

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

JONATHAN GAFFERS, individually,)
and on behalf of others similarly situated,)
)
Plaintiffs,)
)
v.)
)
SITEL WORLDWIDE CORPORATION,)
a Delaware corporation, and)
SITEL OPERATING CORPORATION, a)
Delaware corporation,)
)
Defendants.)
)

Civil Action No.

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

JURY TRIAL DEMANDED

Plaintiff, JONATHAN GAFFERS, individually and on behalf of all others similarly situated, by and through his attorneys, hereby bring this Collective/Class Action Complaint against Defendants, SITEL Worldwide Corporation and SITEL Operating Corporation, and states as follows:

INTRODUCTION

1. This is a collective and class action brought pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23 by Plaintiff, Jonathan Gaffers (“Plaintiff”), individually and on behalf of all similarly situated persons employed by Defendants, SITEL Worldwide Corporation and SITEL Operating Corporation (hereinafter referred to as “Defendants”), arising from Defendants’ willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* and for breach of contract.

2. According to their website, Defendants provide “contact center based Business Process Outsourcing (BPO) solutions in the U.S. to companies in every major industry.” *See* <http://sitel.com/countries/united-states>. Defendants’ “client roster of composed of a marquee list

of industry leaders, primarily Fortune 500 companies representing diverse verticals including Technology, Financial Services, Insurance, Communications, Manufacturing, Healthcare, Media & Entertainment and Travel.” *Id.*

3. Employing over 61,000 people across the world, Defendants are “one of the world’s largest and most diversified providers of customer care outsourcing services.” *See* <http://www.sitel.com/our-company/invester-relations>.

4. In addition to maintain traditional brick and mortar call center locations, Defendants employ home-based customer care agents (hereinafter “HBCCAs”) through their “Sitel Work@Home Solutions” program. *See* <http://www.sitel.com/solution/sitel-workhome-solutions>. Defendants employ the HBCCAs in full and part time positions in no less than 34 states across the country. *See* <http://www.sitel.com/careers/work-home/>.

5. Defendants require the HBCCAs to work a set schedule. Defendants do not compensate the HBCCAs for all work performed; instead, Defendants only pay the HBCCAs for the time they are on the telephone and available to accept calls. This policy results in HBCCAs not being paid for all time worked and for all of their overtime in violation of the FLSA and state contract law.

6. Specifically, Defendants do not compensate its HBCCAs for all work performed including work performed at the beginning of each shift in connection with starting and logging into various computer programs and applications; during each shift in connection with technical issues; during each shift in connection with activities performed during the HBCCAs’ lunch break; and subsequent to each shift in connection with shutting down and logging out of various computer programs and applications. Defendants’ compensation policies result in HBCCAs not being paid for all time worked and for all of their work, including overtime, in violation of the FLSA and state

contract law.

7. Defendants' HBCCAs use multiple computer programs, software programs, servers and applications, in the course of performing their responsibilities. These programs, servers and applications, are an integral and important part of their work as they cannot perform their job without them.

8. All of Defendants' HBCCAs perform the same basic job duties and are required to use the same computer programs, software programs, servers and applications.

9. Defendants' HBCCA jobs are non-exempt positions that typically pay a few dollars more than the federally mandated minimum wage.

10. The U.S. Department of Labor recognizes that call center jobs, like those held by Defendants' HBCCAs, are homogenous and it issued Fact Sheet #64 in July 2008 to alert call center employees to some of the abuses which are prevalent in the industry. One of those abuses, which occurred in this case, is an employer's refusal to pay for work "from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday." Fact Sheet #64 at p. 2.

11. The Department of Labor's Fact Sheet #64 specifically condemns an employer's non-payment of an employee's necessary pre-shift and post-shift activities: "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.*

12. Plaintiff was employed by Defendants as an HBCCA in Bradenton, Florida from September 2013 to March 2014.

13. In order to perform his job, prior to each shift Plaintiff was required to start-up and log-in to various secure computer programs, software programs, servers and applications. The start-up and log-in process took substantial time on a daily basis with said time ranging from 5 to 15 minutes per day.

