

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAMILLE INGRAHAM individually and  
behalf of all similarly situated individuals,

Plaintiffs,

v.

VITAL RECOVERY SERVICES, LLC and  
VITAL SOLUTIONS, INC.,

Defendants,

Case No.:

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

COMES NOW THE PLAINTIFF, Camille Ingraham (“Ingraham” or “Plaintiff”), by and through her undersigned attorneys, bring this Collective and Class Action Complaint against Vital Recovery Services, LLC (“VRS”) and Vital Solutions, Inc. (“Vital Solutions”) (collectively, “Defendants”) and state and allege as follows:

**INTRODUCTION**

1. This is a Class and Collective Action brought by Plaintiff on behalf of herself and those similarly situated Collections Specialists who were employed at Defendants’ call center in Georgia to recover for Defendants’ willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and alleged

contractual obligations (or unjust enrichment if no contract is found).

2. The U.S. Department of Labor (“DOL”) recognizes that call center jobs, like those held by Plaintiff in Defendants’ call centers, are homogenous and issued guidance to alert and condemn an employer’s non-payment of an employee’s necessary preliminary and postliminary activities. *See* DOL Fact Sheet #64, attached hereto as Exhibit 1, 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. Further, the DOL issued guidance on the proper calculation method of overtime premiums. *See* DOL Fact Sheet #23, attached hereto as Exhibit 2, at 1 (“. . . overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing by dividing the total pay for employment . . . in any workweek by the total number of hours actually worked.”).

4. Specifically, here, Plaintiff and those similarly situated, were subjected to Defendants’ policy and practice of failing to compensate its call center employees for their necessary pre-shift and post-shift activities, which resulted in the failure to

properly compensate them as required under applicable federal and state laws. Further, in the weeks Plaintiff and those similarly situated worked more than 40 hours per workweek, Defendants failed to pay them the proper overtime pay for all their overtime hours worked in violation of the FLSA. This improper calculation of the overtime pay rate was a result of Defendants' willful failure to include non-discretionary commissions and/or bonuses earned in calculating Plaintiffs' proper overtime premium pay rate.

5. Plaintiff seeks a declaration that their rights, the rights of the putative FLSA Class, and the rights of putative 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**

6. 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.*

7. 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.”

8. This Court has supplemental jurisdiction over Plaintiff’s common 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.

9. Upon information and belief, Defendants’ 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).

10. Defendants’ 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.

11. This Court has personal jurisdiction over VRS because VRS is registered with the Georgia Secretary of State to conduct business within Georgia and systematically and continuously conducts business within the State of Georgia.

12. This Court has personal jurisdiction over Vital Solutions because Vital Solutions is registered with the Georgia Secretary of State to conduct business within Georgia and systematically and continuously conducts business within the State of Georgia.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants conducted substantial business within this District and because a substantial portion of the events that give rise to the claims pled in this Complaint occurred in this District.

### **PARTIES**

14. Plaintiff Ingraham is an individual who resides in the County of Gwinnett, City of Snellville, Georgia. Ingraham executed her Consent to Sue form, which is attached hereto, as Exhibit 3.

15. Plaintiff, and those similarly situated, are current and former hourly Collections Specialists or other job titles performing the same or similar job duties (hereinafter, “Collections Specialists”) who were employed by Defendants to perform work in Defendants’ call centers in Georgia.

16. Defendant Vital Solutions is domestic for-profit corporation with its principal place of business located at 4775 Peachtree Industrial Blvd., Suite #310, Peachtree Corners, Georgia, 30092. *See Vital Solutions Inc. Business Information*, Georgia Corporations Division Business Search, Georgia Secretary of State Brad Raffensperger, attached hereto as Exhibit 4.

17. Vital Solutions “works nationwide in all time zones, and provides customized outsourcing solutions for various industries, with specialized programs

in the Automotive Finance, Credit Card and Utilities industries” and does so by assigning its clients “a team of specialists dedicated to nurturing a vital partnership with each client and, through sound, innovative programs, help them realize greater success and profitability.”<sup>1</sup>

18. Vital Solutions “provides these services through two wholly owned operating subsidiaries[.]”<sup>2</sup>

19. VRS is one of Vital Solutions two wholly owned subsidiaries, “which is a fully licensed, national, third-party collection agency performing bad debt recovery and skip tracing services.”<sup>3</sup>

20. VRS’s principal place of business is also located at 4775 Peachtree Industrial Blvd., Suite #310, Peachtree Corners, Georgia, 30092. *See Vital Recovery Services, LLC. Business Information*, Georgia Corporations Division Business Search, Georgia Secretary of State Brad Raffensperger, attached hereto as Exhibit 5.

21. Defendants currently provide services through their employees, like Plaintiff and the putative FLSA Class, to “over 100 clients and \$5.0 billion in annual placements[.]”<sup>4</sup>

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<sup>1</sup> *About Us Overview & History*, Vital Solutions, [https://vitalsolutions.net/about\\_us/](https://vitalsolutions.net/about_us/) (last visited September 13, 2019).

