

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**Yael Almonte, Nestor Batista,  
Jonathan Bencosme, Victor  
Marte, Marcos Ortiz, Eliezer  
Quezada, and Noel Quezada,**

Plaintiffs,

Civil Action No.: 20-8848

- against -

**COMPLAINT**

**Washington Heights Wireless,  
Inc.; Fordham Wireless Plaza,  
Inc.; East Side Wireless Plaza,  
Inc.; STP Rockaway, Inc., Bronx  
Metro Wireless, Inc., Manhattan  
Metro Wireless, Inc., collectively  
d/b/a Metro by T-Mobile f/k/a  
MetroPCS and Elliot Dabah, an  
Individual,**

Defendants.

Plaintiffs Yael Almonte, Nestor Batista, Jonathan Bencosme, Victor Marte, Marcos Ortiz, Eliezer Quezada, and Noel Quezada (collectively “plaintiffs”) by their attorneys the Law Offices of Mitchell Schley, LLC, complaining of defendants Washington Heights Wireless, Inc., Fordham Wireless Plaza, Inc., East Side Wireless Plaza, Inc., STP Rockaway, Inc., Bronx Metro Wireless, Inc., and Manhattan Metro Wireless, Inc., collectively d/b/a Metro by T-Mobile, f/k/a MetroPCS, and Elliot Dabah, an Individual, (all collectively “defendants” or “Metro”), allege as follows:

**NATURE OF THE ACTION**

1. This action is brought to recover unpaid overtime wages and all available relief pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”), and the New York

Labor Law § 190, *et seq.* (“NYLL”). It has also violated the New York Wage Theft Prevention Act (“WTPA”) by failing to furnish its employees with mandated notices regarding the terms of their employment and the required weekly pay stub with each paycheck showing the regular hours worked, the overtime hours worked, and regular and overtime rates of Pay. Plaintiffs seek

2. Defendants Washington Heights Wireless, Inc., Fordham Wireless Plaza, Inc., East Side Wireless Plaza, Inc., STP Rockaway, Inc., Bronx Metro Wireless, Inc., and Manhattan Metro Wireless, Inc., collectively d/b/a Metro by T-Mobile, f/k/a MetroPCS, (“Metro”) are cellular phone stores located in Manhattan, the Bronx and Brooklyn in New York City.

3. Plaintiffs have been unlawfully deprived of overtime pay and minimum wage because of the employers’ disregard of the requirements of federal and state labor laws.

4. Plaintiffs seek unpaid minimum wages, overtime wages, liquidated damages, pre- and post-judgment interest, injunctive and declaratory relief against defendants’ unlawful actions, and attorneys’ fees and costs pursuant to the FLSA, NYLL and the WTPA.

### **JURISDICTION**

5. This Court has subject matter jurisdiction of this case pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331 and 1337. The Court has supplemental jurisdiction over plaintiffs’ claims under the NYLL pursuant to 28 U.S.C. § 1367.

6. The Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

### **VENUE**

7. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 because a substantial part of the conduct alleged herein occurred in this judicial district and most defendants reside in this district.

## THE PARTIES

### Plaintiffs

8. Plaintiff Yael Almonte is a resident of Mount Vernon, New York.

9. Yael Almonte was employed as a salesperson by Metro at the Washington Heights Wireless, Inc. store located at 1323 St. Nicholas Avenue, New York, NY 10033, from May 2010 until March 2020.

10. At all relevant times, Yael Almonte was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

11. At all relevant times, Yael Almonte was an employee of defendants within the meaning of the FLSA and NYLL.

12. Plaintiff Nestor Batista is a resident of the Bronx, New York.

13. Nestor Batista was employed as a salesperson by Metro at the Washington Heights Wireless, Inc. store located at 1323 St. Nicholas Avenue, New York, NY 10033 and the Fordham Wireless Plaza, Inc. store located at 42 West Fordham Road, Bronx, NY 10468, from 2017 until 2020.

14. At all relevant times, Nestor Batista was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

15. At all relevant times, Nestor Batista was an employee of defendants within the meaning of the FLSA and NYLL.

16. Plaintiff Jonathan Bencosme is a resident of the Bronx, New York.

17. Jonathan Bencosme was employed as a salesperson by Metro at the Fordham Wireless Plaza, Inc. store located at 42 West Fordham Road, Bronx, NY 10468 and the Bronx Metro Wireless, Inc. store located at 318 East 149 Street, Bronx, NY 10451, and the Manhattan

Metro Wireless, Inc. store located at 3421 Broadway, New York, NY 10031, from February 2009 until July 2020.

18. At all relevant times, Jonathan Bencosme was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

19. At all relevant times, Jonathan Bencosme was an employee of defendants within the meaning of the FLSA and NYLL.

20. Plaintiff Victor Marte is a resident of Brooklyn, New York.

21. Victor Marte was employed as a salesperson by Metro at the STP Rockaway, Inc. store located at 2 Belmont Ave, Brooklyn, NY 11212, from September 2018 until March 2020.

22. At all relevant times, Victor Marte was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

23. At all relevant times, Victor Marte was an employee of defendants within the meaning of the FLSA and NYLL.

24. Plaintiff Marcos Ortiz is a resident of the Bronx, New York.

25. Marcos Ortiz was employed as a salesperson by Metro at the Washington Heights Wireless, Inc. store located at 1323 St. Nicholas Avenue, New York, NY 10033, from April 2015 until March 2020.

26. At all relevant times, Marcos Ortiz was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

27. At all relevant times, Marcos Ortiz was an employee of defendants within the meaning of the FLSA and NYLL.

28. Plaintiff Eliezer Quezada is a resident of the Bronx, New York.

29. Eliezer Quezada was employed as a salesperson by Metro at the Bronx Metro Wireless, Inc. store located at 318 East 149 Street, Bronx, NY 10451, from October 2009 until August 2017.

30. At all relevant times, Eliezer Quezada was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

31. At all relevant times, Eliezer Quezada was an employee of defendants within the meaning of the FLSA and NYLL.

32. Plaintiff Noel Quezada is a resident of the Bronx, New York.

33. Noel Quezada was employed as a salesperson by Metro at the East Side Wireless Plaza, Inc. store located at 1197 East 233 Street, Bronx, NY 10466, from 2015 until 2017.

34. At all relevant times, Noel Quezada was an employee engaged in commerce or the production of goods for commerce on behalf of defendants within the meaning of the FLSA.

35. At all relevant times, Noel Quezada was an employee of defendants within the meaning of the FLSA and NYLL.

### **Defendants**

36. Defendants Washington Heights Wireless, Inc., Fordham Wireless Plaza, Inc., East Side Wireless Plaza Inc., STP Rockaway, Inc., Bronx Metro Wireless, Inc., and Manhattan Metro Wireless, Inc. do business as Metro by T-Mobile and formally did business as MetroPCS.

37. Washington Heights Wireless, Inc. has been at all relevant times an employer engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

38. At all relevant times, Washington Heights Wireless, Inc. has had an annual gross volume of sales in excess of \$500,000 within the meaning of the FLSA.

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