14. At the end of each shift, Plaintiff was required to shutdown and log-out of the various secure computer programs, software programs, servers and applications that he utilized during his shift. Additionally, during his post-shift activities Plaintiff was required to perform other tasks including, but not limited to, answering e-mails and saving case materials. The shutdown and log-out process took substantial time on a daily basis with said time ranging from 5 to 15 minutes per day.

15. Pursuant to Defendants' compensation policies, Plaintiff and other HBCAAs are not paid for the pre- and post-shift activities described above. Accordingly, Defendants fail to pay HBCAAs for no less than 10 to 30 minutes per day of work performed in connection with the pre-shift and post-shift activities.

16. The unpaid time Plaintiff and the putative Class spend starting up and logging into each session directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

17. Likewise, the unpaid time Plaintiff and the putative Class spend shutting down and logging out of each session directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

18. Additionally, at periodic times both prior to or during his work shifts Plaintiff would experience technical issues with and be disconnected from Defendants' computer systems and/or software programs/applications.

19. Defendants fail to pay Plaintiff and their HBCAAs for all time they spend dealing with pre- or mid-shift technical issues. Specifically, Defendants fail to pay the HBCAAs for time spent:

- a. On hold waiting to speak to a member of Defendants' technical support team – which often times takes 10 to 15 minutes or longer;
- b. Speaking to members of Defendants' technical support team – which often times takes 10 to 15 minutes or longer; and
- c. Time spent performing start-up and log-in procedures once the technical issue is resolved.

20. The unpaid time Plaintiff and the putative Class spend in connection with technical issues directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

21. Defendants' technical downtime compensation policies result in Plaintiff and the putative Class being withheld substantial compensation on a daily and weekly basis.

22. Defendants provide their HBCCAs with one unpaid 60-minute lunch break per shift.

23. Defendants, however, require their HBCCAs to perform the following functions during their unpaid lunch breaks:

- a. Logging out of various computer programs and applications at the beginning of each lunch break but subsequent to clocking out of Defendants' time keeping system – a process that usually takes 5 minutes per shift;
- b. Saving notes and case materials at the beginning of each lunch break but subsequent to clocking out of Defendants' time keeping system – a process that usually takes 5 minutes per shift;
- c. On occasions where supervisors are unavailable, answering questions from other HBCCAs throughout the lunch break period and subsequent to clocking out of Defendants' time keeping system – a process that usually takes 15 minutes per shift and occurred 2 to 3 times per week; and
- d. Logging into various computer programs and applications at the end of each

lunch break but prior to clocking into Defendants' time keeping system – a process that usually takes 5 minutes per shift.

24. Defendants knew or could have easily determined how long it takes HBCCAs to complete the pre-shift start-up and log-in process, and the post-shift log-out process, and Defendants could have properly compensated Plaintiff and the putative Class for the off-the-clock work they performed, but did not.

25. Defendants knew or could have easily determined the amount of unpaid time HBCCAs spend in connection with technical issues and could have paid the employees for this time, but did not.

26. Defendants knew or could have easily determined the amount of unpaid time HBCCAs spend in connection activities performed during their lunch breaks and could have paid the employees for this time, but did not.

27. Plaintiff brings this action on behalf of himself and all other similarly situated HBCCAs to obtain declaratory relief and recover unpaid wages and overtime, liquidated damages, penalties, fees and costs, pre- and post-judgment interest, and any other remedies to which they may be entitled.

JURISDICTION AND VENUE

28. This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331 because Plaintiff's claim raises a federal question under 29 U.S.C. § 201, *et seq.*

29. Additionally, this Court has jurisdiction over Plaintiff's collective action FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction."

30. Defendants' annual sales exceed \$500,000 and it has more than two employees, so the FLSA applies in this case on an enterprise basis. Defendants' HBCCAs engage in interstate

commerce and therefore they are also covered by the FLSA on an individual basis.

31. This Court has jurisdiction over Plaintiff's state law class claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The aggregate claims of the individual Class members exceed the sum value of \$5,000,000 exclusive of interest and costs, there are believed to be in excess of 1,000 Class members, and this is a case in which more than two-thirds of the proposed Class members and Defendants are citizens of different states.