<sup>2</sup> *Id.* (all caps in the original omitted).

<sup>3</sup> *Id.*

<sup>4</sup> *About Us Overview & History*, Vital Solutions, [https://vitalsolutions.net/about\\_us/](https://vitalsolutions.net/about_us/)

22. At all times relevant to this Action, Defendants were members of, and engaged in, a joint venture, partnership, or common enterprise, and were acting with the course and scope of, and in pursuance of said joint venture, partnership, or common enterprise in employing Plaintiff, and other similarly situated Collections Specialists.

23. At all times relevant to this Action, Defendants were joint employers of Plaintiffs within the meanings of the FLSA, 29 U.S.C. § 203(d).

24. On information and belief, Defendants acted as joint employers in the following ways: a) together, Defendants were involved in the development and implementation of their call centers' human resource policies, including, but not limited to, employee hiring, firing, supervision, and conditions of employment; b) together, Defendants were involved in the development and implementation of their call centers' payroll practices, including, but not limited to, how employees were paid, whether a job position was to be classified as exempt or non-exempt, how overtime premiums would be calculated, creating the pay scale be for each position, including the details concerning the non-discretionary bonuses and/or commissions; and c) together, Defendants were involved in the day-to-day business operations of their call centers, including but not limited controlling and supervising their

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(last visited July 17, 2019).

employees' work schedules, supervising their employees' working conditions, reviewing their employees' time records, and creating and maintain employment records.

25. Vital Solutions can be served through its Registered Agent, Corporation Service Company, located at 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. *See Exhibit 4.*

26. VRS can be served through its Registered Agent, Corporation Service Company, located at 40 Technology Parkway South, Suite 300, Norcross, Georgia 30092. *See Exhibit 5.*

### **GENERAL ALLEGATIONS**

27. Ingraham was jointly employed by Defendants as an hourly Collections Specialist from approximately November 2018 until approximately April 2019.

28. Ingraham worked at Defendants' call center located at 4775 Peachtree Industrial Blvd., Suite 310, Berkeley Lake, Georgia 30092.

29. Ingraham's rate of pay was \$14.00 per hour, plus the ability to earn non-discretionary commissions and/or bonuses by meeting certain criteria and performance that Defendants set.

30. Ingraham's primary job duties included, but were not limited to, providing customer service for Defendants' clients over the phone through collecting



on deficient accounts.

31. Plaintiff, and others similarly situated, were regularly scheduled to work 40 hours per workweek and often worked in excess of 40 hours per workweek.

32. In fact, Plaintiff was regularly scheduled to work Monday through Friday for at least 8 hours per day, and Plaintiff would occasionally work Saturdays.

33. Regardless of the total number of hours Plaintiff was *scheduled* to work, Defendants regularly required Plaintiff to work a substantial amount of time off-the-clock as part of her job as a Collection Specialist in the call center and Plaintiff was never compensated for this time worked off-the-clock.

34. 29 C.F.R. § 553.221 provides that:

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.

35. 29 C.F.R. § 790.8 provides that “[a]mong activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance.”

***Pre-Shift Off-the-Clock Work***

36. Plaintiff was tasked with providing Defendants' clients with customer service and collection services by use of Defendants' telephones, Defendants' computers, and the programs accessible by and through Defendants' computers and network.

37. Defendants required Plaintiff, and all other similarly situated Collection Specialists, to arrive at the call center before their scheduled shifts to boot-up their computers, launch and log into necessary servers, programs, and/or applications, review any necessary materials, and log into Defendants' phone systems to ensure they were ready to make their first call at their scheduled shift start. This pre-shift procedure regularly takes 10 to 15 minutes per shift, or more if technical issues arise. Plaintiff was not allowed to log into Defendants' time keeping system until the start of her scheduled shift.

38. In order for Plaintiff, and all other similarly situated Collection Specialists, to perform their jobs, the pre-shift boot-up procedure was integral and indispensable to perform their principal job duties.

39. The pre-shift boot-up procedure was integral and indispensable to Defendants' business because providing "a team of specialists dedicated to nurturing a vital partnership with each client and, through sound, innovative programs, help

them realize greater success and profitability”<sup>5</sup> means nothing if those specialists do not have access to their computers or phones.

40. The unpaid pre-shift off-the-clock work performed by Plaintiff, and all other similarly situated Collection Specialists, directly benefits Defendants.

***Defendants’ Policy and Practice of Suffering Off-the-Clock Work Violated the FLSA.***

41. At all times relevant to this Action, Defendants suffered or permitted Plaintiff, and all other similarly situated Collection Specialists, to routinely perform off-the-clock pre-shift work.

42. Defendants knew, or should have known, that their employees are required to be paid for all compensable times throughout the workweek. *See* 29 C.F.R. §§ 553.221; 790.8; 785.19(a).

43. Defendants knew, or should have known, that the FLSA, 29 U.S.C. § 207, requires employers to compensate non-exempt employees who work in excess of 40 hours in a workweek at a rate of one and one-half times their regular rates of pay.

