

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**KIMBERLY HAUGHT,
on behalf of herself and all others similarly
situated**

Plaintiffs,

v.

THE WIRELESS CENTER, INC.

Defendant.

Case No: _____

JURY TRIAL DEMANDED

COLLECTIVE ACTION COMPLAINT

Plaintiff Kimberly Haught (“Haught” or “Plaintiff”), by counsel, brings this action, on behalf of herself and all other similarly situated Managers and Managers in Training, to recover unpaid wages and overtime, liquidated damages and attorneys’ fees from her former employer, The Wireless Center, Inc. (“Wireless Center” or “Company” or Defendant”), for violations of the Fair Labor Standards Act (hereinafter “FLSA”), 29 U.S.C. § 201 *et seq.* By virtue of Defendant’s store staffing model, Plaintiff and others similarly situated were deemed exempt employees despite never regularly supervising the work of two full time employees or their equivalent. Defendant is a large specialty-based retailer of wireless communication products, services and accessories, that has operated over 90 locations throughout Virginia, Maryland, Pennsylvania, Ohio, Kentucky, New York, New Jersey, Washington D.C., and West Virginia., employing more than 200 people. At all times alleged in this Complaint, Plaintiff, and all others similarly situated, were the victims of a uniform policy and practice to deprive them of lawful

wages and earned overtime in willful violation of the FLSA.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1337 (commerce), 28 U.S.C. § 1331 (federal question) and 29 U.S.C. § 216(b) (FLSA).

2. Venue is proper in this Court under 28 U.S.C. § 1391. The causes of action asserted herein occurred and/or accrued in Hanover County, Virginia. Venue is also appropriate in this Court because Defendant owns and/or operates one or more retail stores in areas surrounding Richmond, Virginia within this Judicial District and Division. In addition, Defendant's unlawful conduct occurred in, among other places, Virginia.

PARTIES

3. Haught is a natural person residing in Tappahannock, Virginia and, at all relevant times asserted in this Complaint, was an employee of Defendant in its retail stores located at 11657 Lakeridge Parkway, Ashland, Virginia and 4915 Richmond Tappahannock Hwy., Aylett, Virginia.

4. Defendant is a an Ohio corporation and is an enterprise, as defined in 29 U.S.C. § 203(r)(1), engaged in business in the State of Virginia, operating retail stores for the sale of wireless communication products, services and accessories throughout Virginia with more than 25 physical retail locations in Virginia, and currently more than 60 locations nationwide. Defendant operates as an authorized, independent retailer of Verizon Wireless services and equipment.

FACTUAL ALLEGATIONS

5. On or about December 3, 2014, Haught became employed by Defendant as a Sales Consultant at its Aylett, Virginia location.

6. In December of 2015, approximately a year after joining the company, Haught was promoted to Manager/Manager in Training at the Ashland, Virginia location.

7. Defendant paid Plaintiff and other similarly situated Managers and Managers in Training a flat salary plus commissions. Plaintiff, and others similarly situated, consistently worked more than 40 hours a week but were deemed exempt by Defendant and not eligible for overtime compensation despite the fact they did not regularly supervise the work of two full time employees or their equivalent.

8. In early May of 2016, Haught's employment with Defendant concluded.

9. Plaintiff, and other similarly situated Managers and Managers in Training were regularly scheduled to work at least 45 hours a week, but often were required to work more.

10. Plaintiff, and other similarly situated Managers and Managers in Training, were informed by Defendant that the store was to be regularly staffed with less than 80 weekly hours of non-exempt sales consultant time so as to prevent the accrual of overtime to said sales consultants.

11. To the extent the allotted sales consultant time was inadequate to meet store needs, the Plaintiff and other similarly situated, were required to make up for any shortfalls leading to weekly hours worked well in excess of 40.

