

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**SCOTT LAVALLEY, individually and on behalf
all others similarly situated,**

Plaintiffs,

v.

ECOLAB, INC.,

Defendant.

COMPLAINT

Jury Trial Demanded

Plaintiff Scott LaValley, individually and on behalf of all others similarly situated as class representatives (“Plaintiffs”), by their attorneys, upon personal knowledge as to himself and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. Defendant Ecolab, Inc. (“Ecolab”) is a Fortune 500 company that had revenues of over \$13 billion in 2011. Ecolab has more than 25,000 employees who serve customers in more than 170 countries in a wide range of industries, including equipment care.

2. Plaintiffs worked for Ecolab as Territory Representatives and Senior Territory Representatives (together “Territory Representatives”) whose primary duty is performing service work on customers’ commercial machinery at the customers’ commercial location.

3. Plaintiffs regularly work in excess of 40 hours in a week for which Ecolab does not pay them overtime at a rate of one and one-half their regular rate of pay.

4. Throughout the relevant period, it has been Ecolab’s nationwide policy to

deprive its Territory Representatives of earned overtime wages. In order to avoid paying Territory Representatives overtime premiums for hours they worked in excess of 40 in a workweek, Ecolab has uniformly misclassified them as exempt from federal overtime protections. The primary duties of these employees do not fall under any exemption.

5. In August of 2014, as part of a settlement with the U.S. Department of Labor, Ecolab agreed to reclassify Territory Representatives as non-exempt employees.

6. This case seeks to compel Ecolab to pay the Plaintiffs all of the wages they earned.

7. By the conduct described in this Class Action Complaint, Ecolab has violated the Fair Labor Standards Act (“FLSA”), and the wage and hour laws of New York by failing to pay its employees proper overtime compensation. These violations arose out of Ecolab’s company-wide policies and its pattern or practice of violating wage and hour laws.

8. Plaintiff LaValley brings individual and representative claims to remedy these violations. He brings his FLSA claims as a collective action, on his own behalf and on behalf of other similarly situated employees, under 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision, 29 U.S.C. § 216(b).

9. Plaintiff LaValley also brings individual wage claims under New York’s wage-and-hour laws, including New York Labor Law Articles 6 and 19 and their implementing regulations (“New York Labor Law”).

THE PARTIES

The Plaintiff

10. Plaintiff LaValley’s written consent to be a party to this action is attached

hereto.

11. Plaintiff LaValley resides in North Syracuse, New York.

12. Plaintiff LaValley was employed by Ecolab in New York as a Territory Representative and Senior Territory Representative from approximately February 2012 until September 2013.

13. Pursuant to Ecolab's policy and pattern or practice, Plaintiff LaValley regularly worked more than 40 hours per week for Ecolab's benefit without overtime compensation.

The Defendant

14. Defendant Ecolab, Inc. is a Delaware corporation that develops and markets technologies and services to the food, energy, healthcare, and hospitality industries. The services Ecolab provides include providing cleaning and sanitizing services to quick service restaurants and food retailers. Its customers, located in over 160 countries throughout the world, include hotels, restaurants, health and educational facilities, convenience and grocery stores, commercial and institutional laundries, and car washes.

15. Ecolab's corporate headquarters are located at 370 Wabasha Street, St. Paul, Minnesota 55102.

16. Ecolab maintains and maintained control, oversight, and direction over Territory Representative's work, including Plaintiff LaValley's work.

17. Plaintiff LaValley performed work on behalf of Ecolab in New York.

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331

and 1337 and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §§ 1332 and 1367.

19. In addition, the Court has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

20. Upon information and belief, Ecolab is subject to personal jurisdiction in New York.

21. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

22. Venue is proper in the District of Minnesota New York pursuant to 28 U.S.C. § 1391(b) because the Ecolab resides in the District of Minnesota and a substantial part of the events or omissions giving rise to the claim occurred in the District of Minnesota.

COLLECTIVE ACTION ALLEGATIONS

23. Plaintiffs bring FLSA claims, the First Cause of Action, on behalf of themselves and all similarly situated persons:

who have worked for Ecolab during a period of three years prior to the filing of this initial complaint and the date of final judgment in this matter as a Territory Representative or Senior Territory Representative. (the "FLSA Collective").

24. Ecolab is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs. Upon information and belief, there are many similarly situated current and former employees of Ecolab who have been underpaid in violation of the FLSA who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Ecolab, are readily identifiable, and can be located through

Ecolab's records. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

FACTUAL ALLEGATIONS

25. Territory Representatives', including LaValley's, primary job duties were performing the manual labor of maintenance, installation, and repair services on commercial equipment on Ecolab's business customers' premises. Work duties in addition to this primary duty were governed by strict guidelines and standards.

26. Territory Representatives, including LaValley, regularly worked more than 40 hours per workweek.

27. Pursuant to Ecolab's policy and pattern or practice, Ecolab classified Territory Representatives, including LaValley, as exempt from overtime pay requirements and willfully failed to pay them a proper overtime premium for hours they worked for Ecolab's benefit in excess of 40 hours per workweek.