44. Despite this, Defendants failed to compensate Plaintiff, and all other similarly situated Collection Specialists, for their off-the-clock pre-shift compensable work performed in any amount.

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<sup>5</sup> *About Us Overview & History*, Vital Solutions, [https://vitalsolutions.net/about\\_us/](https://vitalsolutions.net/about_us/) (last visited July 17, 2019).

***Defendants' Policy and Practice of Failing to Include Non-Discretionary Bonuses and/or Commissions in Calculating Overtime Premiums Owed Violated the FLSA.***

45. At all times relevant to this Action, Defendants' pay scheme incorporated the ability for Plaintiff, and all other similarly situated Collection Specialists, to earn non-discretionary bonuses and/or commission through sales by meeting certain criteria and performance that Defendants set.

46. Defendants knew, or should have known, that for purposes of the FLSA an employee's "regular rate" of pay is determined by adding together the employee's total compensation—which includes the employee's hour rate and non-discretionary incentive payments, such as bonuses and/or commission, and dividing the number by the total number of hours worked by the employee during the week in which the compensation was earned. *See* 29 U.S.C. § 207(e).

47. Despite this, Defendants failed include non-discretionary commissions and/or bonuses earned in calculating to compensate Plaintiff's and all other similarly situated Collection Specialists' proper regular rates of pay and corresponding overtime premium pay rates for workweeks in which they worked in excess of 40 hours—whether as scheduled or due to working off-the-clock.

48. In reckless disregard of the FLSA, Defendants adopted and then adhered to their practice of employing Plaintiff, and all other similarly situated

Collection Specialists, to perform compensable pre-shift off-the-clock work and then failing to compensate them at one and one-half times their regular rates of pay. Further, in reckless disregard of the FLSA, Defendants adopted and then adhered to their practices of improperly calculating their employees regular rate of pay, thereby failing to compensate Plaintiff, and all other similarly situated Collection Specialists, at the proper overtime premiums. These illegal practices resulted Plaintiff, and all other similarly situated Collection Specialists, not being paid correctly in violation of the federal law.

***Defendants' Policy and Practice of Failing to Record the Pre-Shift Off-the-Clock Work Violated the FLSA's Recording Provision.***

49. 29 C.F.R. § 516.1 subjects “every employer subject to any provision of the Fair Labor Standards Act” to maintain employee records.

50. Employers subject to the FLSA, like Defendants are here, are mandated to maintain and preserve payroll or other records containing, without limitation, the total hours worked by each employee, each workday, and the total hours worked by each employee, each workweek. *See* 29 C.F.R. § 516.2.

51. Upon information and belief, Defendants failed to establish, maintain, and preserve accurate timesheet and payroll records as required by the FLSA in not recording Plaintiff's and all other similarly situated Collection Specialists' pre-shift

off-the-clock work.

52. When the employer fails to keep accurate records of the hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946) is controlling. The Supreme Court found:

[w]here here the employer's records are inaccurate or inadequate . . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

53. The Supreme Court set forth this test to avoid placing a premium on an employer's failure to keep proper records in conformity with its statutory duty, thereby allowing the employer to reap the benefits of the employee's labors without proper compensation as required by the FLSA. *See id.*

54. Where damages are awarded pursuant to this test, "[t]he employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with . . . the Act." *Id.*

### **COLLECTIVE ACTION ALLEGATIONS**

55. Plaintiff brings this action pursuant to the FLSA, 29 U.S.C. § 216(b) on her own behalf and on behalf of:

*All current and former Collection Specialists, or other job titles performing the same or similar job duties, who worked for Vital Solutions, Inc. and/or Vital Recovery Services, LLC. in Georgia at any time in the last three years.*

(hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend this definition as necessary.

56. Plaintiff does not bring this action on behalf of any executive, administrative, or professional employees exempt from coverage under the FLSA.

57. *29 U.S.C. § 216(b) Conditional Certification “Similarly Situated” Standard:* With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because, under 29 U.S.C. § 216(b), the Collection Specialist call center employees described are “similarly situated” to Plaintiff. The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they were employed by Defendants in the same or similar positions as Plaintiff; (b) they were subject to the same or similar unlawful practices, policies, or plans as Plaintiff (namely, Defendants’ practices, policy, or plan of suffering them to work off-the-clock and then failing to pay them overtime premiums and not considering non-discretionary bonuses or commissions in the

calculation of their employees regular rates of pay and overtime premiums owed to their employees); (c) their claims are based upon the same legal theories as Plaintiff; and (d) the employment relationship between Defendants and every putative FLSA Collective member is exactly the same, and differs only by name, location, and rate of pay.

58. Upon information and belief, Plaintiff estimates that the FLSA Collective, including both current and former call center employees over the relevant period, will include several hundreds, if not thousands of members who would benefit from the issuance of a court-supervised notice of this action and the opportunity to join it. The precise number of collective Class members should be readily available from a review of Defendants' personnel, scheduling, time and payroll records, and from input received from the collective class members as part of the notice and "opt-in" process provided by 29 U.S.C. § 216(b).

