

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

DANA ROHDE and MICHAEL WILSON, on
their own behalf and on the behalf of all others
similarly situated,

Plaintiffs

v.

T-MOBILE USA, INC.,
a Delaware Corporation,

Defendant.

NO.

CLASS ACTION COMPLAINT

Plaintiffs, individually and on behalf of all others similarly situated, by and through
their counsel, for their Complaint against Defendant hereby state and allege as follows:

I. INTRODUCTION

1. Defendant T-Mobile USA, Inc. ("T-Mobile") is a telecommunications company that provides cellular phone services to customers. During the past several years, T-Mobile has employed Washington residents as retail sales associates in stores throughout Washington to sell cellular plans, phones, and accessories to customers. T-Mobile has offered and agreed to pay certain commissions to those employees under a contract that identifies Washington law as controlling. As set forth more fully below, however, T-Mobile has engaged in a systemic

1 course of failing to pay its retail sales associates all of the commissions they have earned. T-
2 Mobile has also engaged in a systemic course of failing to pay earned commissions to those
3 employees in a timely manner. T-Mobile's conduct has violated Washington law.

4 2. Plaintiffs and the proposed class members are current and former retail sales
5 associates who have worked for T-Mobile in Washington and have been victimized by T-
6 Mobile's unlawful compensation practices. This lawsuit is brought as a class action under
7 Washington law to recover unpaid wages owed to the individual Plaintiffs and all other
8 similarly situated employees.

9 II. JURISDICTION AND VENUE

10 3. Venue is proper in King County because Plaintiffs Rohde and Wilson worked
11 for Defendant T-Mobile in King County, where the violations alleged herein occurred. In
12 addition, T-Mobile is headquartered and transacts business in King County and many of the
13 specific acts, as well as the course of conduct alleged herein, occurred in King County.

14 4. Defendant T-Mobile is within the jurisdiction of this Court. T-Mobile does
15 business in Washington and has operations in King County. T-Mobile is registered in
16 Washington and has obtained the benefits of the laws of Washington and the Washington retail
17 and labor markets.

18 5. Defendant T-Mobile is headquartered in King County, Washington and thus is a
19 citizen of Washington for purposes of the Class Action Fairness Act. Federal jurisdiction is
20 inappropriate under the Class Action Fairness Act because two-thirds or more of the members
21 of the proposed plaintiff class in the aggregate are also citizens of Washington.

22 III. PARTIES

23 6. Defendant T-Mobile USA, Inc. is a Delaware corporation, registered to do
24 business in Washington. T-Mobile is headquartered in Washington.

25 7. Named Plaintiffs Dana Rohde and Michael Wilson are citizens of Washington,
26 residents of King County, and worked as retail sales associates for T-Mobile in King County.

IV. FACTUAL ALLEGATIONS

8. Ms. Rohde worked for Defendant T-Mobile as a retail sales associate in King County from approximately February 2011 to December 2014.

9. Mr. Wilson worked for Defendant T-Mobile as a retail sales associate in King County from approximately February 2012 to December 2014.

10. T-Mobile offered and agreed in writing to pay commissions to Plaintiffs and proposed class members when those employees sold goods and services—including but not limited to, data plans, voice plans, phones, and phone accessories—to T-Mobile customers.

11. Plaintiffs and proposed class members sold goods and services on behalf of T-Mobile, thereby earning the commissions that T-Mobile offered and agreed to pay.

12. T-Mobile tracked these sales and earned commissions.

13. T-Mobile routinely failed to pay to Plaintiffs and proposed class members all of the commissions that they earned from their sales.

14. The commissions that T-Mobile owes to Plaintiffs and proposed class members are identifiable from records in T-Mobile's possession, custody, and control.

15. T-Mobile also routinely failed to pay in a timely manner the commissions that Plaintiffs and proposed class members earned.

16. The commissions that T-Mobile failed to pay in a timely manner to Plaintiffs and proposed class members are identifiable from records in T-Mobile's possession, custody, and control.

17. T-Mobile failed to provide Plaintiffs and proposed class members an accurate accounting of all commissions earned. For example, T-Mobile regularly omitted instances of sales made by Plaintiffs and proposed class members that entitled them to promised commissions.

18. T-Mobile knew or should have known that it routinely failed to pay all earned commissions to Plaintiffs and proposed class members.

1 19. T-Mobile knew or should have known that it routinely failed to pay earned
2 commissions to Plaintiffs and proposed class members in a timely manner.

