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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

KRISTY DOUGLAS and TYSHEKA  
RICHARD, individually and on behalf of all  
others similarly situated,

Plaintiffs,

v.

XEROX BUSINESS SERVICES, LLC, a  
Delaware Limited Liability Company;  
LIVEBRIDGE, INC., an Oregon  
Corporation; AFFILIATED COMPUTER  
SERVICES, INC., a Delaware Corporation;  
AFFILIATED COMPUTER SERVICES,  
LLC, a Delaware Limited Liability  
Company,

Defendants.

NO. 2:12-cv-01798

**COLLECTIVE ACTION COMPLAINT**

**I. INTRODUCTION**

1.1 Plaintiffs bring this action on behalf of themselves and all similarly situated employees against Defendants for engaging in a systematic scheme of wage and hour violations. The scheme involves, among other things, requiring or permitting employees to work off the clock, failing to pay employees for all hours worked, and failing to pay employees for overtime work.

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**II. JURISDICTION AND VENUE**

2.1 Defendants are within the jurisdiction of this Court. This Court has jurisdiction under 28 U.S.C. §1331 because Plaintiffs' claims arise under federal law in the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§201-219.

2.2 Venue is proper in this Court pursuant to 28 U.S.C. §1391(a)(1) because Defendants do sufficient business in this District to subject them to personal jurisdiction herein.

**III. PARTIES**

3.1 Plaintiff Tysheka Richard is a citizen of Washington State. Defendants hired Plaintiff Richard as a non-exempt customer care assistant in August 2010. Since she was hired, Plaintiff Richard has been employed as a customer care assistant or technical support agent and has performed customer service work in Defendants' call center in Federal Way, Washington. Defendants required Plaintiff Richard to perform unpaid work before, during, and after her scheduled shift. Defendants failed to pay Plaintiff Richard for all hours worked, including overtime hours.

3.2 Plaintiff Kristy Douglas is a citizen of the state of Indiana. Defendants hired Plaintiff Douglas as a non-exempt customer care assistant in November 2010. Since she was hired, Plaintiff Douglas has been a customer care assistant and has performed customer service work in Defendants' call center in Anderson, Indiana. Defendants required Plaintiff Douglas to perform unpaid work before, during, and after her scheduled shift. Defendants failed to pay Plaintiff Douglas for all hours worked, including overtime hours.

3.3 Defendant Xerox Business Services, LLC ("Xerox") is a Delaware LLC with its headquarters in Texas. Xerox has employed thousands of employees in the United States, including Plaintiffs and proposed Class members. On information and belief, Xerox is either the parent company or affiliate of co-Defendants Livebridge, Inc., Affiliated Computer Services, Inc., and Affiliated Computer Services, LLC. On

1 information and belief, Xerox has exercised control over Livebridge and the Affiliated  
2 Computer Services companies since it purchased them in 2010. Xerox conducts  
3 business, including employing thousands of employees, in the Western District of  
4 Washington.

5 3.4 Defendant Livebridge, Inc. is an Oregon corporation with its  
6 headquarters in Texas. On information and belief, Livebridge is the subsidiary  
7 company or affiliate of co-Defendant Xerox. Livebridge has conducted business in the  
8 Western District of Washington. On information and belief, Livebridge has employed  
9 thousands of employees in the United States, including Plaintiff Richard and proposed  
10 Class members.

11 3.5 Defendant Affiliated Computer Services, Inc. is a Delaware corporation  
12 with its headquarters in Texas. On information and belief, Affiliated Computer  
13 Services, Inc. is the subsidiary or affiliate of co-Defendant Xerox and was acquired by  
14 Xerox in 2010. Affiliated Computer Services, Inc. has conducted business in the  
15 Western District of Washington. On information and belief, Affiliated Computer  
16 Services, Inc. has employed thousands of employees in the United States, including  
17 Plaintiffs and proposed Class members.

18 3.6 Defendant Affiliated Computer Services, LLC is a Delaware limited  
19 liability company with its headquarters in Texas. On information and belief, Affiliated  
20 Computer Services, LLC is the subsidiary or affiliate of co-Defendant Xerox. On  
21 information and belief, Affiliated Computer Services, LLC has conducted business in  
22 the Western District of Washington. On information and belief, Affiliated Computer  
23 Services, LLC employs thousands of employees in the United States, including  
24 Plaintiffs and proposed Class members.