32. This Court has personal jurisdiction over Defendants because Defendants' principal place of business is located within the State of Tennessee, Defendants conduct business within the State of Tennessee, and Defendants are registered with the Tennessee Secretary of State.

33. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants reside in this District, and a substantial portion of the events that give rise to the Plaintiff's claims occurred in this District.

PARTIES

34. Plaintiff, Jonathan Gaffers, is a resident of Bradenton, Florida, who worked for Defendants as a HBCAA from September 2013 to March 2014. Mr. Gaffers signed a consent form to join this lawsuit, which is attached to this Complaint as *Exhibit A*.

35. Defendant, SITEL Worldwide Corporation, is a Delaware corporation headquartered in Nashville, Tennessee. Defendant is licensed to do business in the State of Tennessee and its registered agent for service of process in Tennessee is Corporation Service Company, 2908 Poston Ave., Nashville, Tennessee 37203.

36. Defendant, SITEL Operating Corporation, is a Delaware corporation headquartered in Nashville, Tennessee. Defendant is licensed to do business in the State of Tennessee and its registered agent for service of process in Tennessee is Corporation Service Company, 2908 Poston

Ave., Nashville, Tennessee 37203. Upon information and belief, Defendant, SITEL Operating Corporation, is a wholly owned subsidiary of Defendant, SITEL Worldwide Corporation.

37. At all relevant times, Defendants jointly employed Plaintiff, and all members of the putative Class, under the FLSA. As the joint employers of Plaintiff and all putative Class members, Defendants were responsible for compliance with all applicable FLSA provisions. 29 C.F.R. § 791.2(a) and (b).

38. At all relevant times, Defendants owned and operated a business enterprise engaged in interstate commerce utilizing goods moved in interstate commerce as defined in 29 U.S.C. § 203(s).

39. Defendants constitute an “enterprise” within the meaning of 29 U.S.C. § 203(r)(1), because they perform related activities through common control for a common business purpose.

40. At all relevant times, Plaintiff and the Class members were engaged in commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

GENERAL ALLEGATIONS

41. Plaintiff, Jonathan Gaffers, was employed by Defendants as a HBCCA since from September 2013 to March 2014 earning a wage of \$9.50 to \$9.75 per hour.

42. In order to perform his job, prior to each shift Plaintiff was required to start-up and log-in to various secure computer programs, software programs, servers and applications. The start-up and log-in process took substantial time on a daily basis with said time ranging from 5 to 15 minutes per day.

43. At the end of each shift, Plaintiff was required to shutdown and log-out of the various secure computer programs, software programs, servers and applications that he utilized during his shift. Additionally, during his post-shift activities Plaintiff was required to perform

other tasks including, but not limited to, answering e-mails and saving case materials. The shutdown and log-out process took substantial time on a daily basis with said time ranging from 5 to 15 minutes per day.

44. Pursuant to Defendants' compensation policies, Plaintiff and other HBCAAs are not paid for the pre- and post-shift activities described above. Accordingly, Defendants fail to pay HBCAAs for no less than 10 to 30 minutes per day of work performed in connection with the pre-shift and post-shift activities.

45. The unpaid time Plaintiff and the putative Class spend starting up and logging into each session directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

46. Likewise, the unpaid time Plaintiff and the putative Class spend shutting down and logging out of each session directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

47. Additionally, at periodic times both prior to or during his work shifts Plaintiff would experience technical issues with and be disconnected from Defendants' computer systems and/or software programs/applications.

48. Defendants fail to pay Plaintiff and their HBCAAs for all time they spend dealing with pre- or mid-shift technical issues. Specifically, Defendants fail to pay the HBCAAs for time spent:

- a. On hold waiting to speak to a member of Defendants' technical support team – which often times takes 10 to 15 minutes or longer;
- b. Speaking to members of Defendants' technical support team – which often times takes 10 to 15 minutes or longer; and
- c. Time spent performing start-up and log-in procedures once the technical issue is resolved.

49. The unpaid time Plaintiff and the putative Class spend in connection with technical issues directly benefits Defendants and this process is an essential part of Plaintiff's job responsibilities as a HBCCA.

50. Defendants' technical downtime compensation policies result in Plaintiff and the putative Class being withheld substantial compensation on a daily and weekly basis.