59. Plaintiff shares the same interests as the FLSA Collective in that the outcome of this action will determine whether they are entitled to unpaid overtime compensation, interest, attorneys' fees and costs owed under the FLSA. Because the facts in this case are similar, if not altogether identical, to the factual assessment and legal standards lend themselves to a collective action.



**THE RULE 23 CLASS ACTION ALLEGATIONS**<sup>6</sup>

60. Plaintiff brings this Action pursuant to Fed. R. Civ. P. 23 on behalf of putative Class defined to include:

*All current and former Collection Specialists, or other job titles performing the same or similar job duties, who worked for Vital Solutions, Inc. and/or Vital Recovery Services, LLC. in Georgia at any time in the last four years.*

(hereinafter referred to as the “Breach of Contract Class”). Plaintiff reserves the right to amend this definition as necessary.

61. *Numerosity*: The members of the Breach of Contract Class are so numerous that joinder of all members in the case would be impracticable, and the disposition of their claims as a Class will benefit the parties and the Court. The precise number of Class members should be readily available from a review of Defendants’ personnel and payroll records.

62. *Commonality/Predominance*: There is a well-defined community of interest among Breach of Contract Class members and common questions of both

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<sup>6</sup> To the extent the Court finds, or Defendant argues, the employment relationship between itself and its Collections Specialists did not form an oral contract, Plaintiff reserves the right to seek Rule 23 class certification under Plaintiff’s and the Class’ quasi-contract claims. (Count III).

law and fact predominate in the action over any questions affecting individual members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendants offered to pay Plaintiff and the Breach of Contract Class certain hourly rates, with the opportunity to earn non-discretionary bonuses and/or commissions, for each hour worked as Collection Specialists in Defendants' call centers;
- b. Whether Plaintiff and the Breach of Contract Class accepted Defendants' offer orally and continued to accept Defendants' offer by performing the essential functions of the job;
- c. Whether Defendants' breached the oral contract by failing to pay Plaintiff and the Breach of Contract Class properly for each and every hour worked—whether pre-shift off-the-clock or scheduled; and
- d. Whether Plaintiff and the Breach of Contract Class were damaged.

63. *Typicality*: Plaintiff's claims are typical of those of the Breach of Contract Class in that Plaintiff and all other members suffered damages as a direct and proximate result of Defendants' common and systemic payroll policies and practices. Plaintiff's claims arise from Defendants' same policies, practices, and course of conduct as all other Breach of Contract Class members' claims and

Plaintiff's legal theories are based on the same legal theories as all other Breach of Contract Class members: 1) whether all Breach of Contract Class members were employed by Defendants on an hourly basis and were suffered to work pre-shift without compensation; and 2) whether all Breach of Contract Class members were employed by Defendants on an hourly basis with a compensation scheme that included non-discretionary bonuses and/or commissions that Defendants failed to include in calculating the Breach of Contract Class's regular rates of pay and subsequent overtime premiums.

64. *Adequacy*: Plaintiff will fully and adequately protect the interests of the Breach of Contract Class. Plaintiff retained national counsel who is qualified and experienced in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiff nor her counsel has interests that are contrary to, or conflicting with, the interests of the Breach of Contract Class.

65. *Superiority*: A class action is superior to other available methods for the fair and efficient adjudication of the controversy, because, inter alia, it is economically infeasible Breach of Contract Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual. Given the material similarity of Breach of Contract Class members' claims, even if each Class member could afford to litigate a separate claim, this Court

should not countenance or require the filing of thousands of identical actions. Individual litigation of the legal and factual issues raised by Defendants' conduct would cause unavoidable delay, a significant duplication of efforts, and an extreme waste of resources. Alternatively, proceeding by way of a class action would permit the efficient supervision of the putative class' claims, create significant economies of scale for the Court and the parties and result in a binding, uniform adjudication on all issues.

66. The case will be manageable as a class action. This class action can be efficiently and effectively managed by sending the same FLSA opt-in notice to all employees similarly situated and adding for the Breach of Contract Class within that group a separate opt-out notice pertaining to their rights under the common law. Plaintiff and her counsel knows of no unusual difficulties in the case and Defendants have payroll systems that will allow the class, wage, and damages issues in the case to be resolved with relative ease. Because the elements of Rule 23(b)(3), or in the alternative (c)(4), are satisfied in the case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue her claim as a class action”).

**CAUSES OF ACTION**

**COUNT 1- VIOLATION OF THE FLSA**  
***(On Behalf of Plaintiff and the FLSA Collective)***

67. Plaintiff re-alleges and incorporates all previous paragraphs herein.

68. At all times relevant to this Action, Vital Solutions, Inc. was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

69. At all times relevant to this Action, Vital Recovery Services, LLC. was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

70. At all times relevant to this Action, Defendants were members of, and engaged in, a joint venture, partnership, or common enterprise, and were acting with the course and scope of, and in pursuance of said joint venture, partnership, or common enterprise in employing Plaintiff, and all other similarly situated Collection Specialists.

