

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

**TIFFANY SHARPE, individually, and on behalf
of all other similarly situated individuals
who consent to become Plaintiffs,**

Plaintiffs,

v.

Case No. 09-CV-329

APAC CUSTOMER SERVICES, INC.,

Defendants.

COMPLAINT

Plaintiff, Tiffany Sharpe, individually, and on behalf of similarly situated individuals, through her attorneys, Lawton & Cates, S.C., Stueve Siegel Hanson, L.L.P., and Lear Werts, L.L.P., files her complaint against Defendant APAC Customer Services, Inc. (“APAC”) as follows:

INTRODUCTION

1. This is a class action for unpaid wages and overtime brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, (“FLSA”) and the Wisconsin wage payment and overtime laws, Wis. Stat. §§ 103, 104, 109.01, *et seq.*

JURISDICTION AND VENUE

2. This Court has original jurisdiction of the FLSA action, pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337.

3. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a). Additionally, jurisdiction over Plaintiff's state law

claims is based upon the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d)(2)(A).

4. Venue is proper in this federal judicial district pursuant to 28 U.S.C. § 1391(a) and (c) because a substantial part of the events or omissions giving rise to these claims occurred within this judicial district, and because Defendant regularly conducts business within this judicial district and thus is subject to personal jurisdiction within this judicial district.

PARTIES

5. Plaintiff, Tiffany Sharpe, is employed by APAC as a Call Center Employee ("CCE") at APAC's call center located in LaCrosse, Wisconsin. She was employed during the three years preceding the filing of this action.

6. Plaintiff is an employee within the meaning of the FLSA, 29 U.S.C. § 203(e)(1), and Wis. Stats. §§ 103.001(5), 104.01(2) and 109.01(r).

7. Plaintiff has consented in writing to be a party plaintiff in this action and the written consent forms are attached hereto as Exhibit A as required by 29 U.S.C. § 216(b). Further, Kathleen Woods, Melvin Woods, and Jennifer Kasch are CCEs employed by APAC at its call center in LaCrosse, Wisconsin. They have executed Consents to Join pursuant to 29 U.S.C. § 216(b). Their consents are attached hereto as Exhibits B-D.

8. APAC is an Illinois corporation, which has its principal office in Bannockburn, Illinois, and operates a call center in LaCrosse, Wisconsin. APAC has call centers in several states in the United States and is a corporation engaged in interstate commerce and is an "employer" within the meaning of 29 U.S.C. § 203 (d), (r) and (s).

Also, APAC is an “employer” within the meaning of Wis. Stats. §§ 103.001(6), 104.01(3), and 109.01(2).

GENERAL ALLEGATIONS

9. During the relevant time period, APAC operated call centers in at least the following locations: (1) La Crosse, Wisconsin; (2) Tucson, Arizona; (3) Davenport, Iowa; (4) Schaumburg, Illinois; (5) Green Bay, Wisconsin; (6) Wilmington, North Carolina; (7) Cedar Rapids, Iowa; (8) Tampa, Florida; (9) Newport News, Virginia; (10) Corpus Christi, Texas; and (11) Utica, New York.

10. The principal job duty of an APAC CCE is to take inbound calls from new or existing customers of APAC’s clients in order to activate or update accounts, assist with billing inquiries, and handle service or equipment issues. CCEs also update and educate customers on products and services while selling and/or suggesting services provided by APAC’s clients.

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

12. CCEs at APAC’s facilities are not allowed to record accurately or independently the time that they work. Specifically, CCEs are paid based on the time that they are “logged into” APAC’s telephone system even though there is a separate “time-clock” program that CCEs log into and out of at the beginning and end of their shifts, respectively.

13. According to APAC policy, CCEs must be “ready to work” at the beginning of their scheduled shift, which means that CCEs must be ready to answer a call.

14. A number of critical tasks must be performed before a CCE is ready to answer a call. Those tasks include: (1) booting up computers; (2) logging onto APAC's network; (3) opening relevant computer programs; (4) reviewing company notices and training notes on APAC's intranet; (5) completing and/or correcting "customer credits" and other orders; and (6) completing other essential tasks. CCEs perform many of these essential tasks before their shifts begin, during their designated lunch breaks, and after their shifts are completed.

15. APAC does not pay its CCEs for these integral and indispensable tasks that are necessary for the CCEs' principal activity of assisting customers of APAC's clients. These tasks benefit the company and not the CCEs. Moreover, APAC does not allow CCEs to be "clocked-in" for time that CCEs spend performing duties outside of their scheduled shift or on their lunch breaks.

16. The CCEs' review of intranet notices and training bulletins regarding APAC's methods and procedures, as well as those regarding the programs of APAC's clients, are particularly important and time consuming due to the nature of the work. CCEs provide advice and expert assistance to the customers of APAC's clients. Thus, CCEs need to be knowledgeable about the range of equipment and services being provided by those clients, including billing rates and policies, equipment prices and features, policies for crediting overcharged customers, and information regarding outages and repair efforts. With such information constantly changing, CCEs are required to update themselves continually on the latest information. Time spent by APAC's CCEs reviewing the notices and training materials is generally not recorded or compensated.

