

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JONATHAN WOLFE, and MARGARET
HEKLOWSKI, on behalf of themselves and
similarly situated employees,

Plaintiff,

Case No. 1:16-cv-11663
Honorable Ronald A. Guzman
Magistrate Judge Maria Valdez

vs.

TCC WIRELESS, LLC,

Defendant.

ANSWER TO AMENDED COMPLAINT AND AFFIRMATIVE DEFENSES

TCC Wireless, LLC ("TCC Wireless"), through its undersigned counsel, answers the Amended Complaint filed against it as follows:

Jurisdiction and Venue

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331-32, while jurisdiction over the IMWL claim is proper under 28 U.S.C. § 1367.

ANSWER: TCC Wireless admits that this Court has federal question subject matter jurisdiction over claims filed under the FLSA, but denies that any valid claim exists thereunder. TCC Wireless further states that this Court may exercise, in its discretion, supplemental jurisdiction over the IMWL claim under 28 U.S.C. § 1367 subject to the terms and exceptions of this statute.

2. Venue in this Court is proper under 28 U.S.C. § 1391 for the independent reasons that, as alleged below, Defendant resides in this judicial district and a substantial part of the events or omissions giving rise to this lawsuit occurred in this judicial district.

ANSWER: TCC Wireless admits that it resides in this judicial district. TCC Wireless denies the remaining allegations contained in Paragraph 2 because they are untrue.

Parties

3. Wolfe lives in Clementon, NJ 08021.

ANSWER: TCC Wireless lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3.

4. Fronek lives in Oak Lawn, IL 60453.

ANSWER: TCC Wireless lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4.

5. In addition to Wolfe and Fronek, the following individuals already have joined the FLSA collective by filing with the Court consent forms pursuant to 29 U.S.C. § 216(b): (a) Alberto Abarca, who lives in Cicero, IL and worked for Defendant in Chicago, IL; (b) Alexandra Almodovar, who lives in Montgomery, IL and worked for Defendant in Plainfield, IL; (c) Claudia Avila, who lives in Aurora, IL and worked for Defendant in Aurora, IL; (d) Anthony DiPalmo who lives in Indianapolis, IN and worked for Defendant in Indianapolis, IN; (e) Danislava Dramsazova who lives in Chicago, IL and worked for Defendant in Chicago, IL; and (f) Cameron Russell, who lives in Indianapolis, IN and worked for Defendant in Indianapolis, IN.

ANSWER: TCC Wireless admits that the individuals identified have filed consent forms, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 5.

6. Plaintiffs are employees covered by the FLSA and IMWL.

ANSWER: TCC Wireless admits the allegations contained in Paragraph 6.

7. Defendant is an employer covered by the FLSA because, as alleged below, it employs individuals, including Plaintiffs, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce.

ANSWER: TCC Wireless admits that it is an employer, but denies the remaining allegations contained in Paragraph 7 because they are untrue.

8. Defendant is an “enterprise” as that term is defined in Section 203(r)(1) of the FLSA.

ANSWER: TCC Wireless admits the allegations contained in Paragraph 8.

9. Defendant is an employer covered by the IMWL because, as alleged below, it is a limited liability company acting directly or indirectly in the interest of an employer in relation to an employee, including Plaintiffs, for which one or more persons are gainfully employed on some day within a calendar year. At all material times Defendant has employed more than four (4) employees in the State of Illinois.

ANSWER: TCC Wireless admits that it is an employer and that it has employed more than four employees in the State of Illinois. TCC Wireless denies the remaining allegations contained in Paragraph 9.

Facts

10. Defendant operates 105 T-Mobile retail stores throughout the United States. Thirty-four (34) (or 32.38%) of these stores are located in Illinois. The remaining stores are located in the following states: Connecticut (4 stores); Florida (18 stores); Indiana (10 stores); Iowa (5 stores); Massachusetts (2 stores); New Jersey (4 stores); New York (13 stores); Ohio (11 stores); Pennsylvania (3 stores); Rhode Island (1 store).

ANSWER: TCC Wireless admits the allegations contained in Paragraph 10.

11. Defendant employs managers and assistant managers at its stores.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 11 because they are untrue. Not all stores employ both managers and assistant managers.

12. From approximately February 2016 until approximately June 2016, Defendant employed Wolfe as a manager at its Cherry Hill, NJ store.

ANSWER: TCC Wireless admits that it employed Wolfe as a Retail Store Manager from February 25, 2016 through June 9, 2016.

