

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

PATRICIA ANDERSON and JAMES
KWASIBORSKI, on behalf of themselves and all
others similarly situated,

CASE NO. 2:12-cv-00332-JAT

Plaintiffs,

v.

ZIPREALTY, INC.,

Defendant.

**NOTICE OF PENDING FAIR LABOR STANDARDS ACT LAWSUIT AGAINST
ZIPREALTY, INC. (“Defendant”)**

TO: Real estate sales agents classified as employees from May 2, 2010
through January 31, 2011.

RE: Fair Labor Standards Act (“FLSA”) lawsuit against Defendant for alleged failure
to pay overtime and minimum wage.

YOU ARE NOT BEING SUED

I. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are “similarly situated” to the named Plaintiffs, to advise you of how your rights may be affected by this suit, and to instruct you on the procedure for participating in this suit.

II. DESCRIPTION OF THE LAWSUIT

On February 16 2012, Plaintiffs Patricia Anderson and James Kwasiborski, both former sales agents and team leaders at ZipRealty filed a Complaint in the United States District Court, District of Arizona against ZipRealty. The case number is: Civil Case No. 2:12-cv-00332-JAT. Plaintiffs allege that Defendant willfully violated the federal Fair Labor Standards Act of 1938,

1 29 U.S.C. § 216(b) because ZipRealty’s sales agents (1) were misclassified as exempt
2 employees; (2) were not paid the required minimum wage; and (3) were not paid appropriate
3 overtime when they worked over forty hours per week. Plaintiffs seek to recover damages, on
4 behalf of themselves and other similarly situated individuals, including the amount of
5 compensation they have been denied, pre- and post-judgment interest on the amount of
6 compensation denied, liquidated damages, equitable relief, an award of reasonable attorneys’
7 fees, costs and expenses, and such other relief as the Court may deem proper. ZipRealty denies
8 that it violated the FLSA and claims that sales agents were paid properly under the outside sales
9 exemption of the FLSA.

10 **III. COMPOSITION OF THE CLASS**

11 The named Plaintiffs seek to sue on behalf of themselves and also on behalf of other
12 similarly situated individuals. Specifically, Plaintiffs seek to sue on behalf of all ZipRealty sales
13 agents classified as employees between May 2, 2010 and January 31, 2011.

14 **IV. YOUR RIGHT TO JOIN THIS SUIT AS A PARTY PLAINTIFF**

15 If you fit the definition above, you may join this case (that is, you may “opt in”) by
16 completing and mailing the attached “Consent to Opt-Into Collective Action” form to the
17 Plaintiffs’ counsel at the following address:

18 Gerald D. Wells, III
19 FARUQI & FARUQI, LLP
20 101 Greenwood Avenue, Suite 600
Jenkintown, PA 19046

21 The form must be sent to the Plaintiffs’ counsel in sufficient time to have Plaintiffs’
22 counsel file it with the federal court **on or before** ____, **2013** [60 days after mailing of notice]. If
23 you fail to return the Consent to Opt-Into Collective Action form to Plaintiffs’ counsel in time
24 for it to be filed with the federal court on or before the above deadline, you may not be able to
25 participate in this lawsuit. You are not required to participate.

1 **V. EFFECTS OF JOINING THIS SUIT**

2 If you choose to join this suit, you will be bound by the judgment, whether it is favorable
3 or unfavorable, or any settlement of this action. While the suit is proceeding, you may be
4 required to provide information, appear for a deposition, and/or testify in court. The attorneys
5 for the named Plaintiffs are being paid on a contingency fee basis, which means that if there is no
6 recovery, there will be no attorneys' fee. If there is a recovery, the Plaintiffs' counsel will seek
7 an award of fees from the Court. If you sign and return the Consent to Opt-In to Collective
8 Action form attached to this Notice, you are agreeing to designate the class representative as
9 your agent to make decisions on your behalf concerning the litigation, the method and manner of
10 conducting this litigation, the entering of an agreement with Plaintiffs' counsel concerning
11 attorneys' fees and costs, and all other matters pertaining to this lawsuit. These decisions and
12 agreements made and entered into by the representative Plaintiffs will be binding on you if you
13 join this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of
14 any contingency agreement entered into by Plaintiffs with counsel and to determine the adequacy
15 of the Plaintiffs' counsel. Furthermore, you can join this lawsuit by retaining counsel of your
16 own choosing. If you do so, your attorney must file an "opt-in" consent form by _____,
17 2013 [60 days from the date of notice mailing].

