

FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

2017 FEB 22 PM 3:46

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

PORTIA WASHINGTON and  
DIVINE HARWELL, on behalf of  
themselves and those similarly situated,

Plaintiff(s),

CASE NO.: 17-cv-312-ORL-22 GJK

vs.

UNITEL MARKETING, LLC, a  
Florida Limited Liability Company,

Defendant. /

**COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiffs, PORTIA WASHINGTON and DIVINE HARWELL, on behalf of themselves and those similarly situated (“Plaintiffs”), and sues Defendant, UNITEL MARKETING, LLC, a Florida Limited Liability Company (“UNITEL ” or “Defendant”), under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the “FLSA”) for unpaid overtime wage compensation.

**INTRODUCTION**

1. This is an action by the Plaintiffs against their former employer for unpaid overtime pursuant to the Fair Labor Standards Act (“FLSA”). Plaintiffs seek overtime damages, liquidated damages, attorney’s fees and costs, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b) (the “FLSA”).

2. Plaintiffs also seek an Order conditionally certifying this case as a collective action to include all similarly situated “sales representatives” who did not receive proper overtime wages within the last three years.

**JURISDICTION**

3. Defendant, UNITEL MARKETING, LLC, is a Limited Liability Company formed and existing under the laws of the State of Florida, doing business in Florida and New Jersey, and at all times during Plaintiffs' employment, was an employer as defined by 29 U.S.C. §203.

4. This action arises under the Fair Labor Standards Act, 29 U.S.C. §210, *et seq.* The Court has jurisdiction over the FLSA claim pursuant to 28 U.S.C. §1331 and the FLSA.

**VENUE**

5. The venue of this Court over this controversy is proper based on the claim arising in Maitland, Florida (Orange County).

**COVERAGE**

6. At all material times relevant to this action (2014-2017), the Defendant, UNITEL MARKETING, LLC, was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and §203(s).

7. At all material times relevant to this action (2014-2017), the Defendant, UNITEL MARKETING, LLC, made gross earnings of at least \$500,000.00 annually.

8. At all material times relevant to this action (2014-2017), the Defendant, UNITEL MARKETING, LLC, had two or more employees engaged in interstate commerce, producing goods for commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce.

9. At all material times relevant to this action (2014-2017), Defendant, UNITEL MARKETING, LLC, had two or more employees who routinely ordered materials or supplies from out of state vendors.

10. At all material times relevant to this action (2014-2017), Defendant, UNITEL MARKETING, LLC, had two or more employees who used the telephone and/or computers to place and accept business calls with out of state customers on a daily basis in the normal course of its business. Defendant required its employees to perform telephone sales for skin care products.

11. Additionally, Plaintiffs were employees of UNITEL MARKETING, LLC, and were, at all times relevant to this action (2014-2017), individually engaged in commerce as defined by 29 U.S.C. §§206(a) and 207(a)(1) as they was required to communicate with in and out of state customers on a daily basis for sales.

12. Upon information and belief, the records, to the extent that any exist, concerning the number of hours worked and amounts paid to Plaintiffs are in the possession, custody and control of Defendant.

### **FACTUAL ALLEGATIONS**

13. Defendant, UNITEL MARKETING, LLC, is a company providing sales and telemarketing services.

14. UNITEL MARKETING, LLC operates in at least in 2 states: Florida and New Jersey.

15. UNITEL MARKETING, LLC has dozens of employees.

16. Defendant employs representatives commonly referred to as “sales representatives.”

17. Defendant’s sales representatives work in Florida and New Jersey.

18. On or about January 11, 2017, Defendant closed its Maitland, Florida office.

19. Sales representatives perform sales related services on behalf of Defendant.

20. Sales representatives work in a call center setting.

21. Sales representatives are hourly paid employees who are also paid bonuses and commission.

22. Sales representatives were not paid overtime, in one or more weeks, if they worked more than forty (40) hours per week.

