

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH BERRY, individually and on
behalf of all similarly situated individuals,

Plaintiff,

MEDIACOM COMMUNICATIONS
CORPORATION,

Defendant.

Case No.:

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

COMES NOW Plaintiff, ELIZABETH BERRY by and through her undersigned attorneys,
and hereby brings this Collective and Class Action Complaint against Defendant, MEDIACOM
COMMUNICATIONS CORPORATION, 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 ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, Iowa Wage Payment Collection Law ("WPCL"), Iowa Code § 91a.1, *et seq.*, and alleged contractual obligations (or unjust enrichment if no contract is found), and other appropriate rules, regulations, statutes, and ordinances.

2. The U.S. Department of Labor ("DOL") recognizes that call center jobs, like those held by Plaintiff in Defendant's call center locations, are homogenous and issued guidance to alert and condemn an employer's non-payment of an employee's necessary boot-up activities. *See* DOL Fact Sheet #64, attached hereto as **Exhibit A** at 2 ("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.") Additionally, the

FLSA requires that “[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities must be kept.” *Id.*

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

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

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 New York.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant resides within this District.

PARTIES

12. Plaintiff is an individual who resides in the County of Polk, City of West Des Moines, Iowa. Plaintiff worked for Defendant as a Customer Service Representative and executed her Consent to Sue form, attached hereto as **Exhibit B**.

13. Defendant is a Delaware corporation with its principal place of business in New York.

14. Defendant operates customer service call center locations in Delaware, Florida, Georgia, Illinois, Iowa, and Minnesota.

15. Defendant is a national cable provider to residential and commercial customers. *See* Job Postings, attached here to as **Exhibit C**.

16. Defendant may accept service via its registered agent CT Corporation System, 28 Liberty Street, New York, NY 10005.

GENERAL ALLEGATIONS

17. Defendant employed Plaintiff as an hourly call center Customer Service Representative (“CSR”). Defendant assigns CSRs, like Plaintiff, to answer customer calls from Defendant’s clients.

18. Plaintiff’s primary job duties included answering calls from Defendant’s clients, retaining customers, providing troubleshooting guidance, and resolving customer issues and billing inquiries.

19. Throughout Plaintiff’s employment with Defendant, Plaintiff regularly worked at least 40 hours per workweek.

20. Regardless of whether Defendant scheduled Plaintiff to work a workweek totaling under 40 hours, a workweek totaling 40 hours, or a workweek totaling in excess of 40 hours, Plaintiff regularly worked a substantial amount of time off-the-clock as part of her job duties as a CSR. Defendant never compensated Plaintiff for this time worked off-the-clock.

21. 29 C.F.R. § 553.221 provides:

Compensable hours of work generally include all of the time during which an employee is on duty on the employer’s premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee’s principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

22. 29 C.F.R. § 790.8 states “[a]mong activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance.”

A. Off-the-Clock Boot-up Work.

23. Defendant tasked Plaintiff with providing customer service to Defendant’s clients by use of Defendant’s telephones, Defendant’s computers, and the programs accessible from Defendant’s computers.

24. To access Defendant's systems, Plaintiff, and all other current and/or former CSRs, must boot up their computers and log in to the various computer programs, servers, and applications, and log in to Defendant's phone systems in order to take their first call at their scheduled shift start time prior to being paid. This boot-up procedure regularly takes up to 10 minutes per shift, or more if technical issues arise. Defendant did not compensate Plaintiff for this time.

25. Regardless of how long the boot-up and log-in process takes, Defendant did not allow Plaintiff, and all other current and/or former CSRs, to clock in before the start of their scheduled shift—and only after they completed the boot-up and log-in process.

26. The boot-up procedure Plaintiff, and all other current and/or former CSRs, must complete before they begin being compensated is the same regardless of which call center location they worked at. The boot-up and log-in procedure is integral and indispensable to the performance of Plaintiff's principal job duties and integral and indispensable to Defendant's business.

27. Thus, the unpaid off-the-clock work performed by Plaintiff, and all other current and/or former CSRs, directly benefits Defendant.

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

28. At all times relevant, Defendant suffered or permitted Plaintiff, and all other current and/or former CSRs, to routinely perform off-the-clock boot-up work by not compensating its employees until after they completed the boot-up and login procedure.

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

30. Despite this, Defendant failed to compensate Plaintiff, and all other current and/or former CSRs, for their off-the-clock, compensable, boot-up work performed in any amount.

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