71. At all times relevant to this Action, Defendants engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

72. At all times relevant to this Action, Plaintiff was an employee of Defendants within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

73. At all times relevant to this Action, the putative FLSA Class of similarly situated Collection Specialists were “employee[s]” of Jefferson within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

74. At all times relevant, Plaintiffs, and all other similarly situated Collection Specialists, either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce.

75. The position of Collection Specialists is not exempt from the FLSA.

76. Defendants’ other job titles performing similar call center job duties are not exempt from the FLSA.

77. At all times relevant to this Action, Defendants “suffered or permitted” Plaintiff, and all other similarly situated Collection Specialists, to work and thus “employed” them within the meaning of the FLSA, 29 U.S.C. § 203(g).

78. Plaintiff, and all other similarly situated Collection Specialists, were regularly scheduled to work 40 hours per workweek and often worked in excess of 40 hours per workweek.

79. The FLSA requires an employer to pay employees the federally mandated overtime premium rate of one and a half times their regular rate of pay for every hour worked in excess of 40 hours per workweek. *See* 29 U.S.C. § 207.

80. Despite this, Defendants failed to pay Plaintiff, and all other similarly situated Collection Specialists, for their pre-shift off-the-clock work performed in excess of 40 hours per workweek in any amount.

81. Further, for purposes of the FLSA, an employee's "regular rate" of pay is determined by adding together the employee's total compensation—which includes the employee's hour rate and non-discretion incentive payments, such as bonuses and/or commission, and dividing the number by the total number of hours worked by the employee during the week in which the compensation was earned. *See* 29 U.S.C. § 207(e).

82. Despite this, Defendants failed to include non-discretionary bonuses and/or commissions in calculating Plaintiff's, and all other similarly situated Collection Specialists', regular rates of pay and corresponding overtime premiums.

83. As a result of 1) failing to pay Plaintiff, and all other similarly situated Collection Specialists, for their pre-shift off-the-clock work performed in excess of 40 hours per workweek in any amount; and 2) failing to properly calculate overtime premiums of Plaintiff, and all other similarly situated Collection Specialists, Defendants routinely suffered and permitted Plaintiff, and all other similarly situated Collection Specialists, to work more than 40 hours per workweek without receiving proper overtime premiums in violation of the FLSA.

84. Defendants' conduct as it is alleged in this Complaint constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255, as Defendants knew, or showed reckless disregard for the fact their compensation practices violated the FLSA.

85. None of the provisions of the FLSA can be contravened, set aside, abrogated, or waived by Plaintiff or the putative FLSA Class.

86. As the direct and proximate result of Defendants' unlawful conduct, Plaintiff, and all other similarly situated Collection Specialists, have suffered a loss of income and other damages. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages at the proper overtime rate, plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

**COUNT 2- BREACH OF ORAL CONTRACT**  
***(On Behalf of Plaintiff and Rule 23 Breach of Contract Class)***

87. Plaintiff re-alleges and incorporates all previous paragraphs herein.

88. Plaintiff was jointly hired by Defendants as an hourly Collections Specialist beginning in, or around, November 2018.

89. Defendants' offered to pay Plaintiff \$14.00 per hour, plus the ability to earn non-discretionary commissions and/or bonuses by meeting certain criteria and



performance that Defendants set, to perform the job duties of an hourly Collections Specialist.

90. Plaintiff's primary job duties included, but were not limited to, providing customer service for Defendants' clients over the phone through collecting on deficient accounts.

91. Plaintiff orally accepted Defendants' offer.

92. Plaintiff also accepted the offer via her performance—i.e., reporting for work and performing her primary job duties, including but not limited to, providing customer service for Defendants' clients over the phone through collecting on deficient accounts.

93. The Breach of Contract Class members were hired at various dates and times throughout the past four years.

94. Defendants offered to pay the Breach of Contract Class members certain hourly rates per hour for each hour worked, plus the ability to earn non-discretionary commissions and/or bonuses by meeting certain criteria and performance that Defendants set, to perform the job duties of an hourly Collections Specialist (or other job title performing the same or similar job duties). Each Breach of Contract Class members' contractual hourly rate is identified in paystubs and other employment records that Defendants prepare and maintain as part of their regular business activities.

95. The Breach of Contract Class members accepted Defendants' offers orally and/or by performance—i.e., reporting for work and completing the tasks assigned to them.

96. Plaintiff's work, and that of the Breach of Contract Class, required pre-shift boot-up time.

97. Plaintiff and the members of the Breach of Contract Class performed under their contract by doing their jobs, in addition to carrying out the pre-shift uncompensated activities that Defendants required.

98. Upon information and belief, Defendants do not allow their employees to clock in and begin being compensated until after the employee performs his or her pre-shift boot-up procedure.

99. Despite performing integral and indispensable pre-shift work, Defendants did not compensate Plaintiff or the members of the Breach of Contract Class for their time at their hourly rate of pay in workweeks Plaintiff and the Breach of Contract Class worked a total of 40 hours or less.

