

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

2017 AUG 10 AM 10:19

CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

CYNTHIA AMIEL,
And all others similarly situated,

Plaintiff,

Case Number: 8:17cv1896T27MAP

v.

LAKELAND REGIONAL MEDICAL CENTER
INC.,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff, was an employee of Defendant's, and brings this action for unpaid wages, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 201-216 (the "FLSA").

2. Plaintiff worked in a clerical capacity for Defendant and performed related, non-exempt activities for Defendant in Polk County, Florida.

3. Plaintiff was not paid overtime for all of the hours she worked beyond 40 in a single workweek.

4. Plaintiff was engaged by Defendant to work as a purchasing clerk.

5. Plaintiff was to be paid an hourly wage equivalent to as much as seventeen dollars per hour. Plaintiff is not subject to any exemptions under the FLSA. Plaintiff was paid a salary, but Plaintiff routinely and customarily worked in excess of forty hours a week and more during her period of employment with Defendant which began in

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approximately April 2011 and continued through August 4th 2017. Plaintiff did not work for a period of approximately three months in 2013 as Plaintiff was working for another employer during that period of time. Otherwise, Plaintiff's work for Defendant was continual.

6. Plaintiff did not supervise any subservient employees.

7. Plaintiff did not participate in budgetary matters.

8. Plaintiff did not craft or develop or direct the creation of any policy on behalf of Defendant.

9. Plaintiff did not hire or fire subservient employees.

10. Plaintiff did not direct the employment of subservient employees.

11. Plaintiff worked for Defendant in Polk County, Florida.

12. Instead of paying overtime wages, Defendant circumvented the FLSA by failing to pay Plaintiff wages, though Plaintiff habitually worked up to and beyond forty hours hours a week or more during her employment with Defendant prior to the institution of this action.

13. Plaintiff was not paid time and a half for the hours that she worked over forty in any given week.

14. Plaintiff previously complained to her immediate supervisor that Plaintiff was not being paid for all the hours she worked in excess of forty hours during any given week of her employment.

15. Additionally, Plaintiff complained to her immediate supervisor, Anita Henry, that the additional time would be required to finish the entirety of the tasks which

were assigned to Plaintiff, in the given period of time and that Plaintiff would have to work off the clock to complete the tasks unless overtime would be authorized.

16. Plaintiff's immediate supervisor frequently advised Plaintiff that the requested overtime would not be authorized, but that the work "would have to be done no matter what", thereby creating a situation in which Plaintiff was forced to work beyond her scheduled forty-hours any given week, without premium wages, in order to maintain the employment and the Defendant's production related demands.

17. Plaintiff was not paid premium wages for all hours worked. Defendant failed to maintain accurate time records for Plaintiff in direct violation of the FLSA and its regulations. In addition, within approximately the last two years, Plaintiff participated in an internal investigation into other unpaid wage claims raised by other employees, and when so questioned by Defendant, Plaintiff confirmed that the complaining employee did, in fact, work time for which she was not paid and for which the Defendant did not pay said employee. Upon information and belief, said employee was Cheryl Peter.

18. Defendant did not pay Plaintiff for the total amount of time Plaintiff spent working beyond forty hours during the weeks of her employment with Defendant.

19. As of this date, Plaintiff has still not been paid the entirety of her wages and has not been compensated for the full extent of her damages and wage loss under the FLSA.

20. It is believed that there are similarly situated employees who were also not paid the full extent of their overtime at the correct rate of pay and who were also subject to the exact same unlawful pay practices, i.e., the failure to pay wages in accordance with the law.

21. Plaintiff seeks full compensation, including liquidated damages because Defendant's conduct in directing her to work off the clock in a calculated attempt to extract more additional work out of Plaintiff for the benefit of Defendant's, as the expense of Plaintiff, who was being paid less than premium wages under the FLSA.

22. Defendant is a for profit corporation that operates and conducts business in, among others, Polk County, Florida, and is therefore, within the jurisdiction of the Court.

23. Defendant, at all relevant times to this amended complaint, was Plaintiff's employer as defined by 29 U.S.C. § 203(d).

24. Plaintiff performed duties and responsibilities that involved commerce and/or the production of goods for commerce in the computer-software industry dealing with interstate customers and using computers as well as the internet and telephones.

