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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Diana Geary, individually and on behalf
of all similarly situated individuals,

Plaintiff,

v.

Consumer Cellular, Inc.,

Defendant.

Case No.:

**COLLECTIVE AND CLASS ACTION
COMPLAINT AND DEMAND FOR
JURY TRIAL**

Plaintiff, Diana Geary (“Geary”) by and through her undersigned attorneys hereby brings this Collective and Class Action Complaint against Defendant Consumer Cellular, Inc. (“Defendant”), and states as follows:

INTRODUCTION

1. This is a class and collective action brought by Plaintiff on behalf of herself and all similarly situated current and/or former Customer Service Representative employees of Defendant to recover for Defendant’s willful violations of the Fair Labor Standards Act

1 (“FLSA”), 29 U.S.C. §§ 201, et seq., the Arizona Wage Act, A.R.S. §§ 23-350, et seq., and
2 A.R.S. §§ 23-364 (the “Arizona Wage Act”), and alleged contractual obligations (or unjust
3 enrichment if no contract is found), and other appropriate rules, regulations, statutes, and
4 ordinances.
5

6 2. The U.S. Department of Labor (“DOL”) recognizes that call center jobs, like
7 those held by Plaintiff in Defendant’s call center locations, are homogenous and issued
8 guidance to alert and condemn an employer’s non-payment of an employee’s necessary
9 preliminary and postliminary activities. *See* DOL Fact Sheet #64, attached hereto as Exhibit
10 A at 2 (“An example of the first principal activity of the day for
11 agents/specialists/representatives working in call centers includes starting the computer to
12 download work instructions, computer applications and work-related emails.”) Additionally,
13 the FLSA requires that “[a] daily or weekly record of all hours worked, including time spent
14 in pre-shift and post-shift job-related activities must be kept.” *Id.*
15
16

17 3. Defendant subjected Plaintiff, and those similarly situated, to Defendant’s
18 policy and practice of failing to compensate its call center employees for their necessary pre-
19 shift time, which resulted in the failure to properly compensate them as required under
20 applicable federal and state laws.
21
22

23 4. Plaintiff seeks a declaration that her rights, the rights of the FLSA Collective
24 Class, and the rights of the Rule 23 Classes were violated and seek to recover an award of
25 unpaid wages and overtime premiums, liquidated damages, penalties, injunctive and
26 declaratory relief, attorneys’ fees and costs, pre- and post-judgment interest, and any other
27 remedies to which they may be entitled.
28

JURISDICTION AND VENUE

5. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under the FLSA, 29 U.S.C. §§ 201, et seq.

6. This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suits under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction."

7. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because these claims arise from a common set of operative facts and are so related to the claims within this Court's original jurisdiction that they form a part of the same case or controversy.

8. Upon information and belief, Defendant's annual sales exceed \$500,000 and they have more than two employees, so the FLSA applies in this case on an enterprise basis. See 29 U.S.C. § 203(s)(1)(A).

9. Defendant's employees, including Plaintiff, engage in interstate commerce—including, but not limited to utilizing telephone lines and Internet—and therefore, they are also covered by the FLSA on an individual basis.

10. This Court has personal jurisdiction over Defendant because it maintains offices in the State of Arizona.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant conducts substantial business within this District, and because a substantial

1 portion of the events that give rise to the claims pled in this Complaint occurred in this
2 District.

3
4 **PARTIES**

5 12. Plaintiff Geary is an individual who resides in the County of Pinal, City of
6 Apache Junction, Arizona. Plaintiff worked for Defendant as a Customer Associate Advisor
7 1 from February 2018 to April 2018. Plaintiff executed her Consent to Sue form, attached
8 hereto as Exhibit B.
9

10 13. Before filing this action, Plaintiff opted-in to a collective and class action
11 filed in the District of Oregon on September 9, 2020. *See Kane and Bowers v. Consumer*
12 *Cellular, Inc.*, Case No. 3:20-cv-01558-IM.
13

14 14. On March 25, 2021, Plaintiff Geary's claims were withdrawn with leave to
15 refile the instant action.

16 15. Upon information and belief, at some point Defendant began requiring its
17 Customer Service Representatives to execute arbitration agreements. Plaintiff, however, is
18 not subject to an arbitration agreement.
19

20 16. As part of the agreement to withdraw Plaintiff's claims from the Oregon case,
21 the parties agreed that Plaintiff Geary's FLSA claims would relate back to the filing of her
22 Consent to Sue in the Oregon matter—which was September 30, 2020. The statute of
23 limitations for all future potential FLSA opt-ins not subject to an arbitration agreement would
24 be determined by the date they filed their Consents to Sue.
25
26

27 17. Defendant Consumer Cellular, Inc., operates customer service call center
28 locations in North Phoenix and Tempe, Arizona, in addition to locations in Oregon.

1 permitted to work for the employer. Such time includes all pre-shift and post-
2 shift activities which are an integral part of the employee's principal activity
3 or which are closely related to the performance of the principal activity, such
4 as attending roll call, writing up and completing tickets or reports, and
5 washing and re-racking fire hoses.

6 25. 29 C.F.R. § 790.8 states "[a]mong activities included as an integral part of a
7 principal activity are those closely related activities which are indispensable to its
8 performance."