12. Plaintiff, and others similarly situated, regularly oversaw less than 80 weekly hours of subordinate hours worked.

13. Defendant employed numerous other Managers and Managers in Training who were similarly situated to Plaintiff in that they were classified as exempt despite their working at Wireless Center locations where they regularly oversaw less than 80 hours of subordinate work time.

14. As a Manager in Training and/or as Store Managers, Plaintiff, and others similarly situated, regularly worked hours in excess of forty hours per week.

15. The day to day duties of Plaintiff, and others similarly situated were non-office and manual and predominantly sales/storefront related, but also included training new hires, cleaning, making bank deposits and reviewing store sales reports. Plaintiff, and others similarly situated, had no authority to hire or fire employees and played little to no role in any related decision-making process.

16. Defendant paid, and on information and belief, continues to pay, its Manager and Manager in Training employees based on their titles and method of compensation (“salary, exempt”) rather than based on their actual eligibility for any FLSA exemption category.

17. Plaintiff and all others similarly situated were not exempt from overtime pay under FLSA because they manifestly were not employed in a bona fide executive, administrative or professional capacity, nor did they qualify as exempt Retail/Service Establishment employees. Rather, Plaintiff, and all others similarly situated did not regularly supervise two full time employees and did not earn more than one-half of their total compensation from commissions.

18. Defendant’s classifications and its policy and practice with respect to the payment of overtime wages to Plaintiff, and all others similarly situated violated the FLSA, and deprived Plaintiff and all others similarly situated of the lawful wages to which they were entitled.

COLLECTIVE CLAIMS UNDER FLSA

19. Plaintiff brings this action on her own behalf and as collective action on behalf of others similarly situated to recover unpaid compensation, in the form of overtime compensation, pursuant to FLSA. On information and belief, for at least three years prior to filing this complaint, Defendant has had a uniform policy and practice of requiring its Managers in

Training and Managers to work well in excess of 40 hours per week for a salary without overtime compensation. Plaintiff, and others similarly situated, are or were employed with the Defendant in positions denominated Manager and/or Managers in Training but Defendant's own store staffing model makes application of the Executive Exemption impossible as Plaintiff and other similarly situated employees did/do not regularly supervise the work of two or more full time employees or their equivalent. Additionally, Plaintiff, and others similarly situated did not earn more than one-half of their total compensation from commissions and thus could not be exempt Retail/Service Establishment employees.

20. On information and belief Defendant manages the classification of employees for FLSA purposes, including store managers, in a centralized and uniform fashion, from its Cleveland, Ohio home office in all states in which Defendant operates.

21. On further information and belief, Defendant's payroll function is operated in a centralized and uniform manner from its Cleveland, Ohio home office and Plaintiffs' paychecks were regularly issued from this centralized payroll operation. On information and belief, paychecks for all similarly situated employees were issued from the same, centralized payroll department in Defendant's Cleveland, Ohio home office for all states in which Defendant operates.

22. Damages owed to Plaintiff, and others similarly situated, include unpaid overtime, unpaid overtime on commissions, and any unpaid overtime associated with any work performed off-the-clock.

23. Plaintiff and others similarly situated Managers and Managers in Training were paid a specified salary and were not paid any overtime compensation notwithstanding the fact that they worked in excess of 40 hours per week and the vast majority of those hours were spent

performing non-managerial duties. Plaintiff, and others similarly situated, who elect to participate in this action seek unpaid overtime wage compensation, an equal amount of liquidated damages, attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

24. Defendant is an enterprise engaged in commerce or in the production of goods for commerce as defined by § 203(s)(1) of the FLSA.

25. Defendant is an employer as defined by § 203(d) of the FLSA.

26. At all times material to this action, the Plaintiff, and others similarly situated, are and/or were employees of Defendant as defined by § 203(e)(1) of the FLSA, and worked for Defendant within three years preceding the filing of this action.

27. The provisions set forth in §§ 206 and 207, respectively, of the FLSA apply to Defendant, and all members of the Plaintiff collective herein were covered by §§ 206 and 207 of the FLSA while they were employed by Defendant.