51. Defendants provide their HBCCAs with one unpaid 60-minute lunch break per shift.

52. Defendants, however, require their HBCCAs to perform the following functions during their unpaid lunch breaks:

- a. Logging out of various computer programs and applications at the beginning of each lunch break but subsequent to clocking out of Defendants' time keeping system – a process that usually takes 5 minutes per shift;
- b. Saving notes and case materials at the beginning of each lunch break but subsequent to clocking out of Defendants' time keeping system – a process that usually takes 5 minutes per shift;
- c. On occasions where supervisors are unavailable, answering questions from other HBCCAs throughout the lunch break period and subsequent to clocking out of Defendants' time keeping system – a process that usually takes 15 minutes per shift and occurred 2 to 3 times per week; and
- d. Logging into various computer programs and applications at the end of each lunch break but prior to clocking into Defendants' time keeping system – a process that usually takes 5 minutes per shift.

53. Defendants knew or could have easily determined how long it takes HBCCAs to complete the pre-shift start-up and log-in process, and the post-shift log-out process, and Defendants could have properly compensated Plaintiff and the putative Class for the off-the-clock work they performed, but did not.

54. Defendants knew or could have easily determined the amount of unpaid time HBCCAs spend in connection with technical issues and could have paid the employees for this

time, but did not.

55. Defendants knew or could have easily determined the amount of unpaid time HBCCAs spend in connection activities performed during their lunch breaks and could have paid the employees for this time, but did not.

56. At an estimated 10 to 30 minutes per day of unpaid pre-shift computer start-up and log-in time and post-shift log-out time, plus several additional unpaid minutes or hours dealing with technical issues and performing work on lunch breaks, Plaintiff and the putative Class are owed substantial back pay prior to liquidation and interest.

57. Some examples of specific workweeks where Defendants failed to pay Plaintiff for hours worked in excess of 40 hours (as mandated by the FLSA) include the following:

- a. Weeks of October 13, 2013 through October 26, 2013:
 - Plaintiff was paid for 80 hours of regular time and 1.07 hours of overtime (*Exhibit B*).
 - With pre-shift and post-shift time of 10 to 30 minutes per shift, Plaintiff should have been paid an additional 100 to 300 minutes of overtime for the two week period. Thus, Plaintiff is entitled to overtime wages within a range of 100 to 300 minutes. Additionally, Plaintiff is entitled to overtime wages in association with any unpaid work related to technical issues and in connection with any work performed during lunch breaks.
- b. Weeks of January 19, 2014 through February 1, 2014:
 - Plaintiff was paid for 80 hours of regular time and 2.93 hours of overtime (*Exhibit C*).
 - With pre-shift and post-shift time of 10 to 30 minutes per shift, Plaintiff should have been paid an additional 100 to 300 minutes of overtime for the two week period. Thus, Plaintiff is entitled to overtime wages within a range of 100 to 300 minutes. Additionally, Plaintiff is entitled to overtime wages in association with any unpaid work related to technical issues and in connection with any work performed during lunch breaks.

58. At all relevant times, Defendants were Plaintiff's "employer" and Defendants

directed and directly benefited from the unpaid and off-the-clock work Plaintiff performed.

59. At all relevant times, Defendants controlled Plaintiff's work schedule, duties, protocols, applications, assignments and employment conditions.

60. At all relevant times, Defendants were able to track the amount of time that Plaintiff and the putative Class spent in connection with the pre-shift, post-shift, lunch break and technical issues, activities described herein but failed to pay Plaintiff and the putative Class for the work they performed in connection with these tasks each shift.

61. At all relevant times, Plaintiff and the Class members were non-exempt hourly employees, subject to the requirements of the FLSA.

62. At all relevant times, Defendants used their adherence and attendance policies against Plaintiff for his pre-shift, technical issues, lunch break and post-shift time worked and failed to pay for that time.

63. At all relevant times, Defendants' policies and practices deprived Plaintiff and the putative Class of wages owed for the pre-shift, post-shift, lunch break and technical issue time Plaintiff and the putative Class worked.