100. By failing to pay Plaintiff and the Breach of Contract Class for their pre-shift off-the-clock boot-up time, Defendants breached their contracts with Plaintiff and the Breach of Contract Class to pay for each hour worked.

101. As a direct and proximate cause of Defendants' breach, Plaintiff and the Breach of Contract Class were damaged at an amount to be proven at trial.

**COUNT 3- QUASI-CONTRACTUAL REMEDIES: UNJUST ENRICHMENT**  
*(On Behalf of Plaintiff and Rule 23 Breach of Contract Class)*

102. Plaintiff re-alleges and incorporates all previous paragraphs herein.

103. Upon information and belief, Plaintiff and the Breach of Contract Class pre-shift boot-up time provided valuable work and income for Defendants; namely, directly benefitting Defendants by completing integral and indispensable tasks in order to provide customer service and collection services to Defendants' clients.

104. Plaintiff and the Breach of Contract Class were unable to perform any job function without booting up and logging into their computer and required programs. In short, in order to start their work of making customer calls and providing collection services to Defendants' clients, precisely at Plaintiff's and the Breach of Contract Class's designated start times, Plaintiff and the Breach of Contract Class were required to work off-the-clock before their shifts began. Without the pre-shift boot up work performed, Plaintiff and the Breach of Contract Class would be unable to perform their essential job duties, servicing Defendants' clients.

105. As part of their ongoing employment relationships with Defendants, Plaintiff and the Breach of Contract Class expected to be paid their wages for the time

they spent performing their jobs, including the performance of necessary pre-shift boot-up activities.

106. By not paying Plaintiff and the Breach of Contract Class for the time they spent performing integral and indispensable pre-shift boot-up activities, Defendants have been unjustly enriched at the expense of Plaintiff and the Breach of Contract Class, in an amount to be determined at trial.

107. By not paying Plaintiff and the Breach of Contract Class for the time they spent performing integral and indispensable pre-shift boot-up activities, Defendants have also save themselves hundreds-of-thousands of dollars in unpaid payroll taxes—taxes that would have otherwise been credited to Plaintiff's and the Breach of Contract Class members' benefit.

108. It would be unjust and inequitable to allow Defendants to retain the benefit of work performed by Plaintiff and the Breach of Contract Class without compensation.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff request the following relief:

- A. An Order certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- B. An Order designating Plaintiff to act as the FLSA Collective

Representative, on behalf of all similarly individuals;

- C. An Order certifying this action as a class action for the Rule 23 Breach of Contract Class pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- D. An Order compelling Defendants to disclose in computer format, or in print if no computer readable format is available, the names, addresses, and email addresses of all those individuals who are similarly situated, and permitting Plaintiff's Counsel to send notice of this action to all similarly situated individuals including the publishing of notice in a manner that is reasonably calculated to apprise the potential class members of their rights under this litigation;
- E. An Order declaring that Defendants willfully violated the FLSA and its attendant regulations as set forth above;
- F. An Order declaring that Defendants violated its obligations under the FLSA;
- G. An Order granting judgment in favor of Plaintiff and against Defendants and awarding the amount of unpaid overtime pay calculated at the rate of one and one-half (1.5) of Plaintiff's regular rate multiplied by all hours that Plaintiff worked in excess of 40 hours per week for the past

three years for Plaintiff and the FLSA Class;

- H. An Order awarding liquidated damages to Plaintiff, in an amount equal to the amount of unpaid overtime found owing to Plaintiff under the FLSA;
- I. An Order granting judgment in favor of Plaintiff and against Defendants and awarding the amount of unpaid hourly wages calculated at Plaintiff's regular rate of pay multiplied by all hours that Plaintiff worked off-the-clock in workweeks totaling 40 hours or less for the past four years for Plaintiff and the Breach of Contract Class;
- J. An Order awarding reasonable attorney fees and costs incurred by Plaintiff in filing this action;
- K. An Order awarding pre-judgment interest to Plaintiff and the FLSA Collective (to the extent liquidated damages are not awarded) and post-judgment interest to Plaintiff on these damages; and
- L. An Order awarding such further relief as this court deems appropriate.

**JURY DEMAND**

NOW COME Plaintiff, by and through her Attorneys, and hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

Respectfully Submitted,

Dated: September 16, 2019

By: /s/ Cale Conley  
Cale Conley (GA Bar. No. 181080)  
**CONLEY GRIGGS PARTIN, LLP**  
4200 Northside Parkway NW  
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Atlanta, GA 30327  
Telephone: (404) 809-2580  
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*Local Counsel for Plaintiffs*

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Telephone: (612) 436-1800  
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mnephew@johnsonbecker.com

*Trial Counsel for Plaintiffs*

\*PHV Anticipated

# **EXHIBIT 1**



U.S. Department of Labor  
Wage and Hour Division



(Revised July 2008)

## **Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA)**

This fact sheet provides general information concerning the application of the FLSA to employees working in call centers.

