

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION OF
LETITIA JAMES, ATTORNEY GENERAL OF THE
STATE OF NEW YORK

ASSURANCE OF
DISCONTINUANCE

OF

AOD No. 24-072

K MOBILE d/b/a BEST WIRELESS AND NISHANT
GARG.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) has investigated K MOBILE d/b/a BEST WIRELESS (“Best Wireless”) and its owner NISHANT GARG pursuant to New York Executive Law § 63(12).

The investigation examined whether Best Wireless and/or Mr. Garg failed to pay wages, commissions, and overtime, illegally withheld wages, retaliated against employees, and failed to keep required records under the Federal Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”).

This Assurance of Discontinuance (“AOD”) contains the findings in connection with this investigation of Best Wireless and Mr. Garg (collectively, “Respondents”) and the relief agreed to by the OAG, Best Wireless, and Mr. Garg (collectively, the “Parties”).

FINDINGS

Introduction and Background

1. Best Wireless is a retail cell phone company and “Verizon Authorized Retailer” with twenty-nine store locations and approximately seventy employees working at one time throughout New York City, Long Island, and Rockland County.

2. The OAG commenced its investigation in 2023. It covers the time period of January 1, 2020 through December 1, 2023. During that time period, approximately 450 employees worked at Best Wireless.

3. Nishant Garg was and is at all times the owner of Best Wireless with a principal executive office address of 253-25 Union Turnpike, Glen Oaks, NY 11004.

4. Best Wireless and Nishant Garg are employers within the meaning of the FLSA and NYLL.

5. Best Wireless will cease to operate as a Verizon Authorized Retailer as of September 15, 2024. Mr. Garg will not be involved as an owner, high-level senior managerial employee, or in any other capacity in any successor company to Best Wireless as of September 15, 2024. Best Wireless will sell its assets (but not the company stock) to a buyer on or about September 15, 2024.

Illegal Deductions

6. NYLL § 193(1) and 193(3)(a) prohibit deductions and equivalent deductions by separate payments except those that are (1) specifically delineated in the statute (generally categorized as health and welfare benefits, pensions and savings benefits, charitable benefits, representational benefits, transportation benefits, and food/lodging benefits (*see* 12 NYCRR § 195-4.4)), (2) expressly authorized in writing by the employee, and (3) for the benefit of the employee. Wages include “the earnings of an employee for labor or services rendered, regardless of whether the amount of earnings is determined on a...commission...basis.” NYLL § 190(1).

7. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents illegally deducted sums from employees’ paychecks and/or required illegal

payments by separate transactions for “lost” or “stolen” cell phone merchandise, issues with phone trade-ins or promotions, uniform purchases, and background check fees.

8. Specifically, the OAG found that Respondents illegally deducted wages from employees for lost devices, for mis-scanning devices, for stolen merchandise, and for missing phone trade-ins.

9. The OAG also found that Respondents illegally deducted wages from employees for Verizon-branded uniform shirts or failed to reimburse employees for purchasing the required uniforms.

10. The OAG also found that Respondents illegally deducted wages from employees for conducting background checks and failed to reimburse them for such checks.

Failure to Pay Overtime

11. Under FLSA § 207 and NYCRR § 142-2.2, employers must pay covered employees at a wage rate of one and one-half times their regular rate for all hours over forty.

12. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to pay overtime when employees worked in excess of forty hours across multiple store locations.

13. Employees that are exempt from overtime compensation must be paid on a “salary basis,” which means that they are paid a “predetermined amount [that] cannot be reduced because of variations in the quality or quantity of the employee’s work. An exempt employee must receive the full salary for any week in which they perform any work, regardless of the number of days or hours worked.”¹ A salaried employee cannot be docked for partial day absences, for example. *See*

¹ <https://dol.ny.gov/system/files/documents/2021/12/administrative-employee-overtime-exemption-frequently-asked-questions.pdf>; <https://dol.ny.gov/system/files/documents/2021/03/executive-employee-overtime-exemption-frequently-asked-questions.pdf>.

Auer v. Robbins, 519 U.S. 452 (1997); 29 C.F.R. § 541.600. If employees are not paid on a “salary basis,” they are not exempt from overtime and under FLSA § 207 and NYCRR § 142-2.2, must be paid a wage rate of one and one-half times their regular rate for all hours over forty.

14. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to pay overtime to employees that Best Wireless misclassified as overtime exempt.