25. This action is brought under the FLSA to recover from Defendant, unpaid wages in the form of overtime wages, liquidated damages, and reasonable attorneys' fees and costs.

26. This action is intended to include each and every hourly employee who worked for Defendant at any time within the past three (3) years.

27. The Court has jurisdiction over Plaintiff's claims as all material events transpired in Manatee County, including those brought pursuant to 28 U.S.C. § 1337 and the FLSA.

28. At all material times relevant to this action, Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203(s). Upon information and belief, including Plaintiff's experience with Defendant as well as the

sheer size of Defendant's organization suggest that the Defendant are a multi-million-dollar operation. Accordingly, Plaintiff alleges that enterprise coverage is present in this case because Defendant has an annual volume of at least \$500,000.00 in revenue and has two or more employees that handle goods in commerce, including materials and supplies, whom also use telephones, computers and other instrumentalities of commerce.

29. At all material times relevant to this action, Plaintiff in her capacity as an employee was individually covered by the FLSA. This would include to doing hourly work as an purchasing clerk, without managerial responsibility.

30. Plaintiff did not bear supervisory responsibility for any other employees.

31. Plaintiff did not direct the hiring and firing of any employees.

32. Plaintiff did not participate in the creation of budgets or maintain the production of sales nor did Plaintiff plan or control the budget of the Defendant's in any way.

33. Plaintiff did not implement legal compliance measures.

34. At all times relevant to this action, Defendant failed to comply with 29 U.S.C. §§ 201-209, because Plaintiff performed services for Defendant for which no provisions was made by Defendant to properly pay Plaintiff for all hours worked during her employment.

35. Plaintiff worked over 40 hours per nearly every week during her employment with Defendant.

36. The off the clock work that Plaintiff was directed to do was intentional and was designed to extract additional hours of labor out of Plaintiff for the benefit of the Defendant, who then refused to pay Plaintiff and those similarly situated premium wages.

37. Notably, Defendant is in exclusive possession of the *majority* of relevant records in this case, including payroll records and schedules and other documentation that might reasonably assist Plaintiff with providing even greater specificity regarding the precise weeks that Plaintiff worked more than 40 hours.

38. Plaintiff alleges that she routinely worked in excess of 40 hours per week, including time for which Defendant made no provisions to properly record.

39. Defendant failed, refused and/or neglected to keep accurate time records pursuant to 29 U.S.C. § 211(c) of Plaintiff's, and others similarly situated to her, true hours of work.

COUNT I – RECOVERY OVERTIME WAGES COMPENSATION

40. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-39, above.

41. Plaintiff, and those similarly situated to her, are/were entitled to be paid their regular rate of pay for each hour worked per work week as well as premium wages for those hours worked over forty. During her employment with Defendant, Plaintiff, and those similarly situated to her, regularly worked hours for each week in which they were not paid at the correct rate of pay. In Plaintiff's case, she routinely performed labor, at Defendant's specific request for the sole benefit of Defendant, and was not paid for the hours she worked.

42. As a result of Defendant's intentional, willful, and unlawful acts in refusing to pay Plaintiff, and those similarly situated to her, their correct premium rate of pay for each hour worked beyond 40 in one or more work weeks, Plaintiff, and those

similarly situated to her, have suffered damages plus incurring reasonable attorneys' fees and costs.

43. As a result of Defendant's willful violation of the FLSA, Plaintiff, and those similarly situated to her, are entitled to payment of the unpaid wages under Florida law, as well as liquidated damages under the FLSA.

44. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff demands judgment against Defendant, including, but not limited to, reimbursement of an amount equal to the loss of wages and liquidated damages, together with costs and attorney's fees pursuant to the FLSA, and such other further relief as this Court deems just and proper.

DATED this 10th day of August 2017,

/s/ W. John Gadd

W. John Gadd
FL Bar Number 463061
Bank of America Building
2727 Ulmerton Rd. Ste. 250
Clearwater, FL 33762
Tel - (727)524-6300
Email - wjg@mazgadd.com

/S/ Kyle J. Lee

Kyle J. Lee, Esq.
FLBN: 105321
LEE LAW, PLLC
1971 West Lumsden Road, Suite 303
Brandon, FL 33511
Telephone: (813) 343-2813
Kyle@KyleLeeLaw.com