28. At all times relevant to this action, Defendant employed Plaintiff, and others similarly situated in the capacity of Managers in Training and/or Store Managers.

29. The Plaintiff, and all others similarly situated were required to perform non-exempt work without overtime compensation.

30. Defendant has knowingly and/or intentionally and/or recklessly failed and/or refused to pay the Plaintiffs and others similarly situated overtime compensation as required by the provisions of the FLSA.

31. For at least three years, the Defendant has been aware of the requirements of the FLSA and its corresponding regulations, notwithstanding it willfully refused and failed to pay its store managers and/or managers in training overtime wages as required by FLSA.

32. Defendant has failed, and on information and belief, continues to fail, to maintain accurate time records for Plaintiff, and all other similarly situated employees, as required by the FLSA.

33. Defendant willfully violated the FLSA by failing to keep accurate time records of all hours worked by Plaintiff, and all other similarly situated employees.

34. The foregoing conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), as Defendant knew or showed reckless disregard for the fact that its compensation practices were in violation of these laws.

35. Plaintiff, and all other similarly situated present and former employees, are entitled to statutory damages equal to the mandated overtime premium pay within the three (3) (or more) years preceding the filing of this Complaint.

36. Defendant has shown a reckless disregard for the FLSA's overtime requirements. Although Defendant had an obligation to make proper inquiry into their FLSA compliance obligations, it failed to do so or, having inquired, it ignored or willfully attempted to avoid its legal obligations.

37. Moreover, Defendant instructed its Store Managers and Managers in Training that they had complied with the FLSA and was not required to pay them overtime under federal law. As such, Plaintiff, and all other similarly situated employees were misled into believing that Defendant was in full compliance with the FLSA laws concerning payment of overtime compensation.

38. Defendant has not acted in good faith with respect to the failure to pay overtime compensation. Defendant had no legitimate reason to believe their actions and omissions were *not* a violation of the FLSA, thus entitling Plaintiff, and those similarly situated, to recover an

award of liquidated damages in an amount equal to the amount of unpaid overtime compensation described above.

39. There are numerous employees and former employees of Defendant who are similarly situated to Plaintiff who have been denied overtime compensation in violation of the FLSA, who would benefit from the issuance of Court-Supervised Notice and opportunity to join the present lawsuit. Those similarly situated employees and former employees are best known to Defendant, they are readily identifiable from Defendant's records, and their overtime hours have been recorded and maintained. Accordingly, all Managers, Managers in Training and former Managers and Managers in Training who are or have been employed with Defendant for the last three years, who have worked overtime hours and who have not been compensated overtime wages, and who regularly supervised less than 80 weekly hours of subordinate employee time, should be given Court-Supervised Notice of this lawsuit and opportunity to join herein.

40. Plaintiff's consent to become a party plaintiff in this representative FLSA action pursuant to 29 U.S.C. § 216(b), as evidenced by Plaintiff's "Consent to Become Party to Collective Action Under 29 U.S.C. § 216," filed herewith.

COUNT I
Violation of the Fair Labor Standards Act
(Collective Action)

41. Plaintiff re-alleges and incorporates the preceding and subsequent paragraphs as if fully set forth herein.

42. Defendant violated Plaintiff's, and all others similarly situated, rights under the FLSA by failing to pay them overtime compensation for hours worked in excess of forty (40) hours for each workweek that they worked as Managers and/or Managers in Training.

43. Plaintiff, and all others similarly situated, were entitled to all the rights and protections of the FLSA and Defendant's failure to pay them overtime was in violation of the FLSA.

44. Defendant acted willfully and with reckless disregard for Plaintiff's, and others similarly situated, rights under the FLSA.

45. Plaintiff, and all others similarly situated, are entitled to back pay for all overtime hours worked during their employment with Defendant in an amount equal to one and one-half times their regular rate(s) of pay.