Failure to Pay Commissions

15. Under NYLL § 191(1)(c), “[t]he agreed terms of employment shall be reduced to writing, signed by both the employer and the commission salesperson, and must include a description of how the earnings will be calculated.” The failure of an employer to produce such written terms of employment “shall give rise to a presumption that the terms of employment that the commissioned salesperson has presented are the agreed terms of employment.” NYLL 191(1)(c). Commissions must be paid “not less frequently than once in each month and not later than the last day of the month following the month in which they are earned.” *Id.*

16. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to pay commissions earned and subjected employees to a fraudulent commission structure.

Failure to Pay for Meal and Rest Breaks

17. Rest periods of short duration (i.e., five to twenty minutes) that are provided or taken by employees to promote the efficiency of the employee must be counted as hours worked. 29 C.F.R. § 785.18. *See Rodriguez v. Ridge Rest., Inc.*, No. 16-CV-254 (DRH)(AKT), 2020 WL 7711859, at *6 (E.D.N.Y. Dec. 29, 2020) (“To the extent that fifteen-minute breaks are given to an employee they are included in time worked.”) (internal citations omitted).

18. NYLL § 162 provides that non-factory workers in New York State are entitled to 30-minute unpaid lunch breaks for shifts six hours or longer, but they must be paid for this time if they work through the meal period, including during “one employee shifts.”²

19. For “one employee shifts,” employers must explain to employees that “the nature of the industry in which the employer operates necessitates one-employee shifts [and] the employee’s meal periods may be interrupted.” The employer must then obtain an acknowledgement by the employee that they voluntarily consent to this arrangement, preferably in writing, and they must be paid when they work through the meal period. *Id.*

20. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to properly compensate employees for breaks of short duration and missed lunch breaks.

21. Specifically, the OAG found that Respondents did not allow workers to take their lunch breaks but still reduced their compensation as if they had taken those breaks.

22. Further, the OAG found that Respondents required workers to clock out for rest breaks of short duration.

Failure to Create and Provide Required Records

23. Employers must provide notice at the time of hiring of the employees’ rate of pay and regular pay day, among other information. *See* NYLL § 195(1)(a). Employers must also regularly provide wage statements in the employee’s primary language with a full accounting of an employee’s pay period, including the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; deductions, and the number of hours worked, among other information. *See* NYLL § 195(3).

² <https://dol.ny.gov/system/files/documents/2021/03/meal-and-rest-periods-frequently-asked-questions.pdf>; *see also* https://dol.ny.gov/system/files/documents/2021/02/ls443_guidelines_for_meal_periods.pdf.

24. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to provide any hiring notices before 2022 and then failed to provide all employees with hiring notices after that date.

25. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents failed to comply with its recordkeeping obligations to provide regular paystubs.

Retaliation

26. Under NYLL §§ 215 and 740, it is illegal for employers to retaliate against employees for reporting violations of law, including violations of the NYLL, to their employers, supervisors, public agencies, or any other person. Adverse action, including firing and/or threats to subject a former employee to a bad faith or baseless lawsuit, constitute such retaliation.

27. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents retaliated against an employee by firing him and sending a cease and desist letter that threatened legal action for filing a formal complaint with Verizon Corporate about Respondents' deductions from employees' paychecks, lack of meal breaks and rest periods, and failure to pay overtime and for informing his coworkers about the illegal deductions, and retaliation against other former/current employees.

28. Based on its investigation of Best Wireless and Nishant Garg, the OAG concluded that Respondents retaliated against other employees for complaints about company practices including last-minute scheduling, lack of commission payments, lack of safety protocols, and lack of breaks. The retaliation included firing employees and reducing scheduled hours for those who remained employed.

29. Based on the foregoing, the Attorney General has concluded that Best Wireless and Mr. Garg engaged in persistent and repeated illegality in violation of Executive Law § 63(12), the FLSA, and the New York Labor Law.

30. The OAG finds the relief and agreements contained in this AOD appropriate and in the public interest. THEREFORE, the OAG is willing to accept this AOD pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

Entities Bound By the AOD

31. This AOD binds Best Wireless, as well as its principals, directors, beneficial owners, officers, shareholders, and Mr. Garg individually.

Monetary Payment

32. Best Wireless and Mr. Garg agree to pay \$750,000 (seven hundred fifty thousand dollars) in resolution of the OAG's investigation (the "Monetary Relief Amount"), which will be paid directly to the OAG within thirty (30) days of the date of the execution of the AOD ("Effective Date"). The Monetary Relief Amount will be used for distribution as wage restitution to current and former employees for violations of laws specified in this AOD.

