all relevant time periods, upon information and belief, and during the course of Plaintiffs' own employment, while Defendants employed Plaintiffs and the Collective Action Members/the Class, the Defendants failed to maintain accurate and sufficient time records to reflect all of the hours that Plaintiffs and the Collective Action members/the Class worked.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT

50. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

51. At all relevant times Defendants have been and continue to be an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

52. At all relevant times, Defendants employed, and/or continues to employ, Plaintiffs and each of the Collective Action Members within the meaning of the FLSA.

53. Upon information and belief, at all relevant times, the Corporate Defendants

have had gross revenues well in excess of \$500,000.00.

54. Plaintiffs consent in writing to be a party to this action, pursuant to 29 U.S.C. §216(b). The named Plaintiffs' written consents are attached hereto and incorporated by reference.

55. At all relevant times, the Defendants had a policy and practice of refusing to pay wages for all hours worked as well as overtime compensation to its employees for their hours worked in excess of forty hours per workweek.

56. As a result of the Defendants' willful failure to compensate its employees, including Plaintiffs and the Collective Action members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a workweek, the Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

57. As a result of the Defendants' failure to record, report, credit and/or compensate its employees, including Plaintiffs and the Collective Action members, the Defendants have failed to make, keep and preserve records with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

58. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Due to Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action members, are entitled to recover from Defendants their unpaid wages and overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonably delayed payment of wages, reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29

U.S.C. § 216(b).

SECOND CAUSE OF ACTION
NEW YORK LABOR LAW

59. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs hereof with the same force and effect as though fully set forth herein.

60. At all relevant times, Plaintiffs and the members of the Class were employed by the Defendants within the meaning of the New York Labor Law, §§ 2 and 651.

61. Defendants willfully violated Plaintiffs' rights and the rights of the members of the Class by failing to pay them compensation for all hours worked as well as overtime compensation at rates not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

62. The Defendants' New York Labor Law violations have caused Plaintiffs and the members of the Class irreparable harm for which there is no adequate remedy at law.

63. Due to the Defendants' New York Labor Law violations, Plaintiffs and the members of the Class are entitled to recover from Defendants their unpaid wages and unpaid overtime compensation, damages for unreasonably delayed payment of wages, reasonable attorneys' fees and costs and disbursements of the action, pursuant to New York Labor Law § 663(1) et al. Plaintiffs seek liquidated damages, pursuant to New York Labor Law § 663(1) only in the alternative if the Class is not certified.

THIRD CAUSE OF ACTION
Cal. Wage Order No. 4; Cal. Labor Code §§ 510, 1194
On behalf of the California Class

64. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

65. Defendant has engaged in a widespread pattern, policy, and practice of violating the California Cal. Wage Order No. 4; Cal. Labor Code §§ 510, 1194, as detailed in this Class Action Complaint.

66. California law requires employers, such as Defendants, to pay overtime compensation to all non-exempt employees for all hours worked over forty per week, or over eight hours per day.

67. The California Class members are non-exempt employees entitled to be paid overtime compensation for all overtime hours worked.

68. Throughout the California Class Period, and continuing through the present, the California Class members worked in excess of eight hours in a workday and/or forty hours in a workweek.

69. During the California Class Period, Defendant failed and refused to pay the California Class members overtime premium pay for their overtime hours worked.

70. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, the California Class members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendants in an amount to be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and other applicable law.

FOURTH CAUSE OF ACTION
Cal. Record-Keeping Provisions Cal. Wage Order No. 4;
Cal. Labor Code §§ 226, 1174 & 1174.5
On behalf of the California Class

71. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

73. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements including, *enter alia*, hours worked, to the California Class members in accordance with Labor Code § 226(a) and the IWA Wage Orders. Such failure caused injury to the California Class members by, among other things, impeding them from knowing the amount of hours worked and the total wages to which they are and were entitled. At all times relevant herein, Defendant has failed to maintain complete and accurate records of hours worked by the California Class members are required under Labor Code § 1174(d).

74. The California Class members are entitled to and seek injunctive relief requiring Defendant to comply with Labor Code §§ 226(a) and 1174(d), and further seek the amount provided under Labor Code §§ 226(e) and 1174.5, including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period.

FIFTH CAUSE OF ACTION
Cal. Meal Period Provisions, Cal. Wage Order No. 4;
Cal. Labor Code §§ 218.5, 226.7 & 512
On behalf of the California Class

75. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

76. Defendant has engaged in a widespread pattern, policy and practice of violating the California Labor Code §§ 218.5, 226.7 & 512 and Wage Order No. 4-2001, §11(a), as detailed in this Class Action Complaint.

77. The California Class members regularly work and have worked in excess of five hour shifts without being afforded at least a half-hour meal break in which they were relieved of all duty, as required by Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001, § 11(a).