64. Defendants are leaders in the field of call center services and knew or should have known that Plaintiff and other HBCCAs' time spent starting up, logging in to and logging out of Defendants' computer systems, servers and programs, and time spent in connection with technical issues, including work performed during lunch breaks, is compensable under the FLSA and state contract law.

COLLECTIVE ACTION ALLEGATIONS

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

All current and former hourly home-based customer care agents who worked for Defendants at any time during the last three years.

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

66. Excluded from the Class are all Defendants’ executives, administrative and professional employees, including computer professionals and outside sales persons.

67. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are “similarly situated” to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policy, or plan; and (c) their claims are based upon the same factual and legal theories.

68. The employment relationship between Defendants and every Class member are the same and differ only by name, location, and rate of pay. The key issues – the amount of uncompensated pre-shift start-up and log-in time, time associated with technical issues, time associated with performing work during lunch breaks, and post-shift shutdown and log-out time owed to each employee – does not vary substantially from Class member to Class member.

69. The key legal issues are also the same for every Class member, to wit: whether the 10 to 30 minutes of unpaid pre-shift and post-shift time per shift, and the substantial unpaid time spent in association with technical issues and work performed during lunch breaks, is compensable under the FLSA.

70. Plaintiff estimates that the putative Class, including both current and former employees over the relevant period, includes several thousand members. The precise number of Class members should be readily available from a review of Defendants’ personnel and payroll

records.

RULE 23 NATIONWIDE CLASS ACTION ALLEGATIONS

71. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on his own behalf and on behalf of:

All current and former hourly home-based customer care agents who worked for Defendants at any time during the last three years.

(hereinafter referred to as the “Rule 23 Nationwide Class”). Plaintiff reserves the right to amend this definition if necessary.

72. The members of the Rule 23 Nationwide Class are so numerous that joinder of all Rule 23 Nationwide Class members in this case would be impractical. Plaintiff reasonably estimates there are thousands of Rule 23 Nationwide Class members. Rule 23 Nationwide Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

73. There is a well-defined community of interest among Rule 23 Nationwide members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Nationwide Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the pre-shift time Rule 23 Nationwide Class members spend on start-up and log-in activities each session is compensable time;
- b. Whether the unpaid time Rule 23 Nationwide Class members spend in connection with technical issues is compensable time;
- c. Whether the unpaid time Rule 23 Nationwide Class members spend performing work functions during their lunch breaks is compensable time;
- d. Whether the post-shift time Rule 23 Nationwide members spend on shutdown and log-out activities is compensable time; and

- e. Whether Defendants' non-payment of wages for all compensable time amounted to a breach of contract.

74. Plaintiff's claims are typical of those of the Rule 23 Nationwide Class in that they and all other Rule 23 Nationwide Class members suffered damages as a direct and proximate result of the Defendants' common and systemic payroll policies and practices. Plaintiff's claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Nationwide Class members' claims and their legal theories are based on the same legal theories as all other Rule 23 Nationwide Class members.

75. Plaintiff will fully and adequately protect the interests of the Rule 23 Nationwide Class and he retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff nor his counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Nationwide Class.

76. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Nationwide Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer. Prosecution of this case as a Rule 23 Class action will also eliminate the possibility of duplicative lawsuits being filed in state and federal courts throughout the nation.

77. This case will be manageable as a Rule 23 Class action. Plaintiff and his counsel know of no unusual difficulties in this case and Defendants and their corporate clients all have advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

78. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S.

Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

79. Because Defendants acted and refused to act on grounds that apply generally to the Rule 23 Nationwide Class and declaratory relief is appropriate in this case with respect to the Rule 23 Nationwide Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

COUNT I
(29 U.S.C. § 216(b) Collective Action)

VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. -- FAILURE TO PAY OVERTIME

80. Plaintiff re-alleges and incorporates all previous paragraphs herein and further allege as follows.

81. At all times relevant to this action, Defendants were joint employers under 29 U.S.C. § 203(d) of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.* See also 29 C.F.R. § 791.2(b).

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

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

84. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) was employed in an enterprise engaged in commerce or in the production of goods for commerce.

