

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

ZOLA M. MARSHALL, individually, and on)
behalf of a class of others similarly situated,)

Plaintiff,)

v.)

Case No. 07-0227-CV-W-RED

R.J. REYNOLDS TOBACCO COMPANY, a)
North Carolina corporation,)

JURY TRIAL DEMANDED

Serve: CSC-Lawyers Incorporating Service Co.)
221 Bolivar Street)
Jefferson City, Missouri 65101)

Defendant.

COMPLAINT

Plaintiff, individually and on behalf of all others similarly situated, by and through her counsel, for her Complaint against R.J. Reynolds Tobacco Company, (“R.J. Reynolds”) hereby states and alleges as follows:

1. R.J. Reynolds manufactures and sells nicotine products, including cigarettes. R.J. Reynolds’s practice and policy is to deny wages and overtime pay to its retail representatives (“RR”). The deliberate failure of R.J. Reynolds to pay its employees their earned wages and overtime compensation violates the Fair Labor Standards Act (“FLSA”).

2. Plaintiff is currently an RR for R.J. Reynolds. This lawsuit is brought as a collective action under the FLSA to recover unpaid wages owed to Plaintiff and all other similarly situated R.J. Reynolds employees nationwide.

JURISDICTION AND VENUE

3. 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.

4. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and (c), because R.J. Reynolds conducts business in this district.

PARTIES

5. R.J. Reynolds is a North Carolina corporation with its principal place of business in Winston-Salem, North Carolina. R.J. Reynolds does business in the State of Missouri and nationwide.

6. Plaintiff is a resident of Missouri. Plaintiff's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached hereto as Exhibit A.

GENERAL ALLEGATIONS

7. The principal job duty of RRs is to travel to retail stores where R.J. Reynolds's products are available for sale and verify that the store is complying with the terms of the agreement between the store and R.J. Reynolds. For example, RRs verify that R.J. Reynolds's products are being sold at the agreed-upon price, that the appropriate signage is attached to the products, and that the shelves are properly stocked with the products. RRs are also required to review R.J. Reynolds materials and communications to ensure that they are familiar with the latest promotions being offered by R.J. Reynolds.

8. RRs submit an electronic report to R.J. Reynolds for each store they visit in a workday. The report reflects the time that the RR arrived at a particular store and the

time that the RR departed from the store, as well as the date that the RR visited the store. R.J. Reynolds uses these reports to periodically check on the performance of its RRs.

9. Plaintiff has been an RR with R.J. Reynolds for approximately eleven years. She has been employed by R.J. Reynolds for a total of approximately fourteen years.

10. Plaintiff serves as an RR for the greater Kansas City, Missouri, metropolitan area, which includes Kansas City (including portions of Kansas City north of the Missouri River and south of Interstate 435), Raytown, Grandview, Independence, and Lee's Summit. Typically, Plaintiff is required to make in excess of 160 visits to stores every twenty days. The average store visit lasts approximately forty-five minutes, with store visits ranging from ten minutes up to ninety minutes.

11. To accomplish their quota of store visits, Plaintiff and other RRs are required to drive to several stores per day, many of which are spread across metropolitan areas or large rural areas. R.J. Reynolds provides a company car for RRs to use in traveling their assigned routes. RRs submit a monthly mileage report to R.J. Reynolds for their company vehicles.

12. R.J. Reynolds pays Plaintiff and its other RR workers on an hourly, non-exempt status.

13. RRs are instructed that no overtime compensation is allowed by R.J. Reynolds, unless it is specifically authorized in advance. Plaintiff has been denied overtime compensation in the past, even when she worked in excess of forty hours per week.

14. RRs do not sell or offer products to the stores they visit nor do they negotiate with the stores the terms of the contract at issue. RRs merely ensure that the stores are adequately performing their obligations under their pre-determined contract with R.J. Reynolds.

15. R.J. Reynolds does not accurately record or keep the time RRs work. Prior to May 2006, R.J. Reynolds paid RRs based on the expense reports they submitted every two weeks. R.J. Reynolds also used a telephonic timekeeping service that RRs used to report their time if their hours deviated from a standard forty-hour workweek. RRs were instructed not to record or claim overtime.

16. After May 2006, R.J. Reynolds installed a computer program known as “Work Force Central” on RRs’ laptops wherein RRs manually enter the number of hours they work. “Work Force Central” automatically computes a forty-hour workweek for RRs and RRs must then manually change the entries to reflect their time. RRs are still instructed not to include overtime worked.

17. RRs are unable to complete their required quota of store visits and satisfactorily perform their job duties without working in excess of forty hours per week on a regular basis.

18. The net effect of R.J. Reynolds’s policy and practice instituted and approved by company managers is that R.J. Reynolds willfully fails to pay overtime compensation and willfully fails to keep accurate time records in order to save payroll costs. R.J. Reynolds enjoys ill-gained profits at the expense of its hourly employees.

COLLECTIVE AND CLASS ALLEGATIONS

19. Plaintiff brings Count I, the FLSA claim, as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b).

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

21. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a collective basis challenging, among other FLSA violations, R.J. Reynolds’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 R.J. Reynolds, and potential class members may easily and quickly be notified of the pendency of this action.

COUNT I

Violation of the Fair Labor Standards Act of 1938

(Brought Against R.J. Reynolds by Plaintiff Individually and on Behalf of All Others Similarly Situated)

22. Plaintiff reasserts and re-alleges the allegations set forth in paragraphs 1-21.

23. 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.*

24. 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).

25. R.J. Reynolds 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.

26. R.J. Reynolds violated the FLSA by failing to pay for overtime. In the course of perpetrating these unlawful practices, R.J. Reynolds has also willfully failed to keep accurate records of all hours worked by its employees.

27. 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 RRs.

28. Plaintiff and all similarly situated employees are victims of a uniform and company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all RRs employed by R.J. Reynolds. Upon information and belief, R.J. Reynolds has applied this uniform policy to all RRs nationwide.

29. 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 R.J. Reynolds acted willfully and knew, or showed reckless disregard of the fact, that its conduct was prohibited by the FLSA.

30. R.J. Reynolds 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 R.J. Reynolds 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.

31. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by R.J. Reynolds from Plaintiff and all similarly situated employees. Accordingly, R.J. Reynolds 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 R.J. Reynolds and pray for: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as allowed by Section 16(b) of the FLSA; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury of all issues triable by jury.

DESIGNATION OF PLACE OF TRIAL

Plaintiff designates Kansas City, Missouri as the place for trial.

Dated: March 19, 2007

Respectfully submitted,

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