33. Payments shall be made by wire transfer, attorney check, corporate or certified check, or bank draft, which shall be made payable to the "State of New York" and shall reference AOD No. 24-072. Payment shall be addressed to the attention of:

Jessica Agarwal
Assistant Attorney General, Labor Bureau
28 Liberty Street
New York, New York 10005

Jessica.Agarwal@ag.ny.gov

The payment and all correspondence related to this AOD must reference "AOD No. 24-072."

34. The OAG has the sole discretion to determine which employees shall be eligible for restitution and to determine the amount of such restitution.

35. Respondents agree to provide reasonable cooperation necessary to locate and contact current and former employees who may be eligible for a restitution amount, including providing for each worker their last known address, last known telephone number, last-known email address, social security number, preferred language, last-known bank routing number, and last-known bank account number. Respondents will also provide to current employees any information related to the factual details of the settlement as OAG may request.

Programmatic Relief

36. Mr. Garg agrees that if, within three (3) years of the execution date of this AOD, he becomes an owner or serves in a high-level senior managerial capacity in a new company that he will provide notice within thirty (30) days to the OAG upon assumption of such role.

37. Mr. Garg hereby acknowledges and agrees that for any companies in New York State for which he is involved as an owner or in a high-level senior managerial capacity, within three (3) years of the execution date of this AOD, including Best Wireless, Telecom Institute, and We Connect Worldwide (if they continue as ongoing entities with employees), that each company and its managers will comply with all applicable federal, state, and local laws, including, but not limited to, the FLSA and the New York Labor Law.

38. Mr. Garg agrees that for any companies in New York State for which he is involved as an owner or in a high-level senior managerial capacity within three (3) years of the execution

date of this AOD, he will implement training, subject to approval by the OAG, for all managers, employees, and workers on the rights and requirements for workers in New York State under federal, state, and local law, including those contained in the FLSA and the New York Labor Law.

39. Mr. Garg will submit any trainings provided to any personnel as described in Paragraph 38 to the OAG for review and will incorporate any revisions requested by the OAG within 30 days after receipt of those revisions. Mr. Garg will then ensure these trainings are conducted within 30 days of receipt of OAG approval for new and existing employees.

Monitoring and Oversight

40. Periodic Certification of Compliance: Respondents shall provide the OAG with a certification affirming its compliance with the requirements set forth in this AOD Paragraphs 36 to 39 (Programmatic Relief), to be submitted to the OAG within forty-five (45) calendar days of the date of execution of this agreement. This certification shall be in writing and signed by Respondents. Thereafter, a certification of compliance shall be submitted to the OAG on an annual basis for the following three (3) years. In any case, where the circumstances warrant, the OAG may require Respondents to file an interim certification of compliance upon thirty (30) days' notice.

41. Respondents expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph during the Effective Period (three (3) years from the execution date of this AOD) is a violation of the AOD, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 30, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the AOD has been violated shall constitute prima facie proof of the statutory violations described in Paragraphs 1-29 pursuant to Executive Law § 63(15).

Bankruptcy and Non-Payment

42. If within ninety-one (91) days of the Effective Date of this AOD or of any payment made under this AOD, either of the Respondents commence a voluntary case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, or a third party commences such a case on an involuntary basis which is not dismissed within sixty (60) days (a) seeking to have any order for relief of either of the Respondents' debts, or seeking to adjudicate either of the Respondents as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for either of the Respondents or for all or any substantial part of its or their assets (collectively, "Bankruptcy Proceedings"), Respondents agree as follows:

- a. If either of the Respondents (i) fail to make any of the payments required under Paragraph 32, or (ii) Best Wireless's obligations of the Respondents under this AOD are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the acceptance in lieu of legal action as fully set forth in Paragraph 30 shall no longer be effective.
- b. If either of the Respondents enter Bankruptcy Proceedings, Respondents agree that they shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceedings that are brought by the OAG within 60 calendar days of written notification to Respondents that the acceptance in lieu of legal action as fully set forth in Paragraph 30 has been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this AOD, and the OAG may pursue its claim in the case, action, or proceeding

referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. If either of the Respondents fail to make any payment required under Paragraphs 32-35, the OAG may immediately deem the financial obligations and the acceptance in lieu of legal action as fully set forth in Paragraph 30 of Respondents under this AOD terminated, and the OAG may then seek judgment against Respondents in the State Court or Bankruptcy Proceedings, on liability and damages, to the extent allowed by the Bankruptcy Court, and dischargeability of their claims.
- d. Respondents acknowledge that the assurances in this Paragraph are provided in exchange for valuable consideration provided in this AOD.

