

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

FORT MYERS DIVISION

CASE NO.:

16 OCT 14 PM 12:52

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

JENNIFER VENANCIO

Plaintiff,

vs.

M&K WIRELESS, Inc.,

Defendant.

2:16-cv-765-FEM-29CM

COMPLAINT

{Jury Trial Demanded}

Plaintiff, JENNIFER VENANCIO (hereinafter, "Plaintiff"), through counsel, sues Defendant, M&K WIRELESS, INC. (hereinafter, "Defendant") and alleges the following:

1. This is an action for unpaid minimum wage and overtime brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, Et. Seq. This Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.
2. Plaintiff is a past employee of Defendant and all events giving rise to this action arose in this Court's venue.
3. Defendant, M&K WIRELESS INC., is a domestic for profit corporation, which conducts business within this judicial district.
4. At all times material hereto, Defendant, M&K WIRELESS, INC., was engaged in commerce in the cellular telephone business. In furtherance of said business, Defendant's employees handled, sold, or otherwise worked with goods or materials that have been moved in or produced for such commerce.

5. At all times material hereto, Defendant M&K WIRELESS INC., was the “Employer” of Plaintiff as that term is defined under the statutes referenced herein as Plaintiff was engaged in interstate commerce by regularly and routinely selling cellular telephones and cellular telephone plans to and servicing customers in this jurisdiction, thereby subjecting Defendant to “Individual” liability under FLSA.
6. In justifiable reliance upon Defendant’s representations and promises, Plaintiff accepted employment and began working for Defendant as a sales representative.
7. Plaintiff worked as a sales representative from January 15, 2015 to February 3, 2016. She made \$8.50 per hour, and worked an average of approximately 50 hours per week¹, but was only compensated for approximately 25 hours per week. As such, she accrued damages representing unpaid straight time, liquidated damages (minimum wage), and unpaid overtime.
 - a. With regards to her unpaid straight time, Plaintiff is owed approximately:
$$55 \text{ weeks worked} \times \$8.50 \text{ per hour} \times 15 \text{ hours of unpaid straight time per week} = \$7,012.50,$$
 - b. With regards to the liquidated damages (unpaid minimum wage), Plaintiff is owed approximately: $55 \text{ weeks worked} \times \$7.25 \text{ per hour} \times 15 \text{ hours of unpaid straight time per week} = \$5,981.25.$
 - c. With regards to her unpaid overtime, Plaintiff is owed approximately: $55 \text{ weeks worked} \times \$8.50 \text{ per hour} \times 1.5 \times 10 \text{ hours of unpaid overtime per week} \times 2 \text{ (liquidated damages)} = \$14,025.00.$

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Plaintiff estimates that she worked these overtime hours every week of her employment.

8. Defendant knowingly and willfully failed to tender payment of wages owed to Plaintiff.
9. Plaintiff complied with all conditions precedent to bringing this suit, or same have been waived or abandoned.
10. Plaintiff has retained the services of the undersigned and is obligated to pay for the legal services provided.

COUNT I
VIOLATION OF FAIR LABOR STANDARDS ACT ("FLSA")

11. Plaintiff reavers and realleges paragraphs 1-6, 7(b), 7(c) and 8-10 herein.
12. Plaintiff alleges this action pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 216 (b), that Plaintiff is entitled to: (i) minimum wage, (ii) overtime pay and (iii) liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.
13. Plaintiff seeks recovery of damages as referenced above and further seeks costs, and attorney's fees pursuant to 29 U.S.C. § 216(b).

WHEREFORE, Plaintiff demands judgment against Defendant plus costs, reasonable attorney's fees, and such other remedy as the court deems just and appropriate.

COUNT II
BREACH OF CONTRACT

14. Plaintiff reavers and realleges paragraphs 1-6, 7(a) and 8-10 herein.
15. Defendant, M&K WIRELESS INC., entered into an oral contract to pay Plaintiff wages for services performed.
16. Plaintiff has been damaged as a result of Defendant's failure to pay the agreed upon wages.

WHEREFORE, Plaintiff demands judgment against Defendant for unpaid wages, interest, attorney's fees and costs pursuant to Fla. Stat. § 448.08 and such other remedies as the court deems just and appropriate.

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