23. Plaintiffs were employed by Defendant as “sales representatives.”

24. Plaintiff PORTIA WASHINGTON was employed in this capacity from approximately December 08, 2015 through December 20, 2016.

25. Plaintiff DIVINE HARWELL was employed in this capacity from approximately November 2014 through January 11, 2017.

26. Plaintiffs were paid an hourly rate for the hours that they worked plus bonuses and commission.

27. All sales representatives were paid on an hourly basis, plus commission and bonuses.

28. All sales representatives were entitled to be paid for all hours worked for Defendant.

29. In order to perform their jobs and meet the sales team goals, Plaintiffs and all sales representatives worked beyond their scheduled hours, including often working through lunches and breaks, during one or more weeks.

30. Plaintiffs and all sales representatives were not paid for the time they spent working prior to the beginning of their work shifts and time spent after the end of their work shifts, during one or more weeks.

31. This suit seeks payment of all of the time spent prior to the beginning of their work shifts and after the end of their work shifts that resulted in the Plaintiffs, and those similarly situated, working overtime hours but not being compensated at a rate of no less than half of their regular hourly rate for the overtime hours.

32. As a result of this compensation practice, Plaintiffs, and all sales persons similarly situated, did not receive full and proper payment of half their regular rate of pay for all hours worked in excess of forty (40) within a work week, in one or more weeks.

33. Defendant failed to comply with 29 U.S.C. §§ 201-209, because Plaintiffs performed services for Defendant for which no provisions were made by Defendant to properly pay Plaintiff for those hours worked in excess of 40 within a workweek.

34. Defendant employed other individuals who performed the same or similar job duties under the same pay provisions as Plaintiffs.

35. Upon information and belief, the records – to the extent such records exist – concerning the number of hours worked and amounts paid to Plaintiffs, and others similarly situated to them, are in the possession, custody, or control of Defendant.

**CLASS REPRESENTATIVE ALLEGATIONS**

36. Plaintiffs and the other sales representatives (“the class members”) performed the same or similar job duties as one another in that they provided sales duties for Defendant.

37. Further, Plaintiffs and the class members were subjected to the same pay provisions in that they often worked prior to the beginning of their work shifts and after the end of their work shifts resulting in working over forty (40) hours in a work week, during one or more weeks, without being paid at a rate of at least half their regular rate of pay for those hours. Thus, the class members are owed overtime wages for the same reason as the Plaintiffs.

38. Defendant’s policy or practice was applicable to Plaintiffs and the class members. Application of this policy or practice does not depend on the personal circumstances of Plaintiffs or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime wages to Plaintiffs applies to all class members.

39. Defendant knowingly, willingly, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime wages with respect to Plaintiffs and the class members.

40. Defendant acted willfully in failing to pay Plaintiffs and the class members in accordance with the law.

41. Defendant was aware of the time and record keeping requirements of the Fair Labor Standards Act, but willfully or recklessly failed to keep accurate pay and time records as required.

42. Defendant did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

**COUNT ONE - RECOVERY OF OVERTIME COMPENSATION**

43. Plaintiffs reassert and incorporate by reference all allegations contained within previous paragraphs 1 through 42.

44. During their employment with Defendant, Plaintiffs worked more than forty (40) hours in one or more workweeks while employed by Defendant.

45. Defendant failed to properly compensate Plaintiffs for overtime hours that they worked, in violation of the FLSA.

46. Defendant acted willfully, intentionally, and/or recklessly in failing to pay Plaintiffs at least time half their regular hourly rate of pay for each hour worked over forty (40) hours in one or more workweeks while employed by Defendant, in violation of the FLSA.

47. Defendant did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law, (b) the FLSA, 29 U.S.C. § 201, *et seq.*, (c) Department of Labor Wage & Hour Opinion Letters or (d) the Code of Federal Regulations.

**DAMAGES AND RELIEF SOUGHT FOR MEMBERS OF THE CLASS**

48. This action is brought by Plaintiffs, for themselves and on behalf of all others similarly situated, under the provisions of the FLSA for: (i) monetary damages to be paid by the Defendant associated with the above claims; (ii) liquidated damages; and (iii) relief incident and subordinate thereto, including the costs and expenses of this action and an award of attorneys' fees and reimbursement of expenses to Plaintiff's counsel.

**DEMAND FOR JURY TRIAL**

49. Plaintiff also demands a trial by jury.

WHEREFORE, Plaintiff demands an Order awarding:

- a. Payment of Plaintiffs', and all class members, overtime wages at the correct rate of half of Plaintiffs' regular rate pursuant to the FLSA;
- b. An equal amount of liquidated damages, or in the alternative, pre-judgment and post-judgment interest at the highest rate allowed by law;
- c. Pre-judgment and Post-judgment interest where applicable;
- d. Reasonable attorneys' fees and costs for all time worked by the attorneys for Plaintiffs in prosecuting this case; and
- e. All other relief that the Court deems just and proper.



Dated this 22<sup>nd</sup> day of February, 2017.

Respectfully submitted,



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*Attorney for Plaintiffs*

JS 44 (Rev. 11/15)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

|   |   |
|---|---|
| <p><b>I. (a) PLAINTIFFS</b><br/>                 PORTIA WASHINGTON and DIVINE HARWELL, on behalf of themselves and those similarly situated.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Orange</u><br/>                 (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number)<br/>                 Morgan &amp; Morgan, P.A.<br/>                 20 N. Orange Ave., 14th Floor Orlando, FL 32802-4979<br/>                 Telephone: (407) 428-6241</p> | <p><b>DEFENDANTS</b><br/>                 UNITEL MARKETING, LLC, a Florida Limited Liability Company,</p> <p>County of Residence of First Listed Defendant <u>Orange</u><br/>                 (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p> |
|---|---|

|  |   |                            |   |                            |                            |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
|--|---|----------------------------|---|----------------------------|----------------------------|-----|-----|-----------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
| <p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p> | <p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table> |                            | PTF   | DEF                        |                            | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|  | PTF   | DEF                        |   | PTF                        | DEF                        |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen of This State  | <input type="checkbox"/> 1  | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen of Another State   | <input type="checkbox"/> 2  | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen or Subject of a Foreign Country  | <input type="checkbox"/> 3  | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT  | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES   |   |  |
|---|--|--|---|--|---|--|
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury<br><input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 690 Other  | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157   | <input type="checkbox"/> 375 False Claims Act<br><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))<br><input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable Sat TV<br><input type="checkbox"/> 850 Securities/Commodities Exchange<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 896 Arbitration<br><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision<br><input type="checkbox"/> 950 Constitutionality of State Statutes |  |
| <p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property  | <p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights<br><input type="checkbox"/> 441 Voting<br><input type="checkbox"/> 442 Employment<br><input type="checkbox"/> 443 Housing/Accommodations<br><input type="checkbox"/> 445 Amer. w/Disabilities - Employment<br><input type="checkbox"/> 446 Amer. w/Disabilities - Other<br><input type="checkbox"/> 448 Education   | <p><b>PRISONER PETITIONS</b></p> <p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee<br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition<br><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement                            | <p><b>LABOR</b></p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Management Relations<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 751 Family and Medical Leave Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Employee Retirement Income Security Act | <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark | <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))   | <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. § 216(b) (the "FLSA")

Brief description of cause:  
Action for unpaid overtime wage compensation.

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ Unknown at this time    CHECK YES only if demanded in complaint. JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions):    JUDGE \_\_\_\_\_    DOCKET NUMBER \_\_\_\_\_

DATE: 02/22/2017    SIGNATURE OF ATTORNEY OF RECORD: \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Unitel Marketing Slammed with FLSA Suit Over Unpaid Overtime](#)

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