3 20. Plaintiffs' employment at T-Mobile ended in December 2014. T-Mobile has
4 failed to pay Plaintiffs all commissions due on account of their employment.

5 **V. CLASS ACTION ALLEGATIONS**

6 21. Plaintiffs bring this case as a class action pursuant to Washington Civil Rule 23
7 on behalf of the following Class:

8 All Washington citizens who, at any time from May 15, 2009
9 through the date of final judgment, worked as retail sales
10 associates for T-Mobile USA, Inc. in Washington under a
 commission agreement governed by Washington law.

11 Excluded from this Class are Defendant T-Mobile, any entity in which T-Mobile has a
12 controlling interest or which has controlling interest in T-Mobile, and T-Mobile's legal
13 representatives, assignees and successors. Also excluded is any judge to whom this case is
14 assigned and any member of the judge's immediate family.

15 22. Plaintiffs believe there are more than 100 members in the Class, making joinder
16 impracticable.

17 23. There are numerous questions of law and fact common to Plaintiffs and Class
18 members. These questions include, but are not limited to, the following:

- 19 a. Whether T-Mobile has engaged in a common course of failing to pay
20 earned commissions to Plaintiffs and Class members in a timely manner;
21 b. Whether T-Mobile has engaged in a common course of failing to pay all
22 earned commissions owed to Plaintiffs and Class members;
23 c. Whether T-Mobile's commission policies gave rise to unilateral contract
24 offers—that is, promises by T-Mobile to pay commissions to Plaintiffs
25 and Class members when they sold goods and services;
26

- d. Whether the work performed by Plaintiffs and Class members constituted consideration and acceptance of T-Mobile's unilateral contract offers;
- e. Whether T-Mobile breached those contracts;
- f. Whether T-Mobile's failure to pay commissions to Plaintiffs and Class members in a timely manner was willful in violation of RCW 49.52.050;
- g. Whether T-Mobile's failure to pay all wages owed to Plaintiffs and Class members was willful in violation of RCW 49.52.050;
- h. Whether T-Mobile's common course of conduct violated RCW 49.48.010;
- i. Whether T-Mobile failed to keep true and accurate employment records for Plaintiffs and Class members;
- j. Whether T-Mobile failed to furnish proper payroll documents to Plaintiffs and Class members in a timely manner;
- k. Whether T-Mobile's common course of conduct violated WAC 296-128-010;
- l. Whether T-Mobile's common course of conduct violated WAC 296-126-040;
- m. Whether T-Mobile's common course of conduct violated WAC 296-126-023;
- n. Whether T-Mobile's common course of conduct violated WAC 296-128-035; and,
- o. The nature and extent of class-wide injury and the measure of compensation for such injury.

24. Plaintiffs' claims are typical of the claims of the Class members. Plaintiffs, like the Class members, are Washington citizens who worked in Washington as retail sales

1 associates for T-Mobile under a commission agreement governed by Washington law.

2 Plaintiffs' claims, like the claims of the Class members, arise out of the same common course
3 of conduct by T-Mobile and are based on the same legal and remedial theories.

4 25. Plaintiffs will fairly and adequately protect the interests of the Class members.
5 Plaintiffs have retained competent and capable attorneys who are experienced in complex and
6 class action litigation, including employment law. Plaintiffs and their counsel are committed to
7 prosecuting this action vigorously on behalf of the Class and have the financial resources to do
8 so. Neither Plaintiffs nor their counsel have interests that are contrary to or that conflict with
9 those of the proposed Class.

10 26. T-Mobile has engaged in a common course of wage abuse toward Plaintiffs and
11 Class members. The issues arising from this conduct that are common to Plaintiffs and Class
12 members predominate over any individual issues. Adjudication of these common issues in a
13 single action has important and desirable advantages of judicial economy.

14 27. Plaintiffs and Class members have suffered and will continue to suffer harm and
15 damages as a result of T-Mobile's unlawful and wrongful conduct. Absent a class action,
16 however, most Class members would likely find the cost of litigating their claims prohibitive.
17 Class action treatment is superior to other alternatives for the fair and efficient adjudication of
18 the controversy alleged herein. Such treatment will permit a large number of similarly situated
19 persons to prosecute their modest, purely economic, common claims in a single forum
20 simultaneously, efficiently, and without duplication of effort and expense that numerous
21 individual actions would entail. No difficulties are likely to be encountered in the management
22 of this class action that would preclude its maintenance as a class action, and no superior
23 alternative exists for the fair and efficient adjudication of this controversy. The Class is readily
24 identifiable from T-Mobile's records.

