

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

LISA NOBLES, individually, and on behalf
of a class of others similarly situated,

Plaintiffs,

v.

STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY,

Serve: Agent Authorized to Accept Service
4700 S. Providence Road
Columbia, MO 65217

Defendant.

Case No. _____

COMPLAINT

Plaintiff Lisa Nobles, individually and on behalf of all others similarly situated, by and through her counsel, for her Complaint against State Farm Mutual Automobile Insurance Company (hereinafter "State Farm" or "Defendant") hereby states and alleges as follows:

1. State Farm provides insurance products and services to consumers nationwide. State Farm's practice and policy is to deny wages and overtime pay to its employees working in the call center facilities within its operations centers. State Farm's failure to pay employees their earned wages and overtime compensation violates the Fair Labor Standards Act ("FLSA") and the Missouri Minimum Wage Law ("MMWL").

2. Plaintiff previously worked as a claims processor at State Farm's operations center in Columbia, Missouri. This lawsuit is brought in three counts. First, as a collective action under the FLSA on behalf of Plaintiff and all other similarly situated workers

employed by State Farm nationwide. Second, as a Rule 23 class action under the MMWL on behalf of Plaintiff and all other similarly situated workers employed by State Farm in the State of Missouri. Third, as a claim for unjust enrichment pursuant to Rule 23 on behalf of Plaintiff and other similarly situated workers employed by State Farm in the State of Missouri.

3. The United States Supreme Court has held that, among other things, preparatory work duties that are integral and indispensable to the principal work activity are compensable under the FLSA. *IBP, Inc. v. Alvarez*, 126 S. Ct. 514 (2005). Although *Alvarez* arose in the donning and doffing context in a meat processing plant, its holding is directly applicable to the employees of State Farm working in call center environments.

4. Plaintiff and similarly situated employees engage in numerous preparatory activities, as well as related work activities performed over breaks and after the conclusion of their scheduled shifts, that are integral and indispensable for them to perform their duties. Until recently, it was State Farm's policy and practice not to pay these employees for this work time, and consequently they were consistently working "off the clock" and without pay. Accordingly, under the holding of *Alvarez*, as well as under consistent rulings and interpretations of the United States Department of Labor, Plaintiff and all similarly situated employees are entitled to compensation for the time they spend working pre-shift and over unpaid meal breaks.

JURISDICTION AND VENUE

5. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiffs' FLSA claims is based upon 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

6. The Class Action Fairness Act requires plaintiffs to pursue certain state law

class claims in the United States District Court. Plaintiff's Rule 23 claims for violations of the MMWL and for unjust enrichment have a value in excess of \$5,000,000. And the parties to this suit are minimally diverse. Accordingly, jurisdiction over Plaintiff's MMWL and unjust enrichments claims is based upon 28 U.S.C. § 1332(d).

7. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) and (c), because a substantial part of the events giving rise to this claim occurred in the Western District of Missouri.

PARTIES

8. State Farm is an Illinois mutual benefit company doing business nationally with its principal place of business in Bloomington, Illinois.

9. Plaintiff currently is a resident of Missouri. Plaintiff previously worked as a claims processor at State Farm's operations center in Columbia, Missouri, from approximately January, 2005 to January, 2010 and a claims service assistant from January, 2010 until June, 2010. Plaintiff's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit A.

GENERAL ALLEGATIONS

10. State Farm maintains operations centers in several states across the country. Upon information and belief, among others, State Farm maintains operations centers in the following locations: Homewood, Alabama; Tempe, Arizona; Bakersfield, California; Rohnert Park, California; Greeley, Colorado; Jacksonville, Florida; Winter Haven, Florida; Johns Creek, Georgia; Bloomington, Illinois; West Lafayette, Indiana; Frederick, Maryland; Mendota Heights, Minnesota; Columbia, Missouri; Lincoln, Nebraska; Parsippany, New Jersey; Ballston Spa, New York; Columbus, Ohio; Newark, Ohio; Tulsa, Oklahoma;

Concordville, Pennsylvania; Murfreesboro, Tennessee; Dallas, Texas; Jollyville, Texas; Charlottesville, Virginia; Dupont, Washington; and Brookfield, Wisconsin.

11. Within its operations centers, State Farm operates its call center facilities. In these facilities, the employees handle both inbound and outbound telephone calls from State Farm's customers and others. Though these employees have various job titles (e.g., without limitation, Claims Service Assistant, Claims Processor, Claims Representative, Customer Service Representative), they are similarly situated with respect to State Farm's unlawful pay practices. For example, these call center employees ("CCEs") were expected to arrive early to their work stations to log into various computer programs necessary to perform their jobs as well as to read and respond to emails that had arrived since the end of the CCE's last shift. The CCEs had to arrive early because State Farm required the CCEs to be ready to log into their telephone to begin taking or making telephone calls at the beginning of the CCE's scheduled shift.