18 **VI. EFFECTS OF NOT JOINING THIS LAWSUIT**

19 If you choose not to join this suit, you will not be affected by the judgment, favorable or
20 unfavorable. If you do not choose to file a consent form with the District Court, you will not
21 receive any compensation for Defendants' failure to pay minimum wage if Plaintiffs prevail.
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1 **VII. THE COURT TAKES NO POSITION ON THE MERITS OF THE CASE**

2 *NO OPINION EXPRESSED AS TO THE MERITS OF THE CASE, THIS*
3 *NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE FEDERAL*
4 *DISTRICT COURT. THE COURT HAS TAKEN NO POSITION REGARDING THE*
5 *MERITS OF THE PLAINTIFFS' CLAIMS OR THE DEFENDANT'S DEFENSES.*

6 **VIII. NO RETALIATION OR DISCRIMINATION PERMITTED**

7 Federal law prohibits defendants from retaliating against you because you have exercised
8 your rights under the Fair Labor Standards Act to participate in this lawsuit.

9 **IX. NO WAIVER OF FLSA RIGHTS**

10 If you have signed a release or waiver regarding overtime or any other rights under the
11 FLSA, it may not be valid.

12 **X. LEGAL REPRESENTATION IF YOU JOIN THE SUIT**

13 If you choose to join this suit, you will be represented by the law firms of Bonnett,
14 Fairbourn, Friedman & Balint, P.C. and Faruqi & Faruqi, LLP. The names and address for the
15 Plaintiffs attorneys and the class are: Adam Gonnelli and Christopher Marlborough, Faruqi &
16 Faruqi LLP, 369 Lexington Ave., New York, NY 10017, (212) 983-9330; Gerald D. Wells, III
17 and Robert J. Gray, Faruqi & Faruqi, LLP, 101 Greenwood Avenue, Suite 600, Jenkintown, PA
18 19046, (215) 277-5770; and Wendy J. Harrison and Ty D. Frankel, Bonnett, Fairbourn,
19 Friedman, & Balint, P.C, 2901 N. Central Ave., Suite 1000, Phoenix, AZ 85012.

20 **XI. ADDITIONAL INFORMATION**

21 Further information about this Notice, the deadline for filing a Consent to Opt-Into
22 Collective Action, or questions concerning this lawsuit may be obtained by writing or phoning
23 the Plaintiffs' counsel at the telephone number and address stated in Paragraph IV above. E-
24 mailing Plaintiffs' counsel is also permitted at jwells@faruqilaw.com or
25 agonnelli@faruqilaw.com.

1 **XII. ATTORNEYS FOR DEFENDANTS**

2 Further information about this case may also be obtained by writing or phoning the
3 Defendant's counsel at:

4 Brian P. Maschler
5 Gordon & Rees LLP
6 275 Battery Street, Suite 2000
7 San Francisco, CA 94111
8 Telephone: (415) 986-5900
9 Facsimile: (415) 986-8054
10 E-mail: bmaschler@gordonrees.com

11 Dated: _____, 2013.

12 **FARUQI & FARUQI, LLP**
13 Gerald D. Wells, III
14 Robert J. Gray
15 101 Greenwood Avenue, Suite 600
16 Jenkintown, PA 19046
17 Telephone: (215) 277-5770
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