### **Characteristics**

A call center is a central customer service operation where agents (often called customer care specialists or customer service representatives) handle telephone calls for their company or on behalf of a client. Clients may include mail-order catalog houses, telemarketing companies, computer product help desks, banks, financial services and insurance groups, transportation and freight handling firms, hotels, and information technology (IT) companies.

### **Coverage**

If the annual dollar volume of a call center's sales or business is \$500,000 or more, and the enterprise has at least two employees, all employees of the enterprise are covered by the FLSA on an "enterprise" basis. An enterprise may consist of one establishment, or it may be made up of multiple establishments.

Additionally, the FLSA also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls, the Internet or the U.S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities.

### **Requirements**

Covered nonexempt employees are entitled to be paid at least the federal minimum wage as well as [overtime](#) at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees, including computer professionals and outside sales, as provided in Regulations [29 CFR 541](#)).

The FLSA requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both [minimum wage](#) and [overtime](#) provisions, records must be kept as prescribed by Regulations [29 CFR 516](#). Records required for exempt employees differ from those for non-exempt workers.

The FLSA also contains youth employment provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements. Additional information on the youth employment provisions is available at [www.youthrules.dol.gov](http://www.youthrules.dol.gov).

## Typical Problems

**Hours Worked:** Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. 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.

**Rest and Meal Periods:** Rest periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal.

**Recordkeeping:** A daily and weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept.

**Overtime:** Earnings may be determined on an hourly, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the regular hourly rate derived from all such earnings. This is calculated by dividing the total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked. See Regulations [29 CFR 778](#).

**Salaried Employees:** A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and/or [overtime](#) depends on their job duties and responsibilities as well as the salary paid. Sometimes, in call centers, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt. Regulations [29 CFR 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees – including computer professionals, and outside sales persons).

## Where to Obtain Additional Information

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

# **EXHIBIT 2**

**U.S. Department of Labor**  
Wage and Hour Division



Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas.

## **Fact Sheet #23: Overtime Pay Requirements of the FLSA**

This fact sheet provides general information concerning the application of the [overtime pay](#) provisions of the [FLSA](#).

### **Characteristics**

An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work.

### **Requirements**

Unless specifically exempted, employees covered by the Act must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than time and one-half their regular rates of pay. There is no limit in the Act on the number of hours employees aged 16 and older may work in any workweek. The Act does not require [overtime pay](#) for work on Saturdays, Sundays, holidays, or regular days of rest, as such.

The Act applies on a workweek basis. An employee's workweek is a fixed and regularly recurring period of 168 hours -- seven consecutive 24-hour periods. It need not coincide with the calendar week, but may begin on any day and at any hour of the day. Different workweeks may be established for different employees or groups of employees. Averaging of hours over two or more weeks is not permitted. Normally, overtime pay earned in a particular workweek must be paid on the regular pay day for the pay period in which the wages were earned.

The regular rate of pay cannot be less than the [minimum wage](#). The regular rate includes all remuneration for employment except certain payments excluded by the Act itself. Payments which are not part of the regular rate include pay for expenses incurred on the employer's behalf, premium payments for overtime work or the true premiums paid for work on Saturdays, Sundays, and holidays, discretionary bonuses, gifts and payments in the nature of gifts on special occasions, and payments for occasional periods when no work is performed due to vacation, holidays, or illness.

Earnings may be determined on a piece-rate, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the average hourly rate derived from such earnings. This is calculated by dividing the total pay for employment (except for the statutory exclusions noted above) in any workweek by the total number of hours actually worked.

Where an employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, the regular rate for that week is the weighted average of such rates. That is, the earnings from all such rates are added together and this total is then divided by the total number of hours worked at all jobs. In addition, section 7(g)(2) of the FLSA allows, under specified conditions, the computation of overtime pay based on one and one-half times the hourly rate in effect when the overtime work is performed. The requirements for computing overtime pay pursuant to section 7(g)(2) are prescribed in [29 CFR 778.415](#) through [778.421](#).

Where non-cash payments are made to employees in the form of goods or facilities, the reasonable cost to the employer or fair value of such goods or facilities must be included in the regular rate.

### **Typical Problems**

**Fixed Sum for Varying Amounts of Overtime:** A lump sum paid for work performed during overtime hours without regard to the number of overtime hours worked does not qualify as an overtime premium even though the amount of money paid is equal to or greater than the sum owed on a per-hour basis. For example, no part of a flat sum of \$180 to employees who work overtime on Sunday will qualify as an overtime premium, even though the employees' straight-time rate is \$12.00 an hour and the employees always work less than 10 hours on Sunday. Similarly, where an agreement provides for 6 hours pay at \$13.00 an hour regardless of the time actually spent for work on a job performed during overtime hours, the entire \$78.00 must be included in determining the employees' regular rate.

**Salary for Workweek Exceeding 40 Hours:** A fixed salary for a regular workweek longer than 40 hours does not discharge FLSA statutory obligations. For example, an employee may be hired to work a 45 hour workweek for a weekly salary of \$405. In this instance the regular rate is obtained by dividing the \$405 straight-time salary by 45 hours, resulting in a regular rate of \$9.00. The employee is then due additional overtime computed by multiplying the 5 overtime hours by one-half the regular rate of pay ( $\$4.50 \times 5 = \$22.50$ ).