9 ***Pre-Shift Off-the-Clock Work.***

10 26. Defendant tasked Plaintiff with providing customer service to Defendant's
11 clients by use of Defendant's telephones, Defendant's computers, and the programs
12 accessible from Defendant's computers.

13 27. To access Defendant's systems, Plaintiff, and all other current and/or former
14 CSRs, must boot up their computers and log in to the various computer programs, servers,
15 and applications, and log in to Defendant's phone systems in order to take their first call at
16 their scheduled shift start time prior to being paid. This pre-shift procedure regularly takes
17 fifteen (15) minutes per shift, or more if technical issues arise. Defendant did not compensate
18 Plaintiff for this time.

19 28. Regardless of how long the boot up and login process takes, Defendant did
20 not allow Plaintiff, and all other current and/or former CSRs, to clock in until two (2) minutes
21 before the start of their scheduled shift—and only after they completed the boot up and login
22 process. If a CSR could not clock in because of system issues, a supervisor would log into
23 the system and clock in the CSR to reflect the exact shift start time.

1 29. The pre-shift boot up procedure Plaintiff, and all other current and/or former
2 CSRs, must complete before they begin being compensated is the same regardless of which
3 call center location they worked at. The pre-shift boot up and login procedure is integral and
4 indispensable to the performance of Plaintiff's principal job duties and integral and
5 indispensable to Defendant's business.

7 30. Thus, the unpaid, pre-shift, off-the-clock work performed by Plaintiff, and
8 all other current and/or former CSRs, directly benefits Defendant.

9
10 ***Defendant's Policy and Practice of Off-the-Clock Work Violates Federal and State Laws.***

11 31. At all times relevant, Defendant suffered or permitted Plaintiff, and all other
12 current and/or former CSRs, to routinely perform off-the-clock, pre-shift work by not
13 compensating its employees until after they completed the pre-shift boot up and log in
14 procedure.

16 32. Defendant knew or should have known that it must pay its employees for all
17 compensable time throughout the workweek. *See* 29 C.F.R. §§ 553.221, 790.8, 785.19(a).

19 33. Despite this, Defendant failed to compensate Plaintiff, and all other current
20 and/or former CSRs, for their off-the-clock, pre-shift, compensable work performed in any
21 amount.

23 34. Defendant knew, or should have known, that the FLSA, 29 U.S.C. § 207,
24 requires Defendant to compensate non-exempt employees who work in excess of forty (40)
25 hours in a workweek at a rate of one and one-half times their regular rate of pay—including
26 the compensable off-the-clock, pre-shift work performed.

1 35. Despite this, Defendant failed to compensate Plaintiff, and all other current
2 and/or former CSRs, for their off-the-clock, pre-shift, compensable work performed in
3 excess of forty (40) hours in a workweek at one and one-half times their regular rates of pay.
4

5 36. Defendant knew or should have known that Arizona wage and hour laws
6 require an employer to pay employees wages for each hour worked. *See* A.R.S. § 23-351.
7

8 37. Despite this, Defendant failed to compensate Plaintiff Geary, and all other
9 current and/or former hourly CSRs working in Defendant's call center locations in Arizona
10 for their off-the-clock, pre-shift, compensable work performed in workweeks totaling less
11 than 40 hours and in workweeks totaling in excess of 40 hours at the proper legal rates,
12 including overtime premiums.
13

14 38. Defendant knew or should have known that Arizona wage and hour laws
15 require an employer to promptly pay employees for their earned wages. *See* A.R.S. §§ 23-
16 351 and 23-353.
17

18 39. In reckless disregard of the FLSA and Arizona wage and hour laws,
19 Defendant adopted and then adhered to its policy, plan, or practice of employing Plaintiff,
20 and all other current and/or former CSRs, to perform pre-shift, compensable work off-the-
21 clock. This illegal policy, plan, or practice caused incorrect payments for all straight time
22 and overtime performed by Plaintiff, and all other current and/or former CSRs, in violation
23 of the FLSA and Arizona wage and hour laws.
24

25 ***Recordkeeping.***
26

27 40. The Arizona wage and hour laws require that "[e]mployers shall maintain
28 payroll records showing the hours worked for each day worked, and the wages and earned

1 paid sick time paid to all employees for a period of four years.” *See* A.R.S. § 23-364.

2 41. Further, 29 C.F.R § 516.1 subjects “every employer subject to any provisions
3 of the Fair Labor Standards Act” to maintain employee records.
4

5 42. Federal regulations mandate each employer to maintain and preserve payroll
6 or other records containing, without limitation, the total hours worked by each employee
7 each workday and total hours worked by each employee each workweek. *See* 29 C.F.R §
8 516.2.
9

10 43. Upon information and belief, Defendant failed to establish, maintain, and
11 preserve accurate timesheet and payroll records for all hours worked by Plaintiff as required
12 by the FLSA and Arizona wage and hour laws.
13

14 44. When the employer fails to keep accurate records of the hours worked by its
15 employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687–88 (1946)
16 controls. That rule states:
17

18 [w]here the employer’s records are inaccurate or inadequate . . . an employee
19 has carried out his burden if he proves that he has in fact performed work for
20 which he was improperly compensated and if he produces sufficient evidence
21 to show the amount and extent of that work as a matter of just and reasonable
22 inference. The burden then shifts to the employer to come forward with
23 evidence of the precise amount of work performed or with evidence to
24 negative the reasonableness of the inference to be drawn from the employee’s
25 evidence. If the employer fails to produce such evidence, the court may then
26 award damages to the employee, even though the result be only approximate.