85. At all times relevant to this action, Defendants “suffered or permitted” Plaintiff and all similarly situated current and former employees to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

86. At all times relevant to this action, Defendants required Plaintiff and all similarly situated current and former Class members to perform 10 to 30 minutes of pre-shift computer start-up/log-in time and post-shift shutdown/log-out time per shift, but failed to pay these employees the federally mandated overtime compensation for all services performed.

87. At all times relevant to this action, Defendants failed to pay Plaintiff and all similarly situated current and former Class members’ compensation for work they performed related to technical issues associated with Defendants’ computer programs and software.

88. At all times relevant to this action, Defendants required Plaintiff and all similarly situated current and former Class members to perform work activities during their unpaid 60-minute lunch breaks, but failed to pay them the federally mandated overtime compensation for any of the services performed.

89. The pre-shift, post-shift, technical issues and lunch break unpaid work performed by Plaintiff and all similarly situated Class members every shift is an essential part of their jobs and these activities and the time associated with these activities is not *de minimis*.

90. In workweeks where Plaintiff and other Class members worked 40 hours or more, the uncompensated pre-shift start-up and log-in time, the uncompensated technical issue time, the uncompensated lunch break time, and the uncompensated post-shift shutdown and log-out time, and all other overtime should have been paid at the federally mandated rate of 1.5 times each employee’s regularly hourly wage. 29 U.S.C. § 207.

91. Plaintiff and other Class members, by virtue of their job duties and activities actually performed, are all non-exempt employees.

92. Defendants' violations of the FLSA were knowing and willful. Defendants knew or could have determined how long it takes HBCCAs to perform the off-the-clock work they performed including the work they performed pre-shift, in connection with technical issues, during their lunch break, and post-shift. Further, Defendants could have properly compensated Plaintiff and the Class for these activities, but did not.

93. 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 wages (and unpaid overtime if applicable) plus an additional equal amount in liquidated damages (double damages), plus costs and reasonable attorneys' fees.

Count II
(Rule 23 Nationwide Class Action)

BREACH OF CONTRACT

94. Plaintiff re-alleges and incorporates all previous paragraphs herein and further allege as follows.

95. At all times relevant to this action, Defendants had a binding and valid contract with Plaintiff and every other Rule 23 Nationwide Class member to pay each employee for each hour they worked at a pre-established (contractual) regularly hourly rate in consideration of the work duties Plaintiff and the Rule 23 Nationwide Class members performed on Defendants' behalf.

96. Each Rule 23 Nationwide Class member's contractual hourly rate is identified in paystubs and other records that Defendants prepare as part of their regular business activities.

97. Upon information and belief, each Rule 23 Nationwide Class member, including Plaintiff, have an hourly rate between \$9.00 and \$10.00 per hour.

98. Plaintiff and every other Rule 23 Nationwide Class member performed under the contract by doing their jobs and carrying out the work they performed each shift including the unpaid work that was required of them, accepted by Defendants, and that they performed, in connection with pre-shift, technical issues, lunch break, and post-shift activities.

99. By not paying Plaintiff and every other Rule 23 Nationwide Class member the agreed upon hourly wage for the work they performed each shift in connection with pre-shift, technical issues, lunch break, and post-shift activities, Defendants systematically breached its contracts with Plaintiff and each member of the Rule 23 Nationwide Class.

100. Plaintiff's and the Rule 23 Nationwide Class members' remedies under the FLSA are inadequate in this case to the extent Defendants paid them more than the federally mandated minimum wage of \$7.25 per hour but less than 40 hours per week (i.e., pure "gap time" claims).

101. Defendants also breached their duty of good faith and fair dealing by failing to keep track of the time Plaintiff and other Rule 23 Nationwide Class members spent performing the off-the-clock activities, which is a fundamental part of an "employer's job."

102. As a direct and proximate result of Defendants' breaches of the contracts alleged herein, Plaintiff and every other member of the Rule 23 Nationwide Class has been damaged, in an amount to be determined at trial.