#### 25 **IV. CONCERTED ACTION ALLEGATIONS**

26 4.1 Pursuant to 29 U.S.C. §216(b), Plaintiffs bring this case as a concerted  
27 action on behalf of all employees of Defendants in the United States who are similarly

1 situated, i.e., all current and former employees of Defendants who have been  
2 employed by Defendants in the United States as non-exempt customer service  
3 employees at any time between October 12, 2009 and the date of final disposition of  
4 this action (the “Class”).

5 4.2 The named Plaintiffs are similarly situated to the members of the  
6 proposed Class because they were employed by Defendants in the same or similar  
7 positions, they were required to use the same or similar systems to record their time  
8 and work activities, they were required to perform work before and after their shifts  
9 without compensation, and they were systematically denied full compensation for all  
10 hours worked, including overtime hours.

11 4.3 This case is related to a state-law class action case, *Hill v. Xerox Corp.*  
12 *et al*, Case No. 2-cv-00717-JCC, which is currently pending in this Court.

### 13 **V. SUMMARY OF FACTUAL ALLEGATIONS**

14 5.1 Common Course of Conduct. Defendants have engaged in, and  
15 continue to engage in, a common course of wage and hour abuse against customer  
16 service employees through their pay practices, including but not limited to the “Activity  
17 Based Compensation” (“ABC”) plan or other incentive-based compensation plans.  
18 Under these plans, Defendants pay customer service employees based on a hybrid  
19 model that combines hourly rates with complicated incentive rates for time spent on  
20 incoming phone calls with customers. Defendants’ compensation system results in  
21 customer service employees performing unpaid work both on and off the clock.  
22 Defendants fail to track and pay for all regular and overtime hours worked by customer  
23 service employees. For example, Defendants only track and pay for the time in which  
24 customer service employees are logged into Defendants’ phone system and taking  
25 calls or in special training sessions. As another example, Defendants require  
26 customer service employees to perform uncompensated, off-the-clock work when the  
27 employees are not logged into the time-keeping system and when the employees are

1 logged into certain auxiliary codes in the system. Defendants also fail to pay customer  
2 service employees for all overtime work.

3 5.2 Off-the-Clock Work. Defendants' common course of wage and hour  
4 abuse includes but is not limited to routinely failing to compensate customer service  
5 employees for off-the-clock work. As a result of this off-the-clock work, customer  
6 service employees are deprived of straight-time and overtime wages. Defendants  
7 have had actual or constructive knowledge of the fact that customer service  
8 employees are performing uncompensated off-the-clock work.

9 a. Pre-Shift Work. During the applicable statute of limitations period,  
10 Defendants have required Plaintiffs and proposed Class members to perform unpaid,  
11 pre-shift work, including but not limited to finding an open computer terminal, starting  
12 the computer system by entering a username and password, opening multiple  
13 programs required for their work and waiting for all necessary programs to load, all  
14 before officially logging on to the time-keeping system to "start" their scheduled shift.  
15 The time for which Defendants' customer service employees are paid begins only  
16 when they log on to the time-keeping system, which they are not allowed to do until  
17 their scheduled shift start time. Plaintiffs and proposed Class members are not paid  
18 for work performed before logging on to the system. During training, Defendants  
19 emphasize to customer service employees that they must arrive at work 15 minutes  
20 prior to their scheduled shift time in order to find a computer terminal, activate the  
21 computer, open required programs, and perform other tasks before logging on to the  
22 system (and thus starting the time clock). Defendants pay customer service  
23 employees only for the time they are logged on to certain settings in the system, which  
24 normally corresponds with the scheduled shift time, not the time they are actually  
25 working. In fact, customer service employees are not permitted to log on to the  
26 system and start the time clock until they have completed all of their pre-log-on work.  
27 Plaintiffs and proposed Class members often spend approximately 15 minutes per day

1 working on pre-shift activities alone. The preliminary activities are necessary for  
2 Plaintiffs and proposed Class members to perform their principal work activities and  
3 are part of Defendants' ordinary course of business. Defendants have had actual or  
4 constructive knowledge of the fact that customer service employees are not being  
5 compensated for pre-shift work.