27 45. The Supreme Court set forth this test to avoid placing a premium on an
28 employer’s failure to keep proper records in conformity with its statutory duty, thereby
allowing the employer to reap the benefits of the employees’ labors without proper
compensation as required by the FLSA. Where damages are awarded pursuant to this test,

1 “[t]he employer cannot be heard to complain that the damages lack the exactness and
 2 precision of measurement that would be possible had he kept records in accordance with . .
 3 . the Act.” *Id.*

4 COLLECTIVE ACTION ALLEGATIONS

5
 6 46. Plaintiff brings this action pursuant to the FLSA, 29 U.S.C. § 216(b)
 7 individually and on behalf of:

8
 9 *All current and former Customer Service Representative employees, and/or*
 10 *other job titles performing the same or similar job duties, who worked for*
 11 *Consumer Cellular, Inc., at any time in the last three years and were not*
subject to an arbitration agreement.

12 (hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend this
 13 definition as necessary.

14
 15 47. Plaintiff does not bring this action on behalf of any executive, administrative,
 16 or professional employees exempt from coverage under the FLSA.

17
 18 48. Plaintiff does not bring this action on behalf of any current and former
 19 Customer Service Representative employees who executed an arbitration agreement with
 20 Defendant from July 2019 to the present.

21 49. *29 U.S.C. § 216(b) Conditional Certification “Similarly Situated” Standard:*
 22 With respect to the claims set forth in this action, a collective action under the FLSA is
 23 appropriate because, under 29 U.S.C. § 216(b), the call center employees described are
 24 “similarly situated” to Plaintiff. The class of employees on behalf of whom Plaintiff brings
 25 this collective action are similarly situated because (a) they have been or are employed in the
 26 same or similar positions; (b) they were or are subject to the same or similar unlawful
 27
 28

1 practices, policies, or plan (namely, Defendant's practices, policies, or plan of not paying
2 their CSR employees for their pre-shift, compensable work performed in excess of forty (40)
3 hours per workweek at an overtime premium of at least one and one-half times their regular
4 rates of pay); (c) their claims are based upon the same legal theories; and (d) the employment
5 relationship between Defendant and every putative FLSA Collective member is exactly the same,
6 and differs only by name, location, and rate of pay.
7

8 50. Upon information and belief, Plaintiff estimate the FLSA Collective,
9 including both current and former call center employees over the relevant period, will include
10 several hundred members who would benefit from the issuance of court-supervised notice
11 of this action and the opportunity to join it. The precise number of the FLSA Collective
12 members should be readily available from a review of Defendant's personnel, scheduling,
13 time, and payroll records; and from input received from the FLSA Collective members as
14 part of the notice and "opt-in" process provided by 29 U.S.C. § 216(b).
15
16

17 51. Plaintiff shares the same interests as the FLSA Collective members in that
18 the outcome of this action will determine whether they are entitled to unpaid overtime
19 compensation, interest, attorneys' fees and costs owed under the FLSA. Because the facts in
20 this case are similar, if not altogether identical, and the factual assessment and legal standards
21 lend themselves to a collective action.
22
23

24 **THE ARIZONA WAGE AND HOUR LAW CLASS ACTION ALLEGATIONS**

25 52. Plaintiff Geary brings this action pursuant to Fed. R. Civ. P. 23 on behalf of
26 a putative Class defined to include:
27
28

1 *All current and former Customer Service Representative employees in*
 2 *Arizona, and/or other job titles performing the same or similar job duties,*
 3 *who worked for Consumer Cellular, Inc., at any time in the last one year and*
 were not subject to an arbitration agreement.

4 (hereinafter referred to as the “Arizona Class”). Plaintiff reserves the right to amend this
 5 definition as necessary.

6
 7 53. *Numerosity:* The members of the Arizona Class are so numerous that joinder
 8 of all members in the case would be impracticable, and the disposition of their claims as a
 9 Class will benefit the parties and the Court. The precise number of Class members should be
 10 readily available from a review of Defendant’s personnel and payroll records.

11
 12 54. *Commonality/Predominance:* There is a well-defined community of interest
 13 among Arizona Class members and common questions of both law and fact predominate in
 14 the action over any questions affecting individual members. These common legal and factual
 15 questions include, but are not limited to, the following:

- 17 a. Whether Defendant violated A.R.S. §§ 23-350 et seq. by failing to pay
 18 current and former employees for all wages earned;
- 19 b. The proper measure of damages sustained by the proposed Arizona
 20 Class; and
- 21 c. Whether Defendant violated the A.R.S. by failing to make, keep, and
 22 preserve true and accurate payroll records.

23 55. *Typicality:* Plaintiff’s claims are typical of those of the Arizona Class in that
 24 Plaintiff and all other members suffered damages as a direct and proximate result of
 25 Defendant’s common and systemic payroll policies and practices. Plaintiff’s claims arise
 26 from Defendant’s same policies, practices, and course of conduct as all other Arizona
 27 members’ claims and Plaintiff’s legal theories are based on the same legal theories as all
 28

1 other Arizona Class members: whether all Arizona Class members were employed by
2 Defendant on an hourly basis without receiving compensation for all wages earned.