12. Notwithstanding the fact that the employees had to arrive to their work stations prior to their scheduled shifts in order to perform all of the tasks necessary to be ready to take a call at the beginning of the shift, until recently it was the policy of State Farm to only pay its CCEs for the time that the employee was scheduled to work. Thus, State Farm did not pay its CCEs for the time performing these integral and indispensable tasks prior to their scheduled shift.

13. State Farm also scheduled its CCEs for unpaid meal breaks each day which was automatically deducted from the CCEs daily pay. CCEs regularly returned to their work stations during these meal breaks to complete unfinished administrative tasks before logging into State Farm's telephone system as scheduled.

14. State Farm also failed to compensate its CCEs for time spent performing integral and indispensable tasks after the conclusion of their scheduled shifts. For example, CCEs routinely were required to finish telephone calls, handle administrative tasks, and close down or log out of computer programs after their shifts ended.

15. State Farm paid Plaintiff and its other CCEs on an hourly basis, and classified Plaintiff and other CCEs as “non-exempt” under the FLSA.

16. CCEs at State Farm's facilities did not accurately or independently record the time they worked. Instead, State Farm principally paid its CCEs based upon each employee's scheduled shift.

17. State Farm did maintain an exception report system for CCEs to report deviations from their scheduled shift. These reports were typically used to indicate when a CCE arrived late, left work early, or worked approved overtime. These reports were not used to track the time spent by CCEs performing the above-described administrative tasks prior to the start of their scheduled shift and during unpaid meal breaks.

18. According to State Farm's policies and practices, CCEs were to be logged into State Farm's telephone system and ready to make or take calls at the beginning of their scheduled shifts.

19. A number of critical tasks must be performed before a CCE is ready to log into State Farm's telephone system. Those tasks include: (1) logging on to State Farm's network; (2) opening relevant computer programs; (3) reviewing and responding to company memoranda and e-mail; and (4) completing other essential tasks. CCEs perform many of these essential tasks before their shifts begin and during their designated meal breaks.

20. State Farm could have easily and accurately recorded the actual time CCEs

spent working including, for example, by placing a time clock at the door of the call center area. In fact, State Farm required CCEs to swipe security badges that automatically record when they arrived at the operations centers, but this system was not used for payroll.

21. State Farm followed the above-described time-keeping policies and practices with respect to CCEs at both its former Monroe, Louisiana facility and its Columbia, Missouri facility. Upon information and belief, State Farm adhered to the same policies and practices with respect to CCEs at all its other operations centers nationwide.

22. CCEs, such as Plaintiff, often worked over forty hours in a workweek, not including the “off the clock” work alleged in this complaint. As a result, the “off the clock” work performed by CCEs, as required by State Farm’s policies and practices, was frequently overtime as defined under the federal and state labor laws. State Farm willfully failed to pay overtime compensation and willfully failed to keep accurate time records in order to save payroll costs. Thus, State Farm enjoyed ill-gained profits at the expense of its hourly employees.

COLLECTIVE AND CLASS ALLEGATIONS

23. Plaintiff brings Count I, the FLSA claim, as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b) on behalf of herself and of the following persons:

All non-exempt telephone-dedicated State Farm employees who worked in operations centers nationwide from at any time during the last three years.

24. The FLSA claim may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

25. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a collective basis challenging, among other FLSA violations, State Farm's practice of failing to accurately record all hours worked and failing to pay employees for all hours worked,

including overtime compensation. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from the records of State Farm, and potential class members may easily and quickly be notified of the pendency of this action.

25. Plaintiff brings Count II, the MMWL claim, as a Rule 23 class action on behalf of herself and of the following persons:

All non-exempt telephone-dedicated State Farm employees who worked in operations centers within the State of Missouri in the last two years.

27. Plaintiff brings Count III, the unjust enrichment/quantum meruit claim, as a Rule 23 class action on behalf of herself and of the following persons:

All non-exempt telephone-dedicated State Farm employees who worked in operations centers within the State of Missouri within the last five years

28. Plaintiff's MMWL and unjust enrichment/quantum meruit claims satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

29. This class is believed to number in the thousands of persons. As a result, joinder of all class members in a single action is impracticable. Class members may be informed of the pendency of this class action.

30. There are questions of fact and law common to the class that, under Missouri state law, predominate over any questions affecting only individual members. The questions of law and fact common to the classes arising from State Farm's actions include, without limitation, the following:

- a. Whether State Farm violated Missouri law when it failed to pay CCEs for all hours worked;
- b. Whether State Farm had a policy and practice of failing to compensate

CCEs for all time worked; and

- c. Whether State Farm was unjustly enriched by virtue of its policy and practices with respect to CCE pay.

31. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

32. Plaintiff's claims under Missouri state law are typical of those of the class in that class members have been employed in the same or similar positions as Plaintiff and were subject to the same or similar unlawful practices as Plaintiff.

33. A class action is the appropriate method for the fair and efficient adjudication of this controversy. State Farm has acted or refused to act on grounds generally applicable to the classes. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for State Farm, and/or substantially impair or impede the ability of class members to protect their interests.