17. APAC could easily and accurately record the actual time CCEs spend working by placing a time clock at the door of the call center. In fact, APAC requires CCEs to swipe a security badge that automatically records when they arrive at and leave the call center, but this system is not used for payroll purposes.

18. Upon information and belief, APAC has adhered to the same policy and practices with respect to its CCEs in its call centers nationwide for at least the last three years, and also continues to adhere to this policy and practice in its current call center locations.

19. The net effect of APAC's policy and practice, instituted and approved by company managers, is that APAC willfully fails to pay overtime compensation and willfully fails to keep accurate time records in order to save payroll costs. As such, APAC enjoys ill-gained profits at the expense of its hourly employees.

COLLECTIVE AND CLASS ALLEGATIONS

20. 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 persons employed by APAC as Customer Service Representatives in its La Crosse, Wisconsin; Tucson, Arizona; Davenport, Iowa; Shaumburg, Illinois; Green Bay, Wisconsin; Wilmington, North Carolina; Cedar Rapids, Iowa; Tampa, Florida; Newport News, Virginia; Corpus Christi, Texas; and Utica, New York locations from May 26, 2006, through the present.

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

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

23. Plaintiff also brings Count II for unpaid wages as a class action pursuant to Fed. R. Civ. P. 23 on her own behalf and as the Class Representative on behalf of the following persons:

All persons employed by APAC as Call Center Employees in its La Crosse, Wisconsin, or Green Bay, Wisconsin, facilities from May 26, 2006, through the present.

24. Plaintiff's state law claims satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

25. The class satisfies the Wisconsin state law numerosity standards. 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 through direct mail.

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

- a. Whether APAC violated Wisconsin law when it failed to pay call center employees for all hours worked; and
- b. Whether APAC had a policy and practice of failing to compensate employees for all time worked.

27. 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.

28. Plaintiff's claims under Wisconsin 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.

29. A class action is the appropriate method for the fair and efficient adjudication of this controversy. APAC 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 APAC, and/or substantially impair or impede the ability of class members to protect their interests.

30. Plaintiff is an adequate representative of the Wisconsin class because she is a member of the class and her interests do not conflict with the interests of the members of the class she seeks to represent. The interests of the members of the class 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.

31. 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 APAC by Plaintiff Individually and on Behalf of All Others Similarly Situated)

32. Plaintiff realleges the allegations set forth in paragraphs 1 through 31 above.

33. 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.*

34. 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).

35. APAC 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.

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

37. 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.

38. Plaintiff and all similarly situated employees are victims of a common and facility-wide compensation policy. This common policy, in violation of the FLSA,

has been applied to all CCEs in APAC's La Crosse, Wisconsin facility. APAC has also applied and is applying the same unlawful compensation policy to its hourly employees in its other call centers located throughout the United States, including, but not limited to, those call centers listed in paragraph 9 above.

39. 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 APAC acted willfully and knew or showed reckless disregard in its violation of the requirements of the FLSA.

40. APAC has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA. 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 APAC did not act willfully in failing to pay its employees overtime compensation, Plaintiff and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

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

COUNT II

Violation of Wisconsin Wage Payment and Overtime Compensation Laws

(Brought Against APAC by Plaintiff Individually and in Her Capacity as the Class Representative on Behalf of All Others Similarly Situated)

42. Plaintiff realleges the allegations set forth in paragraphs 1 through 41 above.

43. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. § 1367.

44. APAC violated Wisconsin law, in relevant part, by failing to pay all wages due to Plaintiff and similarly situated employees as required by Wis. Stat. §§ 104.02, 109.03, and 103.025 and Wis. Admin. Code §§ DWD 272 and 274.

45. APAC violated Wisconsin law, in relevant part, by failing to pay required overtime compensation due to Plaintiff and similarly situated employees as required by Wis. Stat. §§ 104.02, 109.03, and 103.025 and Wis. Admin. Code §§ DWD 272 and 274. APAC further violated Wis. Admin. Code § DWD 272.11 by failing to maintain records of all hours worked by Plaintiff and all similarly situated employees.

46. Further, Plaintiff and similarly situated employees are entitled to recover attorneys' fees and costs, pursuant to Wis. Stat. § 109.03.

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

1. Issue notice to all similarly situated employees of APAC informing them of their right to file consents to join the FLSA portion of this action;

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

3. Declare APAC's policy of not paying Plaintiff and other similarly situated employees illegal under the FSLA and Wisconsin law;

4. Permanently enjoin APAC from violating the FSLA and Wisconsin law by not paying Plaintiff and other similarly situated employees wages and overtime spent in necessary work duties performed before and after their call shifts, and any other compensatory and statutory damages allowed under the FSLA or Wisconsin law;

5. Award Plaintiff and all similarly situated employees liquidated damages under 29 U.S.C. § 216(b) and Wis. Stat. § 109.11;

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

7. Award Plaintiff and all similarly situated employees attorneys' fees and costs as allowed by Section 216(b) of the FLSA and under Wis. Stat. §§ 109.03 and 109.11; and

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

DEMAND FOR JURY TRIAL

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

Dated: May 26, 2009

Respectfully Submitted,

By: s/ Daniel P. Bach

Peggy A. Lautenschlager

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