3 56. *Adequacy:* Plaintiff will fully and adequately protect the interests of the
4 Arizona Class and Plaintiff retained national counsel who are qualified and experienced in
5 the prosecution of nationwide wage-and-hour class actions. Neither Plaintiff nor her counsel
6 have interests that are contrary to, or conflicting with, the interests of the Arizona Class.
7

8 57. *Superiority:* A class action is superior to other available methods for the fair
9 and efficient adjudication of the controversy, because, inter alia, it is economically infeasible
10 for Arizona Class members to prosecute individual actions of their own given the relatively
11 small amount of damages at stake for each individual along with the fear of reprisal by their
12 employer. Given the material similarity of the Arizona Class members' claims, even if each
13 Class member could afford to litigate a separate claim, this Court should not countenance or
14 require the filing of hundreds, or thousands, of identical actions. Individual litigation of the
15 legal and factual issues raised by Defendant's conduct would cause unavoidable delay, a
16 significant duplication of efforts, and an extreme waste of resources. Alternatively,
17 proceeding by way of a class action would permit the efficient supervision of the putative
18 Arizona Class' claims, create significant economies of scale for the Court and the parties,
19 and result in a binding, uniform adjudication on all issues.
20

21 58. The case will be manageable as a class action. This class action can be
22 efficiently and effectively managed by sending the same FLSA opt-in notice to all employees
23 similarly situated and adding for the Arizona Class within that group a separate opt-out notice
24 pertaining to their rights under the Arizona state law. Plaintiff and her counsel know of no
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26
27
28

unusual difficulties in the case and Defendant has payroll systems that will allow the class, wage, and damages issues in the case to be resolved with relative ease. Because the elements of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a Plaintiff whose suit meets the specified criteria to pursue her claim as a class action”).

BREACH OF CONTRACT CLASS ACTION ALLEGATIONS¹

59. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on behalf of a putative Class defined to include:

All current and former Customer Service Representative employees, and/or other job titles performing the same or similar job duties, who worked for Consumer Cellular, Inc., at any time in the last six years and were not subject to an arbitration agreement.

(hereinafter referred to as the “Nationwide Class”). Plaintiff reserves the right to amend this definition as necessary.

60. *Numerosity:* The members of the Nationwide Class are so numerous that joinder of all members in the case would be impracticable, and the disposition of their claims as a Class will benefit the parties and the Court. The precise number of Class members should be readily available from a review of Defendant’s personnel and payroll records.

¹ To the extent the Court finds, or Defendant argues, the employment relationship between itself and its CSRs did not form a contract, Plaintiff reserves the right to seek Rule 23 class certification under Plaintiff’s and the Nationwide Class’ quasi-contract claims (Count IV).

1 61. *Commonality/Predominance:* There is a well-defined community of interest
2 among Nationwide Class members and common questions of both law and fact predominate
3 in the action over any questions affecting individual members. These common legal and
4 factual questions include, but are not limited to, the following:
5

- 6 a. Whether Defendant offered to pay Plaintiff and the Nationwide Class
7 certain rates (depending on the technical job titles) per hour for each
8 hour worked as call center employees;
- 9 b. Whether Plaintiff and the Nationwide Class accepted Defendant's
10 offer by performing the essential functions of the job;
- 11 c. Whether Defendant breached the contract by failing to pay Plaintiff
12 and the Nationwide Class for each and every hour worked; and
- 13 d. Whether Plaintiff and the Nationwide Class were damaged.

14 62. *Typicality:* Plaintiff's claims are typical of those of the Nationwide Class in
15 that Plaintiff and all other members suffered damages as a direct and proximate result of
16 Defendant's common and systemic payroll policies and practices. Plaintiff's claims arise
17 from Defendant's same policies, practices, and course of conduct as all other Nationwide
18 Class members' claims and Plaintiff's legal theories are based on the same legal theories as
19 all other Nationwide Class members: whether Defendant and the Nationwide Class members
20 were employed under an implied contract to be paid for each and every hour worked by
21 Defendant.
22

23 63. *Adequacy:* Plaintiff will fully and adequately protect the interests of the
24 Nationwide Class and Plaintiff retained national counsel who are qualified and experienced
25 in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiff nor her
26
27
28

1 counsel have interests that are contrary to, or conflicting with, the interests of the Nationwide
2 Class.

3 64. *Superiority:* A class action is superior to other available methods for the fair
4 and efficient adjudication of the controversy, because, inter alia, it is economically infeasible
5 for Nationwide Class members to prosecute individual actions of their own given the
6 relatively small amount of damages at stake for each individual along with the fear of reprisal
7 by their employer. Given the material similarity of the Nationwide Class members' claims,
8 even if each Nationwide Class member could afford to litigate a separate claim, this Court
9 should not countenance or require the filing of thousands of identical actions. Individual
10 litigation of the legal and factual issues raised by Defendant's conduct would cause
11 unavoidable delay, a significant duplication of efforts, and an extreme waste of resources.
12 Alternatively, proceeding by way of a class action would permit the efficient supervision of
13 the putative Nationwide Class' claims, create significant economies of scale for the Court
14 and the parties, and result in a binding, uniform adjudication on all issues.