13. From late-2013 until approximately January 2015, Defendant employed Fronек as an assistant manager and, later, a manager at stores located in Hickory Hills and Chicago, Illinois.

ANSWER: TCC Wireless admits the allegations contained in Paragraph 13.

14. Prior to the December 28, 2016 filing of this lawsuit, Defendant paid Wolfe, Fronек, and all other managers/assistant managers on a salary basis. In particular, Wolfe most recently earned an annual salary of approximately \$36,000. Fronек, meanwhile earned an annual salary of approximately \$26,000 while employed as an assistant manager and an annual salary of approximately \$32,500 while employed as a manager.

ANSWER: TCC Wireless admits that it paid Wolfe an annual salary of \$36,000, and Fronек an annual salary of \$26,000 as an assistant retail store manager, and \$32,500 as a retail store manager. TCC Wireless is without knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to other unnamed managers or assistant managers.

15. After filing of this lawsuit, Defendant, upon information and belief, started to pay some assistant managers on an hourly basis.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 15 because they are untrue.

16. Wolfe, Fronck, and other salaried managers/assistant managers regularly worked over 40 hours per week. For example, Wolfe estimates that he worked approximately 55 hours during a typical week working as a manager. Fronck, meanwhile, estimates that she worked an average of approximately 55 hours during a typical week as both an assistant manager and manager.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 16 because they are untrue. TCC Wireless is without knowledge or information sufficient to form a belief as to the truth of the allegations as they relate to other unnamed managers or assistant managers.

17. Prior to the December 28, 2016 filing of this lawsuit, Defendant never paid Wolfe, Fronck, or any other salaried managers/assistant managers overtime premium compensation for hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 17 because they are untrue.

18. After filing of this lawsuit, Defendant, upon information and belief, started to pay some assistant managers overtime premium compensation for hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 18 because they are untrue.

19. Wolfe, Fronck, and other salaried managers/assistant managers frequently worked alone or with only one other store employee.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 19 because they are untrue.

20. Wolfe, Fronek, and other salaried managers/assistant managers did not customarily or regularly supervise the equivalent of two or more non-exempt employees. Indeed, prior to the December 28, 2016 filing of this lawsuit, Defendant staffed its stores so that (a) non-salaried store employees regularly work less than 80 aggregate hours in stores staffed by only one salaried employee and (b) non-salaried employees regularly work less than 160 aggregate hours in stores staffed by two salaried employees. Defendant's business model is clear: under-staff the stores, strictly limit the work hours of the non-salaried employees, and require the salaried managers to pick up the overtime at no additional cost to Defendant.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 20 because they are untrue.

21. Wolfe, Fronek, and other salaried managers/assistant managers spent almost no time performing managerial tasks.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 21 because they are untrue.

22. Wolfe, Fronek and other salaried managers/assistant managers did not earn significantly more than the stores' non-manager employees. For example, Wolfe earned a salary of approximately \$692 for his typical 55-hour workweek. An overtime-eligible employee earning only \$11.08/hour would earn the same amount for working 55 hours. Fronek, while employed as an assistant manager, earned a salary of approximately \$500 for her typical 55-hour workweek. An overtime-eligible employee earning only \$8.01/hour would earn the same amount for working 55 hours. Finally, Fronek, while employed as a manager, earned a salary of

approximately \$625 for her typical 55-hour workweek. An overtime-eligible employee earning only \$10.00/hour would earn the same amount for working 55 hours.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 22 because they are untrue.

23. Defendant's failure to pay overtime premium compensation to salaried store employees for all overtime hours has been in violation of the maximum hour provisions of the FLSA and IMWL.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 23 because they are untrue.

Class/Collective Action Allegations

24. Plaintiffs pursue the FLSA claim as a collective action on behalf of: All salaried store employees who worked for Defendant in the United States during any week within the past 3 years.

ANSWER: TCC Wireless admits that Plaintiffs pursue the FLSA claim as a collective action, but denies that they are entitled to same.

25. Plaintiffs' FLSA claim should proceed as a collective action because Plaintiffs and other potential members of the collective, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 25 because they are untrue.

26. Fronek pursues the IMWL claim as a class action on behalf of: All salaried store employees who worked for Defendant in Illinois during any week within the past 3 years.

ANSWER: TCC Wireless admits that Fronек pursues the IMWL claim as a class action, but denies she is entitled to same.

27. Class action treatment of Fronек’s IMWL claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 27 because they are untrue.

