

DIVERSITY LAW GROUP, P.C.
Larry W. Lee, State Bar No. 228175
E-mail: lwlee@diversitylaw.com
Mai Tulyathan, State Bar No. 316704)
E-mail: ktulyathan@diversitylaw.com
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

POLARIS LAW GROUP LLP
William L. Marder, State Bar No. 170131
E-mail: bill@polarislawgroup.com
501 San Benito Street, Suite 200
Hollister, California 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Dennis S. Hyun (State Bar No. 224240)
E-mail: dhyun@hyunlegal.com

HYUN LEGAL, APC
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
(213) 488-6555
(213) 488-6554 facsimile

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JESSICA GILLESPIE, individually and on
behalf of all those similarly situated,

Plaintiff,

vs.

VERIZON, an unknown corporate entity ;
CELLCO PARTNERSHIP, an unknown
corporate entity; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

**PLAINTIFF’S CLASS ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE §
226**

1 Comes now Plaintiff Jessica Gillespie (“Plaintiff”), individually and on behalf of all similarly
2 situated current and former employees hereby alleges and complains against Defendants Verizon/Cellco
3 Partnership (collectively, “Verizon” or the “Company”), and Does 1 through 50 (collectively,
4 “Defendants”) as follows:

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over the violations of the California Labor Code § 226,
7 pursuant to the Class Action Fairness Act (the “CAFA”), 28 U.S.C. § 1332(d), in that this is a class
8 action involving citizens of different states and the amount in controversy exceeds \$5 million based on
9 the wage statement penalties set forth in Labor Code § 226(e).

10 2. Venue is proper in the Eastern District of California because Plaintiff worked for
11 Defendants in Placer County and, thus, this Court is the proper venue for this lawsuit.

12 **PARTIES**

13 3. Verizon is a national wireless and phone service provider with locations throughout the
14 United States, including in Placer County, California.

15 4. On or about March 5, 2018, Plaintiff began employment with the Company as a non-
16 exempt employee in Roseville, California. Plaintiff is still currently employed by Defendants.

17 **DOE DEFENDANTS**

18 5. Plaintiff does not know the true names or capacities, whether individual, partner or
19 corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
20 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
21 when the true names and capacities are known. Plaintiff is informed and believes and, based thereon
22 alleges, that each of said fictitious Defendants was responsible in some way for the matters alleged
23 herein and proximately caused Plaintiff to be subject to the illegal employment practices, wrongs and
24 injuries complained of herein.

25 **AGENCY STATUS OF EACH DEFENDANT**

26 6. At all times herein mentioned, each of said Defendants participated in the doing of the
27 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
28 and each of them, were the agents, servants and employees of each of the other Defendants, as well as

1 the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
2 of said agency and employment.

3 7. Plaintiff is informed and believes and, based thereon alleges, that at all times material
4 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of,
5 or working in concert with each of the other co-Defendants and was acting within the course and scope
6 of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and
7 omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and
8 ratified said acts, conduct, and omissions of the acting Defendants.

9 8. At all times herein mentioned, Defendants, and each of them, were members of, and
10 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
11 of, and in pursuance of, said joint venture, partnership and common enterprise.

12 9. At all times herein mentioned, the acts and omissions of various Defendants, and each of
13 them, concurred and contributed to the various acts and omissions of each and all of the other
14 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
15 mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein.
16 At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and
17 omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

18 **CLASS ALLEGATIONS**

19 10. **Class Definition:** The named individual Plaintiff brings this action individually and on
20 behalf of the Class pursuant to FRCP 23. Plaintiff proposes the following class and subclass:

- 21 **a.** All current and former California employees of Defendants who received any wage
22 statements from Defendants at any time from September 4, 2017, through the present (this
23 group of individuals shall hereinafter be collectively referred to as the “Class” or “Class
24 Members”);
- 25 **b.** All current and former non-exempt California employees of Defendants who were paid any
26 “FLSA True Up” wages from Defendants at any time from September 4, 2017, through the
27 present (this group of individuals shall hereinafter be collectively referred to as the “FLSA
28 True Up Wage Statement Sub-Class”); and

1 c. All current and former non-exempt California employees of Defendants who were paid any
2 "Sunday Worked Premium" wages from Defendants at any time from September 4, 2017,
3 through the present (this group of individuals shall hereinafter be collectively referred to as
4 the "Sunday Worked Premium Wage Statement Sub-Class").