15 65. The case will be manageable as a class action. This class action can be
16 efficiently and effectively managed by sending the same FLSA opt-in notice to all employees
17 similarly situated and adding for the Nationwide Class within that group a separate opt-out
18 notice pertaining to their rights under the common law. Plaintiff and her counsel know of no
19 unusual difficulties in the case and Defendant has payroll systems that will allow the class,
20 wage, and damages issues in the case to be resolved with relative ease. Because the elements
21 of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class certification is
22 appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398

(2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a Plaintiffs whose suit meets the specified criteria to pursue her claim as a class action”).

COUNT I

**VIOLATION OF THE FAIR LABOR STANDARDS ACT,
U.S.C. § 201, et seq., FAILURE TO PAY OVERTIME WAGES
(FLSA Collective Class)**

66. Plaintiff re-alleges and incorporates all previous paragraphs herein.

67. At all times relevant to this action, Defendant was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, et seq.

68. Defendant is engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

69. At all times relevant to this action, Plaintiff was an “employee” of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

70. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) was employed in an enterprise engaged in commerce or in the production of goods for commerce.

71. The position of Customer Service Representative is not exempt from the FLSA.

72. Defendant’s other job titles performing similar customer service representative job duties are not exempt from the FLSA.

73. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff to work and thus “employed” her within the meaning of the FLSA, 29 U.S.C. § 203(g).

1 74. The FLSA requires an employer to pay employees the federally mandated
2 overtime premium rate of one and a half times their regular rate of pay for every hour worked
3 in excess of forty (40) hours per workweek. See 29 U.S.C. § 207.
4

5 75. Defendant violated the FLSA by failing to pay Plaintiff the federally
6 mandated overtime premium for all hours worked in excess of forty (40) hours per
7 workweek.
8

9 76. Upon information and belief, Defendant has corporate policies of evading
10 overtime pay for its hourly workers.

11 77. Defendant's violations of the FLSA were knowing and willful.

12 78. By failing to compensate its hourly workers at a rate not less than one and
13 one-half times their regular rate of pay for work performed in excess of forty (40) hours in a
14 workweek, Defendant violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§
15 207(a)(1) and 215(a). All similarly situated call former CSRs, or other job titles performing
16 the same or similar job duties, are victims of a uniform and company-wide enterprise which
17 operates to compensate employees at a rate less than the federally mandated overtime wage
18 rate. This uniform policy, in violation of the FLSA, has been, and continues to be, applied to
19 CSRs, or other job titles performing the same or similar job duties, who have worked or are
20 working for Defendant in the same or similar position as Plaintiff.
21
22

23 79. None of the provisions of the FLSA can be contravened, set aside, abrogated,
24 or waived by Plaintiff or the Class.
25

26 80. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of
27 the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal
28

1 amount in liquidated damages, costs, and reasonable attorneys' fees.

2 **COUNT II**

3 **VIOLATIONS OF THE ARIZONA WAGE ACT**
4 **(Arizona Class)**

5 81. Plaintiff Geary, individually and on behalf of the proposed Arizona Class,
6 re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.
7

8 82. Plaintiff and members of the Arizona Class are current and former employees
9 of Defendant within the meaning of A.R.S. § 23-350(2).
10

11 83. Defendant at all relevant times was an employer within the meaning of
12 A.R.S. § 23-350(3).

13 84. Defendant was required to pay Plaintiff and the Arizona Class for all hours
14 worked.
15

16 85. A.R.S. § 23-351 requires every employer to pay "all wages due" every pay
17 period, including overtime pay.

18 86. A.R.S. § 23-353 provides that when an employer discharges an employee or
19 employee quits, the employer must pay the employee all wages due in a timely manner.
20

21 87. Wages are defined as "nondiscretionary compensation due an employee in
22 return for labor or services rendered by an employee for which the employee has a reasonable
23 expectation to be paid whether determined by a time, task, piece, commission or other
24 method of calculation." A.R.S. § 23-350(7).
25

26 88. Defendant, pursuant to its policies and illegal timekeeping practices, refused
27 and failed to pay Plaintiff and the Arizona Class for all hours worked.
28

1 89. By failing to properly compensate Plaintiff and the Arizona Class for all
2 “labor or services rendered” for which Plaintiff and members of the Arizona Class had a
3 reasonable expectation of being paid, Defendant violated, and continues to violate its CSRs’
4 statutory rights under A.R.S. §§ 23-351 and 23-353.

5
6 90. Defendant’s actions were willful, unreasonable, and done in bad faith. See
7 A.R.S. §§ 23-352(3), 23-355.

8
9 91. As a direct and proximate result of Defendant’s unlawful conduct, Plaintiff
10 and the proposed Arizona Class have suffered damages in an amount to be determined at
11 trial.

12 92. Plaintiff and the proposed Arizona Class seek damages in the amount of their
13 unpaid straight-time and overtime wages for all hours worked, treble damages, reasonable
14 attorneys’ fees and costs for this action, pre- and post- judgment interest, and such other legal
15 and equitable relief as the Court deems proper.

16 17 18 **COUNT III**

19 **BREACH OF CONTRACT** 20 **(National Breach of Contract Class Action)**

21 93. Plaintiff and the Nationwide Class re-allege and incorporate all previous
22 paragraphs herein and further allege as follows.