6           b. Post-Shift Work. During the applicable statute of limitations  
7 period, Defendants have required Plaintiffs and proposed Class members to perform  
8 unpaid work after logging out of the system (i.e., clocking out). After logging out of the  
9 system and "ending" their scheduled shifts, Plaintiffs and proposed Class members  
10 are required to close several programs on their computers and sign out of the  
11 computers. During training, Defendants emphasizes to customer service employees  
12 that they must log out of the system (i.e., clock out) before closing any open programs  
13 on their computers. Plaintiffs and proposed Class members often spend  
14 approximately 10-15 minutes per day working on post-shift activities alone. In  
15 addition, on information and belief, Defendants require customer service employees to  
16 perform other unpaid work outside of the employees' scheduled shift time. Defendants  
17 have had actual or constructive knowledge of the fact that customer service  
18 employees are not being compensated for post-shift work.

19           5.3 Other Unpaid Work. During the applicable statute of limitations period,  
20 Defendants have failed to pay Plaintiffs and proposed Class members for all hours  
21 worked during the scheduled and recorded workday. Under the Defendants' ABC or  
22 incentive-based compensation plans, Defendants record and pay for the work of  
23 Plaintiffs and proposed Class members in a variety of ways, using separate and  
24 variable rates for assigned customer service tasks and other activities. Under the ABC  
25 plan, Defendants do not pay for all hours worked by Plaintiffs and proposed Class  
26 members. Defendants have had actual or constructive knowledge of the fact that  
27 customer service employees are not being compensated for all hours worked.

1 5.4 Overtime. Defendants' common course of wage and hour abuse  
2 includes routinely failing to properly record and compensate customer service  
3 employees for all overtime hours worked. Employees are entitled to one and one-half  
4 times the regular rate of pay for all hours worked in excess of 40 hours per week. As  
5 outlined above, Defendants fail to pay for pre-shift and post-shift work performed by  
6 customer service employees, and for other work performed on the clock, all of which  
7 results in failure to pay employees one and one-half times the regular rate of pay for all  
8 hours worked in excess of 40 hours per week. Defendants have had actual or  
9 constructive knowledge of the fact that customer service employees are not being  
10 compensated for all overtime hours worked.

11 **VI. CLAIMS**

12 6.1 Plaintiffs reallege and incorporate by reference each and every allegation  
13 set forth in the preceding paragraphs.

14 6.2 Defendants regularly engage in commerce and their employees are  
15 engaged in interstate commerce.

16 6.3 Defendants are and have been employers for purposes of the FLSA,  
17 29 U.S.C. §203(d).

18 6.4 Plaintiffs and the proposed class have been employees of Defendants  
19 for purposes of the FLSA, 29 U.S.C. §203(e).

20 6.5 Failure to Pay Minimum Wage. While employed by Defendants,  
21 Plaintiffs and proposed Class members performed work for Defendants for which they  
22 were not compensated. Defendants failed to pay Plaintiffs and proposed Class  
23 members the legal minimum wage for all hours worked, in violation of 29 U.S.C. §206.

24 6.6 Failure to Pay Overtime Premiums. While employed by Defendants,  
25 Plaintiffs and proposed Class members performed overtime work for which no  
26 additional compensation was paid to them. Defendants failed to pay Plaintiffs and  
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1 proposed Class members one and one-half times their regular rates of pay for hours  
2 worked in excess of forty hours per week, in violation of 29 U.S.C. §207.

3 6.7 Willful Violations. Throughout the class period, Defendants have willfully,  
4 deliberately, and knowingly refused to pay Plaintiffs and proposed Class members for  
5 all hours worked and for overtime hours worked.

6 **VII. PRAYER FOR RELIEF**

7 7.1 WHEREFORE, Plaintiffs, on their own behalves and on behalf of the  
8 proposed Class, seek judgment against Defendants as follows:

9 a. Certification of this case as a collective action under 29 U.S.C.  
10 § 216(b);

11 b. A declaration that Defendants are financially responsible for  
12 notifying all Class members of Defendants' wage and hour violations;

13 c. Appoint Plaintiffs as representatives of the Class;

14 d. Appoint the undersigned counsel as counsel for the Class;

15 e. Declare that Defendants' actions complained of herein violate the  
16 FLSA;

17 f. Enjoin Defendants and their officers, agents, successors,  
18 employees, representatives, and any and all persons acting in concert with  
19 Defendants, as provided by law, from engaging in the unlawful and wrongful  
20 conduct set forth herein;

21 g. Award Plaintiffs and the Class compensatory and liquidated  
22 damages;

23 h. Award Plaintiffs and the Class reasonable attorneys' fees and  
24 costs;

25 i. Award Plaintiffs and the Class prejudgment and post-judgment  
26 interest, as provided by law;

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