**Overtime Pay May Not Be Waived:** The overtime requirement may not be waived by agreement between the employer and employees. An agreement that only 8 hours a day or only 40 hours a week will be counted as working time also fails the test of FLSA compliance. An announcement by the employer that no overtime work will be permitted, or that overtime work will not be paid for unless authorized in advance, also will not impair the employee's right to compensation for compensable overtime hours that are worked.

### **Where to Obtain Additional Information**

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

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**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
[Contact Us](#)

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

CAMILLE INGRAHAM individually and  
behalf of all similarly situated individuals,

Plaintiffs,

v.

VITAL RECOVERY SERVICES, LLC and  
VITAL SOLUTIONS, INC.,

Defendants,

Case No.:

*Assigned for all purposes to the  
Honorable*

**CONSENT TO SUE**

**CONSENT TO SUE**

I understand my rights under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et. seq.* and by signing below, I certify that:

1. I hereby consent to sue pursuant to the 29 U.S.C. § 216(b) and become a Named Plaintiff in this Action.
2. I represent that, within the last three years, I was employed by Vital Recovery Services, LLC and/or Vital Solutions, Inc to work as Collections Specialist in one of Defendants’ call center locations in Georgia.
3. I represent that, within the last three years, I worked at least one workweek for 40 hours or more for Vital Recovery Services, LLC and/or Vital Solutions, Inc.
4. I represent that I have earned wages owed to me that have not been paid Vital Recovery Services, LLC and/or Vital Solutions, Inc.
5. By consenting to sue, I agree to be bound by any adjudication or court rulings

in the lawsuit, whether favorable or unfavorable, and I agree to be bound by any settlement of this Action.

6. I hereby designate Johnson Becker, PLLC to represent me in this Action.

Signature:   
Camille Ingraham (Jul 24, 2019)

---

Print Name: Camille Ingraham

Date Signed: Jul 24, 2019



# **EXHIBIT 4**



GEORGIA  
CORPORATIONS  
DIVISION

GEORGIA SECRETARY OF STATE  
**BRAD RAFFENSPERGER**

[HOME \(/\)](#)

## BUSINESS SEARCH

### BUSINESS INFORMATION

Business Name: **VITAL SOLUTIONS, INC.** Control Number: **0237099**

Business Type: **Domestic Profit Corporation** Business Status: **Active/Compliance**

Business Purpose: **NONE**

Principal Office Address: **4775 Peachtree Industrial Blvd., #310, Peachtree Corners, GA, 30092, USA** Date of Formation / Registration Date: **7/19/2002**

State of Formation: **Georgia** Last Annual Registration Year: **2019**

### REGISTERED AGENT INFORMATION

Registered Agent Name: **CORPORATION SERVICE COMPANY**

Physical Address: **40 TECHNOLOGY PARKWAY SOUTH, SUITE 300, NORCROSS, GA, 30092, USA**

County: **Gwinnett**

### OFFICER INFORMATION

Name	Title	Business Address
Kishore Saraogi	CEO	4775 Peachtree Industrial Blvd., #310, Peachtree Corners, GA, 30092, USA
Pankaj Dhanuka	CFO	4775 Peachtree Industrial Blvd., #310, Peachtree Corners, GA, 30092, USA
Pankaj Dhanuka	Secretary	4775 Peachtree Industrial Blvd., #310, Peachtree Corners, GA, 30092, USA

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Office of the Georgia Secretary of State Attn: 2 MLK, Jr. Dr. Suite 313, Floyd West Tower Atlanta, GA 30334-1530,  
Phone: (404) 656-2817 Toll-free: (844) 753-7825, WEBSITE: <https://sos.ga.gov/>

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# **EXHIBIT 5**



GEORGIA  
CORPORATIONS  
DIVISION

GEORGIA SECRETARY OF STATE  
BRAD RAFFENSPERGER

[HOME \(/\)](#)

## BUSINESS SEARCH

### BUSINESS INFORMATION

Business Name:	<b>VITAL RECOVERY SERVICES, LLC</b>	Control Number:	<b>0237097</b>
Business Type:	<b>Domestic Limited Liability Company</b>	Business Status:	<b>Active/Compliance</b>
Business Purpose:	<b>NONE</b>		
Principal Office Address:	<b>4775 Peachtree Industrial Blvd., #310, Peachtree Corners, GA, 30092, USA</b>	Date of Formation / Registration Date:	<b>7/19/2002</b>
State of Formation:	<b>Georgia</b>	Last Annual Registration Year:	<b>2019</b>

### REGISTERED AGENT INFORMATION

Registered Agent Name:	<b>CORPORATION SERVICE COMPANY</b>
Physical Address:	<b>40 TECHNOLOGY PARKWAY SOUTH, SUITE 300, NORCROSS, GA, 30092, USA</b>
County:	<b>Gwinnett</b>

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