23 94. Plaintiff and the Nationwide Class were hired at various times. Defendant
24 offered to pay Plaintiff and the Nationwide Class certain rates per hour for each hour worked
25 as a CSR. Each Nationwide Class members’ contractual hourly rate is identified in paystubs
26 and other records that Defendant prepares as part of their regular business activities.
27
28

1 95. Plaintiff and the Nationwide Class accepted the offer and worked for
2 Defendant as CSR, and/or other job titles performing the same or similar job duties.

3 96. Plaintiff and the Nationwide Class also accepted the offer by their
4 performance—i.e., reporting for work and completing the tasks assigned to them.
5

6 97. Plaintiff's work, and the work of the Nationwide Class, required pre-shift
7 boot up time.
8

9 98. Plaintiff and every other Nationwide Class member performed under their
10 contract by doing their jobs in addition to carrying out the pre-shift off-the-clock duties
11 Defendant required.

12 99. Upon information and belief, Defendant does not compensate its CSRs,
13 and/or other job titles performing the same or similar job duties, until after the pre-shift boot
14 up and log in procedures are complete.
15

16 100. Despite being required to complete these integral pre-shift job duties,
17 Plaintiff and the Nationwide Class were not compensated at their hourly rate for their work
18 performed.
19

20 101. By failing to pay Plaintiff and the Nationwide Class for the pre-shift boot up
21 time Defendant breached its contract with Plaintiff and the Nationwide Class to pay their
22 hourly rate for each hour worked.
23

24 102. Defendant also breached their duty of to keep accurate records to keep track
25 of the time Plaintiff and other Nationwide Class members spent doing pre-shift activities,
26 which is a fundamental part of an employer's job.
27

28 103. In sum, the facts set forth above establish the following elements and terms

1 of the contract:

- 2 a. Offer: a set hourly rate for each hour worked as a CSR;
- 3 b. Acceptance: Plaintiff and the Nationwide Class accepted the offer
- 4 overtly or via performance (i.e., each showed up to work and
- 5 completed the tasks assigned to them by Defendant);
- 6 c. Breach: Defendant did not pay Plaintiff and the Nationwide Class for
- 7 each hour (or part thereof) worked; and
- 8 d. Damages: By failing to pay Plaintiff and the Nationwide Class their
- 9 hourly rate for each hour worked, Plaintiff and the Class were
- 10 damaged in an amount to be determined at trial.

11 104. These claims are appropriate for nationwide class certification under Rules
12 23(b)(3) and/or (c)(4) because the law of contracts is substantially similar throughout the
13 United States.

14 105. As a direct and proximate cause of Defendant's breach, Plaintiff and the
15 Nationwide Class were damaged in an amount to be proven at trial.

17 **COUNT IV**

18 **QUASI-CONTRACTUAL REMEDIES: UNJUST ENRICHMENT** 19 **(National Unjust Enrichment Class)**

20 106. Plaintiff and the Nationwide Class re-allege and incorporate paragraphs 1-
21 110 and further allege as follows.

22 107. Upon information and belief, Plaintiff's and every other Nationwide Class
23 members' pre-shift boot up and log in time—which is integral and indispensable to their
24 principal activities as a CSR—provided valuable work and income for Defendant; namely,
25 compensation to Defendant for completing telephone sales and customer service activities
26 that directly benefited Defendant.
27
28

1 108. Pre-Shift Boot up Time: Plaintiff and the Nationwide Class were unable to
2 perform any job function without booting up and logging in to their computers and required
3 programs. In short, in order to start their work of fielding customer calls precisely at their
4 designated start time, Plaintiff and the Nationwide Class worked off-the-clock before their
5 shift began. Without the pre-shift boot-up time, Plaintiff and the Nationwide Class were
6 unable to take customer calls at their designated start time. Further, upon information and
7 belief, Defendant does not compensate its CSRs until after the pre-shift procedures are
8 complete.
9

10
11 109. As part of their ongoing employment relationships with Defendant, Plaintiff
12 and other Nationwide Class members expected to be paid wages for the time they spent doing
13 their jobs, including performance of the necessary pre-shift boot up procedures performed
14 each shift.
15

16 110. By not paying Plaintiff and other Nationwide Class members for the time
17 they spent performing necessary pre-shift boot up activities, Defendant was, and continues
18 to be, unjustly enriched at the expense of Plaintiff and the Nationwide Class in an amount to
19 be determined at trial.
20

21 111. By not paying Plaintiff and other Nationwide Class members for the time
22 they spent performing necessary activities, Defendant also saved, and continues to save, itself
23 hundreds-of-thousands of dollars in unpaid payroll taxes—taxes that would have otherwise
24 been credited to Plaintiff’s and Nationwide Class members’ benefit.
25

26 112. It would be unjust and inequitable to allow Defendant to retain the benefit of
27 the work performed by Plaintiff and the Nationwide Class without compensation.
28

1 113. These claims are appropriate for nationwide class certification under Rules
2 23(b)(3) and/or (c)(4) because the law of unjust enrichment is substantially similar
3 throughout the United States.

4 114. As a direct and proximate cause of Defendant's unjust enrichment, Plaintiff
5 and the Nationwide Class were harmed at an amount to be proven at trial.