78. As a result of Defendants' failure to afford proper meal periods, Defendants are liable to the California Class members for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided, pursuant to California Labor Code § 226.7 and Wage Order No. 4-2001, § 11(b).

SIXTH CAUSE OF ACTION
Failure to Timely Pay Wages
Cal. Labor Code §§ 201, 202, 203
On behalf of the California Class

79. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

80. California Labor Code §§ 201 and 202 require Defendant to pay its employees all wages due within the time specified by law. California Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

81. The California Class members who ceased employment with Defendants are entitled to unpaid compensation, but, upon information and belief, to date have not received such compensation.

82. More than thirty days have passed since certain California Class members left Defendants' employ.

83. As a consequence of Defendants' willful conduct in not paying proper compensation for all hours worked, the California Class members whose employment ended during the four years preceding the filing of this Class Action Complaint are entitled to thirty days' wages under Labor Code § 203, together with interest thereon, and attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiffs on behalf of themselves and all other similarly situated Collective Action Members and members of the Class, respectfully request that this Court grant the following relief:

- a. Designation of this action as a collective action on behalf of the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of an FLSA Opt-In Class, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. §216(b) and appointing Plaintiffs and their counsel to represent the Collective Action members;
- b. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) on behalf of the members of the New York and California Classes and appointing Plaintiffs and their counsel to represent the respective Classes;
- c. An order tolling the statute of limitations;
- d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, the New York Labor Laws and California Wage Laws;

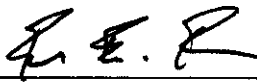
- e. An injunction against the Defendants and its officers, agents, successors, employees, representatives and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- f. An award of wages for all hours worked and overtime compensation due under the FLSA, the New York Labor Laws and California Wage Laws;
- g. An award of liquidated and/or punitive damages as a result of the Defendants' willful failure to pay for all hours worked as well as overtime compensation pursuant to 29 U.S.C. § 216, the New York Labor Laws and California Wage Laws;
- h. An award of damages arising out of the non-payment of wages, arising out of the FLSA, the New York Labor Laws and the California Wage Laws;
- i. An award of prejudgment and post-judgment interest;
- j. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- k. Such other and further relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the complaint.

Dated: New York, New York
July 10, 2009

PELTON & ASSOCIATES PC

By:  _____

Brent E. Pelton (BP 1055)

Attorney for Plaintiffs, Individually, and
on Behalf of All Other Persons Similarly Situated

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New York, New York 10006

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CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of T-Mobile and/or its owners and affiliates to pay me overtime wages as required under state and/or federal law, and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.



Signature

04-14-09

Date

Miguel Agui

Printed Name

June 16, 2009
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CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of T-Mobile and/or its owners and affiliates to pay me overtime wages as required under state and/or federal law, and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.


Signature

6/16/09
Date

Alexander Reyes
Printed Name

June 10, 2009
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CONSENT TO BECOME PARTY PLAINTIFF

By my signature below, I hereby authorize the filing and prosecution of claims in my name and on my behalf to contest the failure of T-Mobile and/or its owners and affiliates to pay me overtime wages as required under state and/or federal law, and also authorize the filing of this consent in the action(s) challenging such conduct. I authorize being named as the representative plaintiff in this action to make decisions on behalf of all other plaintiffs concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with Plaintiff's counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

James Gipson
Signature

6/10/09
Date

James Gipson
Printed Name

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

★ JUL 10 2009 ★

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.)

BROOKLYN OFFICE

I. (a) PLAINTIFFS

Miguel Agui, Alexander Reyes and James Gipson, Individually and on Behalf of All Other Persons Similarly Situated

(b) County of Residence of First Listed Plaintiff Kings

(EXCEPT IN U.S. PLAINTIFF CASES)

09 2955

(c) Attorney's (Firm Name, Address, and Telephone Number)

Brent E. Pelton, Pelton & Associates PC, 111 Broadway, Suite 901, New York, New York 10006

DEFENDANTS

T-Mobile USA Inc. and John Does #1-10, Jointly and Severally

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.

Attorneys (If Known)

DEARIE, CH. J.
LEVY, M. J.

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	<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
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 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	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"/> 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)) 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

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):

FLSA, 29 U.S.C. §§201 et seq

Brief description of cause:

Failure to pay overtime and 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

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

Dearie

MAG. JUDGE

Levy

2955

ARBITRATION CERTIFICATION

I, Brent Pelton, counsel for Mr. Agui, Mr. Reyes and Mr. Gipson do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs.
☒ Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:
T-Mobile International AG

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County? No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ☒

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No ☒

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: BP-1055

E-MAIL Address: pelton@peltonlaw.com

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: _____