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1 36. By the actions alleged above, T-Mobile has violated the provisions of RCW
2 49.48.010 by failing to pay all commissions owed to Plaintiffs and Class members at
3 termination.

4 37. As a result of T-Mobile's unlawful acts, Plaintiffs and Class members have been
5 deprived of compensation in an amount to be determined at trial and, pursuant to RCW
6 49.48.030, Plaintiffs and Class members are entitled to such damages, with interest, as well as
7 attorneys' fees and costs.

8 **VIII. THIRD CLAIM OF RELIEF**

9 **(Willful Refusal to Pay All Wages Owed: RCW 49.52.050)**

10 38. Plaintiffs reallege and incorporate by reference each and every allegation set
11 forth in the preceding paragraphs.

12 39. RCW 49.52.050(2) provides that any employer who "willfully and with intent to
13 deprive the employee of any part of his wages, pays any employee a lower wage than the wage
14 such employer is obligated to pay such employee by any statute, ordinance, or contract" is
15 guilty of a misdemeanor.

16 40. Breaches of an agreement to pay wages owed constitute violations of RCW
17 49.52.050.

18 41. Violations of RCW 49.48.030 constitute violations of RCW 49.52.050.

19 42. By the actions alleged above, T-Mobile has willfully failed to pay wages owed
20 in violation of its unilateral agreements and has willfully failed to pay wages owed at
21 termination in accordance with RCW 49.48.030. Thus, T-Mobile has violated RCW 49.52.050.

22 43. RCW 49.52.070 provides that any employer who violates RCW 49.52.050 shall
23 be liable in a civil action for twice the amount of wages withheld, together with costs of suit
24 and reasonable attorneys' fees.

25 44. As a result of the willful, unlawful acts of T-Mobile, Plaintiffs and Class
26 members have been deprived of compensation in amounts to be determined at trial and,

1 pursuant to RCW 49.52.070, are entitled to recovery of twice such amounts, including interest
2 thereon, attorneys' fees and costs.

3 **IX. FOURTH CLAIM FOR RELIEF**

4 **(Willful Refusal to Pay Wages in a Timely Manner: RCW 49.52.050)**

5 45. Plaintiffs and the Class reallege and incorporate by reference each and every
6 allegation set forth in the preceding paragraphs.

7 46. Washington law requires employers to pay all wages owed to an employee on an
8 established regular pay day at no longer than monthly payment intervals. WAC 296-126-
9 023(3); WAC 296-128-035(3). Employers who pays wages on the basis of a pay period that is
10 less than a month must pay all wages owed to an employee "no later than ten calendar days
11 after the end of the pay period." WAC 296-126-023(4); WAC 296-128-035(4).

12 47. By the actions alleged above, T-Mobile has willfully failed to pay wages owed
13 in the time periods required by WAC 296-126-023 and WAC 296-128-035. Thus, T-Mobile
14 has violated RCW 49.52.050.

15 48. Under RCW 49.52.070, an employer who willfully fails to pay wages in the
16 timeframe required by law is liable for twice the amount of wages owed plus attorneys' fees
17 and costs, even if the employer subsequently pays the employee all of his wages.

18 49. As a result of the willful, unlawful acts of T-Mobile, Plaintiffs and Class
19 members have been deprived of compensation in amounts to be determined at trial and,
20 pursuant to RCW 49.52.070, are entitled to recovery of twice such amounts, including interest
21 thereon, attorneys' fees and costs.

22 **XIII. PRAYER FOR RELIEF**

23 Wherefore, Plaintiffs, on their own behalf and on behalf of the members of the Class,
24 pray for judgment against Defendant T-Mobile as follows:

25 A. Certification of the proposed Class;

26 B. Appoint Plaintiffs Dana Rohde and Michael Wilson as Class representatives;

- 1 C. Appoint the undersigned law firms as Class counsel;
2 D. Declare that the actions complained of herein violate Washington law;
3 E. Award Plaintiffs and Class members compensatory and exemplary damages, as
4 allowed by law;
5 F. Award attorneys' fees and costs to Plaintiffs and their counsel, as allowed by
6 law;
7 G. Award Plaintiffs and Class members pre-judgment and post-judgment interest,
8 as provided by law;
9 H. Grant Plaintiffs the right to amend the pleadings to conform to the evidence
10 produced at the time of trial; and
11 I. Grant such other and further relief as this Court deems necessary.

12 RESPECTFULLY SUBMITTED AND DATED this 18th day of December, 2015.

13
14 TERRELL MARSHALL LAW GROUP PLLC

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