6
7 **PRAYER FOR RELIEF**
8

9 WHEREFORE, Plaintiff requests the following relief:

10 a. An Order certifying this case as a collective action in accordance with 29
11 U.S.C. § 216(b) with respect to the FLSA claims set forth above;

12 b. An Order certifying the Arizona state law class action pursuant to Rule 23 of
13 the Federal Rules of Civil Procedure;

14 c. An Order certifying this action as a class action (for the Rule 23 Breach of
15 Contract Nationwide Class or for the Rule 23 Unjust Enrichment Nationwide Class if no
16 contract is found) pursuant to Rule 23 of the Federal Rules of Civil Procedure;

17 d. An Order compelling Defendant to disclose in computer format, or in print
18 if no computer readable format is available, the names, addresses, and email addresses of all
19 those individuals who are similarly situated, and permitting Plaintiff to send notice of this
20 action to all those similarly situated individuals including the publishing of notice in a
21 manner that is reasonably calculated to apprise the potential class members of their rights
22 under this litigation;

23 e. An Order designating Plaintiff to act as the Class Representatives on behalf
24 of all individuals in the Arizona Class;
25
26
27
28

1 f. An Order designating the Named-Plaintiff to act as the Nationwide Class
2 Representative on behalf of all similarly situated individuals for both the FLSA and the Rule
3 23 Breach of Contract or Unjust Enrichment Nationwide Classes;

4 g. An Order declaring that Defendant willfully violated the FLSA and its
5 attendant regulations as set forth above;

6 h. An Order declaring that Defendant violated its obligations under the FLSA;

7 i. An Order declaring that Defendant willfully violated the Arizona Wage and
8 Hour Law and its attendant regulations as set forth above;

9 j. An Order granting judgment in favor of Plaintiff and against Defendant and
10 awarding the amount of unpaid minimum wages, and overtime pay calculated at the rate of
11 one and one-half (1.5) of Plaintiff's regular rate multiplied by all hours that Plaintiff worked
12 in excess of 40 hours per week;

13 k. An Order awarding liquidated damages to Plaintiff, in an amount equal to the
14 amount of unpaid wages found owing to Plaintiff under the FLSA, in addition to all penalties
15 and damages owed under the Arizona Wage Act and its attendant regulations as set forth
16 above;

17 l. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiff
18 in filing this action pursuant to A.R.S. § 12-341.01;

19 m. An Order awarding pre- and post-judgment interest to Plaintiff on these
20 damages; and

21 n. An Order awarding such further relief as this court deems appropriate.
22
23
24
25
26
27
28

JURY DEMAND

NOW COMES Plaintiff, by and through her undersigned attorneys, and hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

DATED this 22nd day of April, 2021.

BEGAM MARKS & TRAULSEN, P.A.

By s/ Richard P. Traulsen

Richard P. Traulsen
11201 North Tatum Blvd., Suite 110
Phoenix, Arizona 85028-6037
Local Counsel for Plaintiff

And

Jacob R. Rusch (MN Bar No. 0391892)*
Timothy J. Becker (MN Bar No. 0256663)*
Zackary S. Kaylor (MN Bar No. 0400854)*
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Lead Attorneys for Plaintiff

**Pro Hac Vic forthcoming*

EXHIBIT A

U.S. Department of Labor Wage and Hour Division



Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees working in call centers.

Characteristics

A call center is a central customer service operation where agents (often called customer care specialists or customer service representatives) handle telephone calls for their company or on behalf of a client. Clients may include mail-order catalog houses, telemarketing companies, computer product help desks, banks, financial services and insurance groups, transportation and freight handling firms, hotels, and information technology (IT) companies.

Coverage

If the annual dollar volume of a call center's sales or business is \$500,000 or more, and the enterprise has at least two employees, all employees of the enterprise are covered by the FLSA on an "enterprise" basis. An enterprise may consist of one establishment, or it may be made up of multiple establishments.

Additionally, the FLSA also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls, the Internet or the U.S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities.

Requirements

Covered nonexempt employees are entitled to be paid at least the federal minimum wage as well as [overtime](#) at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees, including computer professionals and outside sales, as provided in Regulations [29 CFR 541](#)).

The FLSA requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both [minimum wage](#) and [overtime](#) provisions, records must be kept as prescribed by Regulations [29 CFR 516](#). Records required for exempt employees differ from those for non-exempt workers.

The FLSA also contains youth employment provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements. Additional information on the youth employment provisions is available at www.youthrules.dol.gov.

Typical Problems

Hours Worked: Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications, and work-related emails.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal.

Recordkeeping: A daily and weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept.

Overtime: Earnings may be determined on an hourly, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the regular hourly rate derived from all such earnings. This is calculated by dividing the total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked. See Regulations [29 CFR 778](#).

Salaried Employees: A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and/or [overtime](#) depends on their job duties and responsibilities as well as the salary paid. Sometimes, in call centers, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt. Regulations [29 CFR 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees – including computer professionals, and outside sales persons).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
 Frances Perkins Building
 200 Constitution Avenue, NW
 Washington, DC 20210

1-866-4-USWAGE
 TTY: 1-866-487-9243
[Contact Us](#)

EXHIBIT B

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN KANE and MARY BOWERS,
individually and on behalf of all similarly
situated individuals,

Case No.: 3:20-cv-01558-IM

Plaintiffs,

v.

CONSENT TO SUE

CONSUMER CELLULAR, INC,

Defendant.