46. As a result of Defendant's willful and reckless actions, Plaintiff and all others similarly situated, are entitled to recover liquidated damages pursuant to 29 U.S.C. § 216(b).

47. Plaintiff, and all others similarly situated, are entitled to recover attorney's fees pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, individually and on behalf of all other similarly situated employees and former employees of Defendant, pray for the following relief:

- A. At the earliest possible time, she be allowed to give notice, or that the Court issue such Notice, to all other potential Plaintiffs who may be similarly situated informing them that this action has been filed, the nature of the action, and of their right to opt-into this lawsuit if they worked overtime but were not paid overtime wages therefore, pursuant to 29 U.S.C. § 216(b);
- B. Designate this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216(b);
- C. Enter judgment declaring that the acts and practices complained of herein are

violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*;

- D. Enter judgment that the Plaintiff, and all others similarly situated, be awarded damages in the amount of their respective unpaid overtime wage compensation, plus an equal amount of liquidated damages pursuant to 29 U.S.C. § 216(b), and prejudgment interest;
- E. Enter judgment that Defendant's violations of the FLSA were willful;
- F. Enter judgment awarding Plaintiff, and those similarly situated, reasonable attorney's fees and costs of this suit, pursuant to 29 U.S.C. § 216(b);
- G. Enter judgment for post-judgment interest at the applicable legal rate;
- H. Grant leave to amend to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; to add claims under applicable state and federal laws, including claims for minimum wages pursuant to 29 U.S.C. § 206; and/or to add other Defendants who meet the definition of Plaintiffs' employer, pursuant to 29 U.S.C. § 203(d);
- I. Enjoin Defendant from future violations of the FLSA through the mandated payment of overtime compensation to similarly situated employees for hours worked in excess of forty (40) per week;
- J. Such other legal and equitable relief including, but not limited to, any injunctive and/or declaratory relief, to which they may be entitled; and
- K. Such further relief as this Court deems just and appropriate.

Trial by Jury is Demanded.

Respectfully submitted,

**KIMBERLY HAUGHT, ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY
SITUATED**

By: /s/Paul M. Falabella
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Zev H. Antell (VSB No. 74634)
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Attorneys for Plaintiffs

CIVIL COVER SHEET

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

KIMBERLY HAUGHT, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

BUTLER ROYALS, Harris D. Butler, Zev Antell, Paul M. Falabella
140 Virginia Street, Suite 302, Richmond, VA 23219
(804) 648-4848

DEFENDANTS

THE WIRELESS CENTER, INC.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify) _____
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 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):

Fair Labor Standards Act 29 U.S.C. §201 et seq.

Brief description of cause:

Payment of overtime wages

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
11/30/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
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KIMBERLY HAUGHT,
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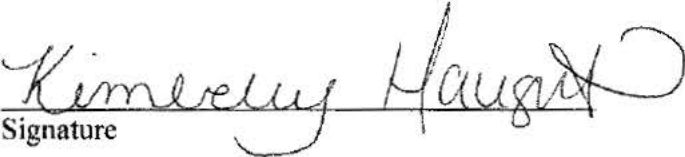
THE WIRELESS CENTER, INC.,

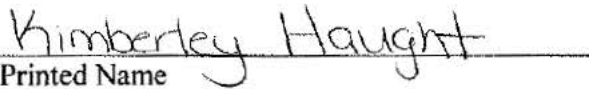
Defendant.

Case No. _____

**CONSENT TO BECOME PARTY TO
COLLECTIVE ACTION UNDER 29 U.S.C. § 216**

I hereby consent to opt-in to become a plaintiff in this representative Fair Labor
Standards Act ("FLSA") action pursuant to 29 U.S.C. § 216(b).


Signature


Printed Name

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [The Wireless Center Hit with Employee Misclassification, Unpaid OT Suit](#)