103. These claims are appropriate for nationwide class certification under Rules 23(b)(2) and (b)(3) because the law of contracts is substantially the same throughout the United States.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests 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 herein (Count I);
- b. An Order certifying this action as a class action (for the Rule 23 Nationwide Class) pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's breach of contract claim (Count II);
- c. An Order compelling Defendants to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all collective action Class members and Rule 23 Class members, and permitting Plaintiff to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the class members of their rights by law to join and participate in this lawsuit;
- d. An Order designating Plaintiff as the representative of the FLSA collective action Class, the Rule 23 Nationwide Class and undersigned counsel as Class counsel for the same;
- e. An Order declaring Defendants violated the FLSA and the Department of Labor's attendant regulations as cited herein;
- f. An Order declaring Defendants' violations of the FLSA were willful;
- g. An Order declaring Defendants breached their contracts with Plaintiff and the members of the Rule 23 Nationwide Class by failing to pay them for each hour they worked at a pre-established (contractual) regularly hourly rate;
- h. An Order granting judgment in favor of Plaintiff and against Defendants and awarding Plaintiff and the collective action Class and the Rule 23 Nationwide Class the full amount of damages and liquidated damages available by law;
- i. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as provided by statute;
- j. An Order awarding pre- and post-judgment interest to Plaintiff on these damages; and
- k. An Order awarding such other and further relief as this Court deems appropriate.

JURY DEMAND

Plaintiff, Jonathan Gaffers, individually and on behalf of all others similarly situated, by and through his attorneys, hereby demands 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.

This, the 2nd day of February, 2016.

s/Gregory F. Coleman
Gregory F. Coleman (BPR #014092)
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EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE

JONATHAN GAFFERS, individually,
and on behalf of others similarly situated,

Plaintiffs,

vs.

Case No. _____

Hon. _____

SITEL WORLDWIDE CORPORATION,
a Delaware corporation, **SITEL OPERATING
CORPORATION**, a Delaware corporation,

Defendants.

CONSENT TO JOIN

1. Pursuant to the Fair Labor Standards Act, 29 U.S.C § 216(b), I hereby consent to join and act as a plaintiff on the above-captioned lawsuit.

2. I agree to be bound by any adjudication or court rulings in the lawsuit, whether favorable or unfavorable.

3. I hereby designate the Sommers Schwartz, P.C. law firm to represent me in the lawsuit under the terms and conditions set forth on the following pages.

Signature:  _____

Print Name: Jonathan Gaffers

Street Address: 4840 48TH ST W APT
614

City, ST, Zip: Bradenton, FL 34210

Email: me@jonathangaffers

Telephone: (941) 281-2596 (941) 920-8348

Date Signed: 01/28/2016

EXHIBIT B

CO. FILE DEPT. CLOCK NUMBER 130
CLI 819477 AF221W 0001390483 1

Earnings Statement



SITEL OPERATING CORPORATION
3102 WEST END AVENUE SUITE 1000
NASHVILLE, TN 37203

Period Beginning: 10/13/2013
Period Ending: 10/26/2013
Pay Date: 11/01/2013

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 0, Tax Blocked
FL: No State Income Tax

JONATHAN W GAFFERS
14741 2ND AVE CIR NE
BRADENTON, FL 34212

Social Security Number: XXX-XX-9720

Earnings	rate	hours	this period	year to date
Regular	9.5000	80.00	760.01	1,089.47
Overtime	14.2500	1.07	15.25	15.25
Gross Pay			\$775.26	1,104.72

Deposits	
Account No.	xxxxxxxx1274
Transit/ABA	xxxx xxxx
Pending	

Deductions	Statutory		
Social Security Tax		-48.06	68.49
Medicare Tax		-11.24	16.02
Net Pay		\$715.96	

Important Notes
YOUR BANK WAS NOTIFIED OF YOUR REQUEST FOR DIRECT DEPOSIT. IT WILL BEGIN AFTER ACCOUNT VERIFICATION.