28. The class, upon information and belief, includes well over 100 individuals, all of whom are readily ascertainable based on Defendant’s payroll records and are so numerous that joinder of all class members is impracticable.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 28 because they are untrue.

29. Fronек is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 29 because they are untrue.

30. Fronек and her lawyers will fairly and adequately represent the class members and their interests.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 30 because they are untrue.

31. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant’s common compensation policies, as described herein. The

legality of these policies will be determined through the application of generally applicable legal principles to common facts.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 31 because they are untrue.

32. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 32 because they are untrue.

Count I
(Alleging FLSA Violations)

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

ANSWER: TCC Wireless incorporates its answers to all previous paragraphs as though fully set forth herein.

34. The FLSA entitles employees to overtime compensation equaling 150% of their regular rate for all hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 34 because they are untrue.

35. Defendant violated the FLSA by failing to pay Plaintiffs and the collective any compensation, including overtime premium compensation, for hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 35 because they are untrue.

36. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions and, thus, has committed a willful violation of the FLSA.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 36 because they are untrue.

Count II
(Alleging IMWL Violations)

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

ANSWER: TCC Wireless incorporates its answers to all previous paragraphs as though fully set forth herein.

38. The IMWL entitles employees to overtime compensation equaling 150% of their regular rate for all hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 38 because they are untrue.

39. Defendant violated the IMWL by failing to pay Fronek and other class members any compensation, including overtime premium compensation, for all hours worked over 40 per week.

ANSWER: TCC Wireless denies the allegations contained in Paragraph 39 because they are untrue.

AFFIRMATIVE DEFENSES

As further defense to the claims asserted by Plaintiff, TCC Wireless alleges the following affirmative defenses:

1. Venue in this action is more appropriate in another judicial district.
2. The individuals who have joined in the Amended Complaint were improperly solicited by Wolfe's counsel.

3. Plaintiffs have waived the right to a jury trial.

4. Plaintiffs' claims are barred by the existence of an arbitration provision, requiring arbitration of the claims.

5. At all times, TCC Wireless' actions were lawful, justified and made in good faith.

6. Plaintiff's claims, or the claims of any putative collective or class action, are barred in whole or in part by the applicable statute of limitations.

7. Plaintiff's claims for recovery of overtime compensation and liquidated damages, if any, are limited to the time period of two years from the date the Plaintiff's Complaint was filed and consent to join the class, in authorized.

8. Plaintiff is not entitled to liquidated damages under 29 U.S.C. § 260 since, at all times relevant and material to this case, TCC Wireless acted in good faith and had reasonable grounds for believing that they did not violate the provisions of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

9. To the extent that a putative class member is an exempt employee under the FLSA white-collar exemptions, such person is not entitled to overtime compensation.

10. Without admitting that any violations of the FLSA have occurred, the *de minimis* rule applies to any such violations.

11. Plaintiff's claims are barred in whole or in part to the extent that the work they performed falls within exemptions, exclusions, exceptions or credits provided for in Section 7 of the FLSA, 29 U.S.C. § 207.

12. Plaintiff's claims are not representative of a class of similarly related employees so that this action cannot be properly brought as a collective action under the FLSA, or a class action under Rule 23 of the Federal Rules of Civil Procedure.

13. This action cannot be maintained as a collective or class action because the allegations, facts and defenses relating to Plaintiff will not support a collective or class action.

14. This action cannot be maintained as a collective or class action because during Plaintiffs' employment, there were not similarly situated individuals to each other and to any other employees, and there is no commonality between Plaintiffs' circumstances, individually and collectively, and those of other employees of TCC Wireless.

15. This action cannot be maintained as a collective or class action because Plaintiffs and/or their counsel are not adequate representatives for the proposed collective and class action.

16. Some or all of the claims asserted in the Complaint are barred because a collective and/or class action are not superior to other available methods for the fair and efficient adjudication of this controversy.

17. This action cannot be maintained as a collective or class action because Plaintiffs have failed to identify any uniform policy that facially creates an overarching unlawful pay practice in violation of the overtime requirements of the FLSA.

18. Should this Court certify this matter as a collective or class actions, TCC Wireless reasserts each of these affirmative defenses with respect to each class member or person filing a consent to this action.

Dated: March 29, 2017

Respectfully submitted,

Jaffe, Raitt, Heuer & Weiss, P.C.

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CERTIFICATE OF ELECTRONIC FILING/SERVICE

The undersigned hereby certifies that on the 29 day of March, 2017, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Dated: March 3, 2017

Jaffe, Raitt, Heuer & Weiss, P.C.

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