34. Plaintiff is an adequate representative of the Missouri classes because she is a member of each of the classes and her interests do not conflict with the interests of the members of those classes she seeks to represent. The interests of the members of the classes will be fairly and adequately protected by Plaintiff and her undersigned counsel. Counsel have extensive experience in the litigation of civil matters, including the prosecution of complex wage and hour, employment, and class action cases.

35. Maintenance of this action as a class action is a fair and efficient method for

adjudication of this controversy. It would be impracticable and undesirable for each member of the class who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all class members.

COUNT I

Violation of the Fair Labor Standards Act of 1938

(Brought Against State Farm by Plaintiff Individually and on Behalf of All Others Similarly Situated)

36. Plaintiff re-alleges the allegations set forth above.

37. At all times material herein, Plaintiff has been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

38. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

39. State Farm is subject to the overtime pay requirements of the FLSA because it is an enterprise engaged in interstate commerce and its employees are engaged in commerce.

40. State Farm violated the FLSA by failing to pay for overtime. In the course of perpetrating these unlawful practices, State Farm has also failed to keep accurate records of all hours worked by its employees.

41. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. None of the FLSA exemptions apply to Plaintiff or CCEs.

42. Plaintiff and all similarly situated employees are victims of a uniform and nationwide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all CCEs in State Farm's Columbia, Missouri facility and in its former Monroe, Louisiana facility. Upon information and belief, State Farm is applying the same unlawful compensation policy to its hourly employees in its other operations centers located nationwide.

43. Plaintiff and all similarly situated employees are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of this Complaint, plus periods of equitable tolling, because State Farm acted willfully and knew, or showed reckless disregard of whether their conduct was prohibited by the FLSA.

44. State Farm has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result thereof, Plaintiff and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court find State Farm did not act willfully in failing to pay overtime pay, Plaintiff and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

45. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by State Farm from Plaintiff and all similarly situated employees. Accordingly, State Farm is liable pursuant to 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff and all similarly situated employees demand judgment against State Farm and pray this Court:

- a. Issue notice to all similarly situated employees of State Farm informing them of their right to file consents to join the FLSA portion of this action;
- b. Award Plaintiff and all similarly situated employees compensatory and liquidated damages under 29 U.S.C. § 216(b);
- c. Award Plaintiff and all similarly situated employees pre-judgment and post-judgment interest as provided by law;
- d. Award Plaintiff and all similarly situated employees attorneys' fees and costs as allowed by Section 216(b) of the FLSA; and
- e. Award Plaintiff and all similarly situated employees such other relief as the Court deems fair and equitable.

COUNT II

Violation of the Missouri Minimum Wage Law

(Brought Against State Farm by Plaintiff Individually and on Behalf of All Others Similarly Situated)

46. Plaintiff re-alleges the allegations set forth above.
47. State Farm violated Missouri law, in relevant part, by failing to pay overtime to Plaintiff and similarly situated employees as required by Mo. Rev. Stat. § 290.502 and § 290.505.
48. Further, Plaintiff and similarly situated employees are entitled to recover liquidated damages in an amount equal to their compensatory damages, attorneys' fees, and costs, pursuant to Mo. Rev. Stat. § 290.527.

WHEREFORE, Plaintiff and all similarly situated employees demand judgment against State Farm and prays this Court:

- a. Certify the state law claim set forth in Count II above as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- b. Award Plaintiff and all similarly situated employees compensatory and liquidated damages under and Mo. Rev. Stat. § 290.527;
- c. Award Plaintiff and all similarly situated employees pre-judgment and post-judgment interest as provided by law;
- d. Award Plaintiff and all similarly situated employees attorneys' fees and costs as allowed by Mo. Rev. Stat. § 290.527; and
- e. Award Plaintiff and all similarly situated employees such other relief as the Court deems fair and equitable.

COUNT III

Unjust Enrichment / Quantum Meruit

(Brought Against State Farm by Plaintiff Individually and on Behalf of All Others Similarly Situated)

49. Plaintiff re-alleges the allegations set forth above.
50. State Farm benefited from the work performed by Plaintiff and similarly situated CCEs prior to the start of their scheduled shifts and during unpaid meal breaks.
51. State Farm was aware that it was receiving the benefit of this unpaid work at the time the work was being performed and accepted and retained that benefit without paying fair compensation for the same.
52. State Farm's acceptance and retention of the benefit of the CCEs' unpaid labor was inequitable and resulted in State Farm being unjustly enriched.

WHEREFORE, Plaintiff and all similarly situated employees demand judgment against State Farm and prays this Court:

a. Certify the state law claim set forth in Count III above as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

b. Order State Farm to disgorge the value of its ill-gained benefits to Plaintiff and all similarly situated employees;

c. Award Plaintiff and all similarly situated employees pre-judgment and post-judgment interest as provided by law; and

d. Award Plaintiff and all similarly situated employees such other relief as the Court deems fair and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a trial by jury of all issues so triable.

Dated: August 9, 2010


Respectfully submitted,

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