Your federal taxable wages this period are \$775.26

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64-1278/611

SITEL OPERATING CORPORATION
3102 WEST END AVENUE SUITE 1000
NASHVILLE, TN 37203

Payroll check number: **0001390483**
Pay date: 11/01/2013

Pay to the order of:

JONATHAN W GAFFERS

This amount:

SEVEN HUNDRED FIFTEEN AND 96/100 DOLLARS

\$715.96

VOID NON-NEGOTIABLE VOID NON-NEGOTIABLE

VOID AFTER 180 DAYS

BANK OF AMERICA

THIS IS NOT A CHECK

EXHIBIT C

CO.	FILE	DEPT.	CLOCK	VCHR. NO.	130
CLI	819477	AF221W		0000060200	1

Earnings Statement



SITEL OPERATING CORPORATION
 3102 WEST END AVENUE SUITE 1000
 NASHVILLE, TN 37203

Period Beginning: 01/19/2014
 Period Ending: 02/01/2014
 Pay Date: 02/07/2014

Taxable Marital Status: Single
 Exemptions/Allowances:
 Federal: 0, Tax Blocked
 FL: No State Income Tax

JONATHAN W GAFFERS
14741 2ND AVE CIR NE
BRADENTON, FL 34212

Social Security Number: XXX-XX-9720

Earnings	rate	hours	this period	year to date
Regular	9.7500	80.00	780.00	2,059.00
Overtime	14.6250	2.93	42.85	42.85
Gross Pay			\$822.85	2,101.85

Deductions	Statutory		
	Social Security Tax	-51.01	130.31
	Medicare Tax	-11.93	30.48
	Net Pay	\$759.91	
	Checking1	-759.91	
	Net Check	\$0.00	

Your federal taxable wages this period are \$822.85

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SITEL OPERATING CORPORATION
 3102 WEST END AVENUE SUITE 1000
 NASHVILLE, TN 37203

Advice number: 0000060200
 Pay date: 02/07/2014

Deposited to the account of	account number	transit ABA	amount
JONATHAN W GAFFERS	xxxxxxx1274	xxxx xxxx	\$759.91

THIS IS NOT A CHECK

VOID AFTER 180 DAYS

NON-NEGOTIABLE

CIVIL COVER SHEET

The JS 44 civil coversheet 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.)

I. (a) PLAINTIFFS

JONATHAN GAFFERS individually and on behalf of others similarly situated,

(b) County of Residence of First Listed Plaintiff Manatee, FL
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Gregory F. Coleman, Greg Coleman Law PC, 800 S. Gay St., #1100, Knoxville, TN 37929 T: 865-247-0080 F: 865-522-0049

DEFENDANTS

SITEL WORLDWIDE CORPORATION and SITEL OPERATING CORPORATION

County of Residence of First Listed Defendant Davidson, TN
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | 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 <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <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):
FLSA, 29 USC Section 201, et seq. and 216(b), F.R.C.P. 23

Brief description of cause:

Collective action for former and current employees who are owed unpaid wages and overtime compensation

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
- DEMAND \$ _____
- CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE: 2/2/2016 SIGNATURE OF ATTORNEY OF RECORD: Gregory F. Coleman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee



JONATHAN GAFFERS, individually and on behalf of others similarly situated,

Plaintiff

v.

SITEL WORLDWIDE CORPORATION and SITEL OPERATING CORPORATION

Defendant

Civil Action No. 3-16-0128

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

SITEL WORLDWIDE CORPORATION
By and through its Registered Agent,
CORPORATION SERVICE COMPANY
2908 Poston Avenue
Nashville, Tennessee 37203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Gregory F. Coleman
GREG COLEMAN LAW PC
First Tennessee Plaza
800 S. Gay Street, Suite 1100
Knoxville, TN 37929

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

KEITH THROCKMORTON
CLERK OF COURT

Handwritten signature of H. Blaney

Signature of Clerk or Deputy Clerk

Date: FEB - 2 2016

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Middle District of Tennessee

JONATHAN GAFFERS, individually and on behalf of others similarly situated,

Plaintiff

SITEL WORLDWIDE CORPORATION and SITEL OPERATING CORPORATION

Defendant

Civil Action No. 3 16 0128

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) SITEL OPERATING CORPORATION By and through its Registered Agent, CORPORATION SERVICE COMPANY 2908 Poston Avenue Nashville, Tennessee 37203

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Gregory F. Coleman GREG COLEMAN LAW PC First Tennessee Plaza 800 S. Gay Street, Suite 1100 Knoxville, TN 37929

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

KEITH THROCKMORTON CLERK OF COURT

H. Boney Signature of Clerk or Deputy Clerk

Date: FEB - 2 2016

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: