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BEFORE THE JUDICIAL ARBITRATION AND MEDIATION SERVICES

MARY SUMP and JEANNIE CRAIG-
PETERSON, individually, and on behalf
of the class of similarly-situated persons,

Plaintiffs,

v.

AFFILIATED COMPUTER SERVICES,
INC.,

Defendant.

NO. 1160017354

SECOND AMENDED CLASS ACTION
COMPLAINT FOR UNPAID WAGES

INTRODUCTION

1. Plaintiffs bring this class action on behalf of themselves and all similarly situated employees of Affiliated Computer Services, Inc. (“ACS”), for unpaid wages under the Washington Wage Statutes and for deceptive and unfair trade practices under the Washington Consumer Protection Act.

PARTIES

2. Plaintiff Mary Sump is a Washington resident and worked for Defendants in King County, Washington.

3. Plaintiff Jeannie Craig-Peterson is a Washington resident and worked for Defendants in Thurston County, Washington.

4. Defendant ACS is a foreign corporation with headquarters in Dallas, Texas.

1 16. Plaintiff Mary Sump was employed by Defendant in 2007 as a customer
2 care representative to receive and process customer phone calls.

3 17. Plaintiff Jeannie Craig-Peterson was employed by Defendant from 2005
4 to 2007 as a customer care representative to receive and process customer phone
5 calls.

6 18. Defendant paid Plaintiffs according to a compensation system called
7 “Activity Based Compensation,” which it refers to as “ABC.”

8 19. Defendant’s ABC compensation plan is detailed, complex, and difficult
9 for a reasonable person in the position of its customer care employees to understand.

10 20. Defendant does not adequately explain its ABC compensation plan to
11 employees.

12 **Unpaid Work Time**

13 21. Under the ABC compensation plan, Defendant paid Plaintiffs a “piece
14 rate” for each inbound customer phone call she received.

15 22. The piece rate Defendant paid Plaintiffs varied from less than one dollar
16 to almost two dollars per call, and was frequently changed.

17 23. The piece rates that Defendant paid to Plaintiffs was intended to
18 compensate them for the time they spent taking inbound calls.

19 24. Under the ABC plan, Defendant promised to pay Plaintiffs an hourly rate
20 for “Non-Transactional Work Activity.”

21 25. The hourly rate promised for this work was called “Supplemental Pay”
22 and it was set above the legal minimum wage. In 2007, Plaintiffs were to be paid nine
23 dollars per hour in Supplemental Pay.

24 26. Defendant required Plaintiffs to get pre-approval for and manually report
25 all Non-Transactional Work Activity in order to be paid Supplemental Pay.

26 27. Defendant did not pay Plaintiffs Supplemental Pay for all of their “Non-
Transactional Work Activity.”

1 28. Under the ABC plan, in any workweek in which the Plaintiffs' piece rate
2 pay, combined with any approved and reported hourly work, computed to less than the
3 legal minimum wage, Defendant paid Plaintiffs "Subsidy Pay."

4 29. Defendant calculated Subsidy Pay so that Plaintiffs' total pay for such
5 workweeks was equivalent to the legal minimum wage for each hour recorded during
6 that workweek.

7 30. In such workweeks, Plaintiffs did not receive the Supplemental Pay rate
8 that was promised them for Non-Transactional Work Activity, but instead received only
9 the legal minimum wage.

10 31. Plaintiffs typically spent 20% to 30% of their workday performing tasks
11 other than Transactional Work, i.e., taking inbound phone calls.

12 32. Defendant referred to this time as "variance," and computed it by
13 deducting the Plaintiffs' time spent in transactional work from the time Plaintiffs were
14 "clocked in" during the day.

15 33. Except in workweeks in which Plaintiffs received substantial Subsidy
16 Pay, Defendant did not pay Plaintiffs for this "variance" time.

17 **Unpaid Breaks**

18 34. Defendants did not pay Plaintiffs at their hourly rate for the time they
19 spent on mandatory rest breaks.

20 35. Defendants claim to have "factored in" rest breaks when setting piece
21 rates.

22 36. In any given workday, when Plaintiffs took a rest break, they made less
23 pay than if they had not taken any rest break.

24 37. Except in workweeks in which Plaintiffs received sufficient Subsidy Pay,
25 Plaintiffs' mandatory rest breaks were unpaid.
26

1 **Pre-Shift Work**

2 38. Each workday, in order to perform their jobs for Defendant, Plaintiffs
3 were required to find an available computer, start or unlock the computer, enter one or
4 more passwords, and open one or more programs and/or websites, including the
5 Defendant's "Front End Payroll System" or "FEPS," before they could clock in for work.

6 39. These preliminary activities were necessary in order for Plaintiffs to
7 perform their principal work activities and were part of the ordinary course of
8 Defendant's business.

9 40. Defendant sometimes instructed customer care employees to arrive
10 early for their scheduled shifts in order to perform these preliminary activities.

11 41. The time Plaintiffs spent performing these preliminary activities could
12 easily have been recorded by Defendant.

13 42. Plaintiffs usually spent at least five minutes and often 10 or 20 or more
14 minutes performing this preliminary pre-shift work each day.

15 43. Defendants did not pay Plaintiffs for this pre-shift preliminary work.

16 **CLASS ACTION ALLEGATIONS**

17 44. Plaintiffs bring this action as a class action under CR 23(a) and (b)(3) on
18 behalf of themselves and all others similarly situated. Plaintiffs seek to represent the
19 following classes and subclasses:

20 **Class 1: The Verizon Wireless ABC Class**

21 All people who have been employed by Defendant Affiliated Computer
22 Services, Inc., as customer care representatives in any of Defendant's
23 Verizon Wireless business units in Washington State and who were paid
24 under Defendant's "Activity Based Compensation" or "ABC" plan.

25 **Class 2: The Rest Break and CPA Class**

26 All people who have been employed by Defendant Affiliated Computer
Services, Inc., in Washington State and who were paid under
Defendant's "Activity Based Compensation" or "ABC" plan.

1 **Class 3: The Pre-Shift Work Class**

2 All people who have been employed by Defendant Affiliated Computer
3 Services, Inc., in any of Defendant's business units in Washington State
4 and who were required to spend time clocking in for work through
 Defendant's FEPS payroll system for which they were not paid.

5 45. Each of the proposed classes consists of over 1,000 members, and
6 individual joinder would be impracticable.

7 46. Plaintiffs' claims are typical of the claims of the proposed classes
8 because they arise from Defendant's policies and practices that were equally
9 applicable to the Plaintiffs and the classes.

10 47. The Plaintiffs' claims and those of the class raise common legal and
11 factual issues because Defendant's pay practices applied to all of members of the
12 class.

13 48. Plaintiffs would adequately represent the interests of the class because
14 they do not have interests which are adverse to the members of the class and have
15 retained competent counsel to prosecute their claims and those of the class.

16 49. Common issues of law and fact predominate over any individual issues,
17 including but not limited to:

18 (a) Whether Plaintiffs and other Verizon Wireless customer care
19 employees are entitled under state law to be paid for all of the time they were on duty
20 and not engaged in transactional work.

21 (b) Whether Plaintiffs and other Verizon Wireless customer care
22 employees are entitled to be paid the pre-determined and promised Supplemental Pay
23 rate for their Non-Transactional Work Activity.

24 (c) Whether Defendant compensated Plaintiffs and other Washington
25 employees under the ABC pay scheme for the time they spent on mandatory rest
26 breaks.

1 (d) Whether Plaintiffs and other similarly-situated employees are
2 entitled to be paid for the time spent performing preliminary activities prior to clocking
3 in to Defendant's payroll system.

4 (e) Whether there is any bona fide dispute as to whether Defendant
5 was obligated to pay Plaintiffs and similarly-situated employees for "variance time," the
6 time they spent on mandatory rest breaks, and/or preliminary activities.

7 (f) Whether Plaintiffs and similarly-situated employees are entitled to
8 double damages under the Washington Wage Statutes for willful withholding of wages.

9 (g) Whether Defendant's ABC plan constitutes a deceptive act or
10 practice under the Washington Consumer Protection Act.

11 (h) Whether Plaintiffs and other similarly-situated employees are
12 entitled to treble damages under the Washington Consumer Protection Act.

13 50. A class action is superior to any other methods for the fair and efficient
14 adjudication of Plaintiffs' claims because: (A) the value of individual damages claims
15 are likely to be small given the total amount of uncompensated work time of each
16 individual worker, and class members would have little ability to individually prosecute
17 his or her claim; (B) there is no known litigation already commenced concerning the
18 claims set forth herein; (C) the claims are conveniently concentrated in this forum,
19 where a significant amount of the subject work was performed under the complained
20 of policy and/or practice, and witnesses to the complained of policy and/or practice
21 reside in the forum; and (D) there are no difficulties likely to be encountered in the
22 management of a class action. In this regard, Defendants' business records can
23 supply the names, current or last known addresses and telephone numbers of all
24 workers who were are members of the proposed classes and hence, the identity of the
25 members of the class. Defendants' records can also supply the hourly rates of pay
26 during the applicable periods for the workers.

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CLAIMS

51. Defendant's failure to pay Plaintiffs and the members of Class 1 for all hours worked violates the Washington Minimum Wage Act, RCW 49.46 et seq., and the Washington Wage Statutes, RCW 49.52.050 and 070.

52. Defendant's failure to pay Plaintiffs and the members of Class 2 for rest breaks violates the Washington Wage Statutes, RCW 49.52.050 and 070, RCW 49.12 and WAC 296-126-092.

53. Defendant's design, implementation, explanation, and operation of its ABC plan constitutes an unfair or deceptive act or practice under the Washington Consumer Protection Act, RCW 19.86.030 as to Plaintiffs and the members of Class 2.

54. Defendant's failure to pay Plaintiffs and the members of Class 3b for preliminary work activities violates the Washington Minimum Wage Act, RCW 49.46 et seq., and the Washington Wage Statutes, RCW 49.52.050 and 070.

DAMAGES

55. As a result of the forgoing, the Plaintiffs have suffered lost wages and economic loss.

REQUEST FOR RELIEF

56. Plaintiffs request the following relief:

- (a) Certification of the proposed classes;
- (b) Judgment against Defendants for the wages due, in an amount to be proven at trial;
- (c) An award of double damages under the Washington Wage Statutes;
- (d) An award of treble damages under the Consumer Protection Act;
- (e) An injunction against ACS requiring it to pay employees for all hours worked;

1 (f) An award of reasonable attorney fees and costs of suit under the
2 Washington Wage Statutes, the Washington Minimum Wage Act, and/or the
3 Consumer Protection Act.

4 (g) Pre-judgment interest on all amounts awarded as allowed by law;

5 (h) Post judgment interest;

6 (i) Such other relief as the Court finds just and equitable.

7 DATED this ____ day of November, 2009.

8
9 BRESKIN JOHNSON & TOWNSEND PLLC

10
11 By: _____ /s/
12 Daniel F. Johnson, WSBA No. 27848
13 Attorneys for Plaintiffs
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