No Retaliation

43. Best Wireless and Mr. Garg agree that they shall comply with NYLL §§ 215 and 740 and shall not in any manner discriminate or retaliate against any of their employees, including but not limited to employees or former employees who cooperated or are perceived to have cooperated with the OAG's investigation of this matter. Respondents agree not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the investigation or to any past, present, or future participation in any activities involving the exercise of their legal rights under the NYLL and New York Codes, Rules, and Regulations.

Ongoing Cooperation

44. Best Wireless and Mr. Garg agree to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this AOD. Best



Wireless and Mr. Garg agree that the OAG shall have full access to the contact information of their employees to reach them through mail, telephone, or electronic means.

MISCELLANEOUS

Representations and Warranties

45. The OAG has agreed to the terms of this AOD based on, among other things, the representations made to the OAG by Best Wireless and Mr. Garg and the OAG's own factual investigation as set forth in Paragraphs 1 through 29 above. Best Wireless and Mr. Garg represent and warrant that neither they nor their counsel have made any material representations to the OAG that are inaccurate or misleading. If any material representations by Best Wireless and Mr. Garg or their counsel are later found to be inaccurate or misleading, this AOD is voidable by the OAG in its sole discretion.

46. No representation, inducement, promise, understanding, condition, or warranty not set forth in this AOD have been made or relied upon by Best Wireless and/or Mr. Garg in agreeing to this AOD.

47. Best Wireless and Mr. Garg represent and warrant, through the signatures below, that the terms and conditions of this AOD are duly approved and execution of this AOD is duly authorized.

Effects of AOD

48. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

49. Any failure by the OAG to insist upon the strict performance by Best Wireless and/or Mr. Garg of any of the provisions of this AOD shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to

insist upon the strict performance of any and all provisions of this AOD to be performed by Best Wireless and Mr. Garg.

Subsequent Proceedings

50. Best Wireless and Mr. Garg expressly agree and acknowledge that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this AOD, for violations of the AOD, or if the AOD is voided pursuant to Paragraph 45, and agree and acknowledge that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the Effective Date of this AOD;
- b. the OAG may use statements, documents, or other materials produced or provided by Best Wireless and/or Mr. Garg prior to or after the Effective Date of this AOD except for settlement communications;
- c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Best Wireless and Mr. Garg irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue;
- d. evidence of a violation of this AOD shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

51. If a court of competent jurisdiction determines that Best Wireless and/or Mr. Garg have violated the AOD, Best Wireless and Mr. Garg shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this AOD, including without limitation legal fees, expenses, and court costs.

General Principles

52. Unless a term limit for compliance is otherwise specified within this AOD, Best Wireless and Mr. Garg's obligations under this AOD are enduring. Nothing in this AOD shall relieve Best Wireless or Mr. Garg of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

53. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Best Wireless and/or Mr. Garg violate the AOD after the Effective Date.

54. This AOD may not be amended except by an instrument in writing signed on behalf of the parties to this AOD.

55. In the event that any one or more of the provisions contained in this AOD shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this AOD.

56. Best Wireless and Mr. Garg acknowledge that they have entered this AOD freely and voluntarily and upon due deliberation with the advice of counsel.

57. This AOD shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

58. The AOD and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

59. All notices, reports, requests, and other communications to any party pursuant to this AOD shall be in writing and shall be directed as follows:

From Best Wireless and/or Mr. Garg to the Attorney General:

New York State Office of the Attorney General
Kristen Ferguson, Assistant Attorney General

Jessica Agarwal, Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005

Or

Kristen.Ferguson@ag.ny.gov
Jessica.Agarwal@ag.ny.gov

From the Attorney General to Best Wireless and Mr. Garg:

1. Mark Peters & Lesley Brovner
Peters Brovner LLP
mpeters@petersbrovner.com & lbrovner@petersbrovner.com
2. Jaspreet Mayall
Certilman Baylin Adler & Hyman LLP
jmayall@certilmanbaylin.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

60. This AOD may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto on September 17, 2024.

LETITIA JAMES
Attorney General of the State of New York

By:  _____

Kristen Ferguson
Jessica Agarwal
Assistant Attorneys General
Labor Bureau
28 Liberty Street
New York, New York 10005
Phone: (212) 416-8603/8701

Dated: September 17, 2024

K MOBILE d/b/a BEST WIRELESS

By: 
Nishant Garg, Owner

09/16/2024
Date

NISHANT GARG
By: 
Nishant Garg

09/16/2024
Date