28. Ecolab failed to keep accurate records of the hours Territory Representatives, including LaValley, worked.

29. All of the work that Territory Representatives, including LaValley, have performed has been assigned by Ecolab and/or Ecolab has been aware of all of the work that they have performed.

30. As part of its regular business practice, Ecolab intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA and New York wage-and-hour laws. This policy and pattern or practice includes but is not limited to:

- a. willfully failing to record all of the time that Territory Representatives, including LaValley, have worked for the benefit of the Ecolab;
- b. willfully failing to keep payroll records as required by the FLSA and New York wage and hour laws;
- c. willfully misclassifying the Territory Representatives, including LaValley, as exempt from the requirements of the FLSA; and
- d. willfully failing to pay Territory Representatives, including LaValley, overtime wages for hours that they worked in excess of 40 hours per week.

31. Upon information and belief, Ecolab's unlawful conduct described in this Complaint was pursuant to a corporate policy or practice of minimizing labor costs by violating the FLSA and state wage and hour laws. Upon information and belief, Ecolab applied the same unlawful policies and practices to workers nationwide.

32. Upon information and belief, Ecolab was or should have been aware that state and federal law required it to pay employees performing non-exempt duties an overtime premium for hours worked in excess of 40 per week.

33. Ecolab's failure to pay Territory Representatives, including LaValley, overtime wages for their work in excess of 40 hours per week was willful.

34. Ecolab's unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION

Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* On behalf of Plaintiff and the FLSA Collective

35. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

36. Ecolab engaged in a widespread pattern, policy, and practice of violating

the FLSA, as detailed in this Complaint.

37. At all times relevant, Territory Representatives, including LaValley, were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

38. The overtime wage provisions set forth in the FLSA apply to Ecolab and protect Territory Representatives, including LaValley.

39. Ecolab was an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

40. At all times relevant, Territory Representatives, including LaValley, were or have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

41. Ecolab employed Territory Representatives, including LaValley, as an employer.

42. Ecolab failed to pay Territory Representatives, including LaValley, the overtime wages to which they are entitled under the FLSA.

43. Ecolab failed to keep accurate records of time worked by Territory Representatives, including LaValley.

44. Ecolab's violations of the FLSA, as described in this Complaint, have been willful and intentional.

45. Ecolab did not make a good faith effort to comply with the FLSA with respect to its compensation of Territory Representatives, including LaValley.

46. Because Ecolab's violations of the FLSA were willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

47. As a result of Ecolab's violations of the FLSA, Territory Representatives,

including LaValley, have suffered damages by being denied overtime wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION

New York Labor Law Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. Part 142

48. Plaintiff LaValley realleges and incorporates by reference all allegations in all preceding paragraphs.

49. Ecolab has engaged in a widespread pattern, policy, and practice of violating New York Labor Law Articles 6 and 19 and their implementing regulations, as detailed in this Complaint.

50. New York Labor Law requires employers, such as Ecolab, to pay overtime compensation to all non-exempt employees for all hours worked over forty per week.

51. Plaintiff LaValley was a non-exempt employee entitled to be paid overtime compensation for all overtime hours worked.

52. Throughout his employment, Plaintiff LaValley worked in excess of forty hours in a workweek.

53. Ecolab misclassified Plaintiff LaValley as exempt from overtime pay entitlement and failed to pay him overtime premium pay for his overtime hours worked.

54. As a direct and proximate result of Ecolab's unlawful conduct, as set forth herein, Plaintiff LaValley has sustained damages, including loss of earnings for hours of overtime worked on behalf of Ecolab in an amount to be established at trial, liquidated damages, reasonable attorneys' fees and costs of the action, and interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- a. That, at the earliest possible time, Plaintiff LaValley be allowed to give notice of this collective action and that Ecolab provide him with names, addresses, telephone numbers, and other contact information, or that the Court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit been employed by Ecolab and who fall within the FLSA Collective described in this Class Action Complaint. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages; and
- b. Unpaid wages;
- c. An additional 100% as liquidated damages under the FLSA;
- d. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
- e. Pre-Judgment and Post-Judgment interest, as provided by law;
- f. Such other injunctive and equitable relief as the Court may deem just and proper; and
- g. Attorneys' fees and costs, including expert fees.

Dated: September 22, 2014

Respectfully submitted,

s/Paul J. Lukas

Paul J. Lukas

NICHOLS KASTER

4600 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

Telephone: (612) 256-3205
Facsimile: (612) 215-6870
lukas@nka.com

GETMAN & SWEENEY

Michael J.D. Sweeney*
9 Paradies Lane
New Paltz, New York 12561
Telephone: (845) 255-9370
Facsimile: (845) 255-8749
msweeney@getmansweeney.com

OUTTEN & GOLDEN LLP

Justin M. Swartz *
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000
Facsimile: (646) 509-2060
jms@outtengolden.com

**Pro hac vice* application forthcoming

Attorneys for Plaintiffs