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VERIZON SUED OVER COMMISSIONS

A joint venture wireless firm illegally penalizes salespeople for cancelled contracts, the suit alleges.

By Karen Coleman

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SAN FRANCISCO - A Sacramento County cell phone service salesman has instigated a class action against Verizon Wireless Services LLC, alleging the firm has been illegally holding back overtime and sales commission payments for an estimated 600 employees in California.

Jim Logan, an employee in Verizon wireless' call center in Folsom, says the country's largest telecommunications company imposes illegal "chargebacks" against sales commissions, taking money back when customers cancel their service.

The lawsuit complains that "[d]efendant's policy and practice of subjecting its sales employees ... to 'chargebacks' of previously paid wages" violates Section 221 of the California Labor Code, which makes it illegal for an employer to take back from an employee any part of wages previously paid.

The suit was filed Wednesday in Alameda County Superior Court. Logan v. Verizon Wireless RG03094066. It also alleges the company, a joint venture between Verizon Communications Inc. and Vodafone Group Plc. based in Bedminster, N.J., incorrectly figured overtime payments, citing the Labor Code and Industrial Welfare Commission orders.

The action seeks an unspecified amount in back wages and injunctive relief.

"If the employee does the work and gets paid for it and the customer changes their mind somewhere down the road, that doesn't mean the employee should get their pay docked," said plaintiffs counsel David Borgen, of Goldstein Demchak Baller Borgen & Dardarian in Oakland.

The plaintiffs team also includes lawyers from Bogatin Corman & Gold, also in Oakland, and Placerville solo John Platt.

A Verizon Wireless spokeswoman said the company had not seen the suit but was aware it had been filed.

"We strongly believe that every aspect of our compensation plan complies with California law," said spokeswoman Jan Morris.

According to the lawsuit, Verizon Wireless requires reimbursement of commissions on service agreements canceled within a year of purchase.

National Association of Sales Professionals President Michael Reagan said the practice is common in most industries. A former telecommunications sales executive himself, Reagan said it's a reasonable way to recoup commission money "advanced" to salespeople before a sale is complete - especially when it involves a service plan paid for in regular installments.

"The key phrase is, 'what's reasonable?'" Reagan said. "I think charging them back 11 months and 29 days later is ludicrous. I believe that is an exception to industry practice."

Joshua Konecky, an associate at Golstein Demchak, said the practice, common or not, violates state law.

In addition, Verizon Wireless also charges a \$175 cancellation fee to the customer who cancels, a bit of double-dipping the suit alleges is also illegal under state law.

"In fact, these so-called 'chargebacks' not only strip the sales employees of their actual wages, but force many to begin their pay periods already indebted to defendant Verizon," the complaint says. "The sales employees continue from one pay period to the next in a cycle of indebtedness with their own employer, despite the fact that they have little or no control over whether the customer maintains or cancels the services at issue."

"Verizon may try to argue that commissions are not wages, but that would be a smoke screen. The fact is that these sales employees make their living on their commissions," Konecky said.

A Santa Clara County Superior Court judge ruled in 2001 that chargebacks by Ikon Office Solutions when customers defaulted on their leases violated state law because the employees involved were not responsible for evaluating creditworthiness as a part of their job. Baker v. Ikon, CV769081.

The attorneys involved in that suit could not be reached for comment. Similar suits have been filed since then in California by plaintiffs lawyer Mark Thierman, of Reno, Nev., against plaintiffs including the Los Angeles Times, Investors Business Daily and NTT/Verio.