5 11. **Numerosity:** The members of the Class are so numerous that joinder of all members
6 would be impractical, if not impossible. The identity of the members of the Class is readily
7 ascertainable by review of Defendant's records, including payroll records. Plaintiff is informed and
8 believe, and based thereon alleges, that Defendant failed to provide proper payroll records in violation of
9 Labor Code § 226.

10 12. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
12 attorneys are ready, willing and able to fully and adequately represent the Class and individual Plaintiff.
13 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently
14 have a number of wage-and-hour class actions pending in California courts.

15 13. **Common Question of Law and Fact:** There are predominant common questions of law
16 and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
17 Defendants failing to provide accurate, itemized wage statements in violation of Labor Code § 226.

18 14. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class.
19 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §
20 226. As with other non-exempt California employees, Plaintiff was not provided proper and accurate
21 itemized wage statements. First, Defendants violated Labor Code § 226(a) as to Plaintiff and Class
22 Members by failing to identify the applicable rate of pay and hours worked whenever "FLSA True Up"
23 wages are paid. Plaintiff is informed and believes and based thereon alleges that the FLSA True Up
24 wages are paid based on an hourly rate of pay. However, whenever such wages were paid, the wage
25 statements do not show what rate was used and what hours were applied to the calculation of such
26 wages. Second, Defendants violated Labor Code § 226(a) as to Plaintiff and Class Members who were
27 paid "Sunday Worked Premium" wages. In particular, when such wages were paid, the wage statements
28 issued by Defendants did not identify the accurate total hours worked. Rather, when the hours shown on

1 the wage statements are added up, they do not appear to add up to the actual total hours worked.
2 Therefore, Defendants violated Labor Code§ 226(a) as to Plaintiff and Class Members as Defendants
3 failed to identify the correct total hours worked. Third, the wage statements issued to Plaintiff and Class
4 Members failed to identify the accurate legal name of the employer. Specifically, the wage statements
5 issued to all employees identified the employer as "Verizon" and/or "Cellco Partnership." However, no
6 such name appears on the Secretary of State's website. As such, all wage statements issued to every
7 employee violates Labor Code§ 226(a). Therefore, Plaintiff is a member of the Class and have suffered
8 the alleged violations of California Labor Code § 226.

9 15. The Labor Code and regulations upon which Plaintiff base these claims are broadly
10 remedial in nature. These laws and labor standards serve an important public interest in establishing
11 minimum working conditions and standards in California. These laws and labor standards protect the
12 average working employee from exploitation by employers who may seek to take advantage of superior
13 economic and bargaining power in setting onerous terms and conditions of employment.

14 16. The nature of this action and the format of laws available to Plaintiff and members of the
15 Class identified herein make the class action format a particularly efficient and appropriate procedure to
16 redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the
17 corporate Defendant would necessarily gain an unconscionable advantage since it would be able to
18 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior
19 financial and legal resources. Requiring each Class member to pursue an individual remedy would also
20 discourage the assertion of lawful claims by employees who would be disinclined to file an action
21 against their former and/or current employer for real and justifiable fear of retaliation and permanent
22 damage to their careers at subsequent employment.

23 17. The prosecution of separate actions by the individual Class members, even if possible,
24 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
25 Class members against the Defendant and which would establish potentially incompatible standards of
26 conduct for the Defendant, and/or (b) adjudications with respect to individual Class members which
27 would, as a practical matter, be dispositive of the interest of the other Class members not parties to the
28 adjudications or which would substantially impair or impede the ability of the Class members to protect

1 their interests. Further, the claims of the individual members of the Class are not sufficiently large to
2 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

3 18. Such a pattern, practice and uniform administration of corporate policy regarding illegal
4 employee compensation described herein is unlawful and creates an entitlement to recovery by the
5 Plaintiff and the Class identified herein, in a civil action for all damages and or penalties pursuant to
6 Labor Code § 226 including interest thereon, applicable penalties, reasonable attorney's fees, and costs
7 of suit according to the mandate of California Labor Code § 226 and Code of Civil Procedure § 1021.5.

8 19. Proof of a common business practice or factual pattern, which the named Plaintiff
9 experienced and is a representative of, will establish the right of each of the members of the Class to
10 recovery on the causes of action alleged herein.

11 20. This action is brought for the benefit of the entire Class and will result in the creation of a
12 common fund.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226**

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

16 21. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 20 as though fully
17 set forth herein.

18 22. Defendants failed in their affirmative obligation to provide accurate itemized wage
19 statements. As with other non-exempt California employees, Plaintiff was not provided proper and
20 accurate itemized wage statements. First, Defendants violated Labor Code § 226(a) as to Plaintiff and
21 Class Members by failing to identify the applicable rate of pay and hours worked whenever "FLSA True
22 Up" wages are paid. Plaintiff is informed and believes and based thereon alleges that the FLSA True Up
23 wages are paid based on an hourly rate of pay. However, whenever such wages were paid, the wage
24 statements do not show what rate was used and what hours were applied to the calculation of such
25 wages. Second, Defendants violated Labor Code § 226(a) as to Plaintiff and Class Members who were
26 paid "Sunday Worked Premium" wages. In particular, when such wages were paid, the wage statements
27 issued by Defendants did not identify the accurate total hours worked. Rather, when the hours shown on
28 the wage statements are added up, they do not appear to add up to the actual total hours worked.

1 Therefore, Defendants violated Labor Code § 226(a) as to Plaintiff and Class Members as Defendants
2 failed to identify the correct total hours worked. Third, the wage statements issued to Plaintiff and Class
3 Members failed to identify the accurate legal name of the employer. Specifically, the wage statements
4 issued to all employees identified the employer as "Verizon" and/or "Cellco Partnership." However, no
5 such name appears on the Secretary of State's website. As such, all wage statements issued to every
6 employee violates Labor Code § 226(a). Therefore, Defendants violated Labor Code § 226 by not
7 providing the requisite itemized wage statements to Plaintiff and other class members.

8 23. Such a pattern, practice and uniform administration of corporate policy as described
9 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein,
10 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon,
11 attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment to be entered in Plaintiff's favor and against
14 Defendants, and each of them, as follows:

- 15 1. For an order certifying the proposed Class;
 - 16 2. For an order appointing Plaintiff as the representative of the Class;
 - 17 3. For an order appointing Counsel for Plaintiff as Class counsel;
 - 18 5. Upon the First Cause of Action, for penalties and/or damages pursuant to Labor Code §
19 226, *et seq.*, for interest, costs, and for attorney's fees;
 - 20 6. On all causes of action, for prejudgment interest at the prevailing legal rate;
 - 21 7. On all causes of action, for attorney's fees and costs as provided by California Labor
22 Code § 226 and Code of Civil Procedure § 1021.5 and for such other and further relief the Court may
23 deem just and proper.
 - 24 8. Costs of suit; and
 - 25 9. Such other and further relief as the Court may deem proper.
- 26
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1 DATED: September 4, 2018

DIVERSITY LAW GROUP, P.C.

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By: _____
 /s/ Larry W. Lee
 Larry W. Lee
Attorneys for Plaintiff and the Class

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The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
JESSICA GILLESPIE, individually and on behalf of all those similarly situated
(b) County of Residence of First Listed Plaintiff Sacramento
(c) Attorneys (Firm Name, Address, and Telephone Number)
Larry W. Lee and Mai Tulyathan, Diversity Law Group, 515 S. Figueroa St., Ste 1250, Los Angeles, CA 90071;
William L. Marder, Polaris Law Group, 501 San Benito St., Ste 200, Hollister, CA 95023;
Dennis Hyun, Hyun Legal, 515 S. Figueroa St., Ste 1250, LA, CA 90071

DEFENDANTS
VERIZON, an unknown corporate entity; CELLCO PARTNERSHIP, an unknown corporate entity; and DOES 1 through 50, inclusive
County of Residence of First Listed Defendant Somerset County, NJ
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State [X] 1 [] 1
Citizen of Another State [] 2 [X] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL INJURY, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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
6 Multidistrict Litigation - Transfer
7 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Class Action Fairness Act, 28 U.S.C. § 1332(d)
Brief description of cause:
Violation of California Labor Code section 226(a)

VII. REQUESTED IN COMPLAINT:
[X] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ Over \$5 million
JURY DEMAND: [] Yes [X] No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 09/04/2018 SIGNATURE OF ATTORNEY OF RECORD

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Verizon, Cellco Partnership Failed to Pay FLSA True Up Wages, Provide Accurate Wage Statements](#)