-
1. I understand this lawsuit against **CONSUMER CELLULAR, INC**, asserts claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and Arizona and Oregon state law concerning Defendant's alleged failure to correctly pay overtime and wages at any time in the last three years.
 2. I hereby consent to opt-in and join and become a Plaintiff in this lawsuit and be bound by the Court, whether favorable or unfavorable, to any settlement of this action.
 3. I hereby designate Johnson Becker, PLLC to represent me in this lawsuit.

Signature: *Diana Geary*
Diana Geary (Sep 14, 2020 22:34 PDT)

Date: 09/15/2020

EXHIBIT C

[New Search](#)[Login Page](#)

Position Description



Customer Service Representative (North Phoenix)- Earn a \$2,600 Bonus!

Location **North Phoenix, AZ**

Job Code **537**

of Openings **1**

[Apply Now](#)

Want to earn an extra \$2,600 bonus just for being at work?

Inquire today to find out how you can easily start earning your \$2,600 bonus!*

A career at Consumer Cellular means you are a part of something meaningful. You'll be surrounded by people you respect and be inspired to reach your professional and personal goals. You'll be on-site at our Phoenix, AZ contact center assisting our customers over the phone. **Remote work is available!** By working at Consumer Cellular, you will be part of a team that has helped people have affordable and reliable phone service for over 20 years.

We're smaller, easy-going, and like it that way. We bet you will, too. Inside our doors, you'll find straight-up friendly people and jobs with growth potential. Our four locations support millions of customers — and all from within the USA. Grow fast with Consumer Cellular.

As a Customer Service Representative You Get to:

- Be the face of our company and handle incoming calls from our customers
- Work with a computer, headset, and a multitude of cell phones
- Translate techno-lingo into real world terms
- Change lives – what would you do without your cell phone?
- Make people smile (a lot!)
- Work on a team that thinks timeliness and punctuality are pretty darn important
- Have a chance to give back to the community through company organized events
- You'll have some fun taking advantage of our ping pong table and shuffle board
- Hard work will be rewarded with bonuses, growth opportunities, and recognition
- Work with people that are just as passionate as you are about taking care of our customers

Minimum Qualifications:

- 1+ year's exceptional customer service experience

- Ability to commute to our Phoenix, AZ location
- High School Diploma or equivalent
- Ability to meet the expectations of our attendance policy
- Must have basic computer skills/typing ability
- Aptitude to quickly learn and navigate new technology systems and applications
- Have stable employment history with a track record of success
- Must possess a professional and friendly attitude and be able to quickly develop a rapport with customers over the phone
- The ability to actively listen and communicate with our customers, like an expert
- Be able to multi-task and provide explanations in simple terms
- A basic understanding of cellular phones and cellular industry is preferred, but not necessary

Benefit package:

- \$15 per hour starting wage and paid training
- 100% paid medical, dental & vision coverage for full-time employees
- 401(k) match
- Employee wireless rate plan
- Paid time off (PTO)
- Flexible spending accounts (FSA)
- Employee rewards program
- Group life and AD&D benefits
- Education reimbursement
- Long-term disability
- **Be here now** and earn a \$2,600 bonus! Here's three easy steps to a "We're Better Together Bonus":
 - Work together with us
 - Provide awesome service to our customers
 - Earn an extra \$2,600 OR MORE!*

Physical Demands & Work Environment:

The physical demands and work environment described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is regularly required to sit; use hands to finger, handle, or feel and talk or hear. The employee is occasionally required to stand; walk and reach with hands and arms. The employee must regularly lift and /or move up to 10 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception and ability to adjust focus.

The noise level in the work environment is usually moderate.

About Consumer Cellular

Consumer Cellular is a top-rated wireless carrier that provides no-contract cellphones and service plans primarily to those 50+. The company has been an approved AARP Provider for over 10 years and offers AARP members special discounts on service. Founded 24 years ago on the belief that everyone should have affordable access to the safety and convenience of cellular service, Consumer Cellular is privately held with about 2,000 employees. The Portland, Ore.-based company utilizes the nation's largest voice and data networks, which covers more than 300 million people – or 99 percent of the U.S. population. Consumer Cellular's wireless phones and plans are sold nationwide at leading retailers such as Target, as well as direct to consumers at [ConsumerCellular.com](https://www.consumercellular.com) or (888) 345-5509. The company has been ranked on the [Inc. 5000 list for 11 years in a row](#). Consumer Cellular received the highest score in the non-contract value segment of the J.D. Power 2016 (V2) – 2019 (V1) Wireless Non-Contract Customer Care Performance Studies of customers' satisfaction with wireless customer care experience. Visit [jdpower.com/awards](https://www.jdpower.com/awards). For cellphone tutorials, features, applications and company news, connect with Consumer Cellular on [Facebook](#), [Twitter](#) and [YouTube](#).

Pre-employment background check, employment history verification and drug screen is required.

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Diana Geary

Defendant(s): Consumer Cellular, Inc.

County of Residence: Pinal

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Richard P Traulsen , Attorney
Begam Marks & Traulsen
11201 N Tatum Blvd, Suite 110
Phoenix, Arizona 85028
6022546071**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

710 Fair Labor Standards Act

VI.Cause of Action:

5. This Court has subject-matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff's claims arise under the FLSA, 29 U.S.C. §§ 201, et seq.

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: S/ Richard P. Traulsen

Date: 04/22/21

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Consumer Cellular Failed to Pay Customer Service Reps for Pre-Shift Work](#)
