

**IN THE 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,	:	
	:	
v.	:	1:16-cv-11663
	:	CLASS/COLLECTIVE ACTION
	:	
TCC WIRELESS, LLC,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	

AMENDED COMPLAINT

Plaintiffs Jonathan Wolfe (“Wolfe”) and Margaret Heklowski (formerly Margaret Fronck) (“Fronck”) (collectively “Plaintiffs”) bring this lawsuit against Defendant TCC Wireless, LLC (“Defendant”) under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/1, *et seq.*, seeking unpaid overtime wages and other available relief. The FLSA claim is asserted by both Plaintiffs as a collective action pursuant to 29 U.S.C. § 216(b), while the IMWL claim is asserted by Fronck as a class action pursuant to Federal Rule of Civil Procedure 23.

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.
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.

PARTIES

3. Wolfe lives in Clementon, NJ 08021.

4. Fronek lives in Oak Lawn, IL 60453.

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.

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

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.

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

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.

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).

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

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

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.

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.

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

16. Wolfe, Fronек, 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. Fronек, meanwhile, estimates that she worked an

average of approximately 55 hours during a typical week as both an assistant manager and manager.

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

18. After the 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.

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

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 store 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 work at no additional cost to Defendant.

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

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.

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.

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.

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.

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.

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

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.

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.

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

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.

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.

COUNT I
(Alleging FLSA Violations)

33. All previous paragraphs are incorporated 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.

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.

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.

COUNT II
(Alleging IMWL Violations)

37. All previous paragraphs are incorporated 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.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and other members of the class/collective, seek the following relief:

- A. Unpaid overtime wages;
- B. Liquidated damages under the FLSA, 29 U.S.C. § 216;
- C. Interest equal to 2 percent of the amount of under-payment for each month following the date of under-payment, as provided for by the IMWL, 820 ILCS 105/12(a);
- D. Litigation costs, expenses, and attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a jury trial as to all claims.

Date: March 14, 2017

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