

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

**ALANDO SMITH, and MAURICE HARRIS,
individually and on behalf all others similarly situated,**

Plaintiffs,

v.

**ALAMO CLAIM SERVICE, PETER PERRINE,
THORLIN LEE, DAVID SERFASS, CIS ALAMO,
LLC, and STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**

Defendants.

COMPLAINT

Plaintiffs Smith and Harris, individually and on behalf of all others similarly situated as class representatives, by their attorneys, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. Mr. Smith and Mr. Harris were employed by Defendants as insurance claims adjusters, classified as independent contractors, paid a day rate for their work, and not paid overtime premium pay for working more than 40 hours in a workweek ("Claims Adjuster"). They and other Claims Adjusters were hired, supervised, scheduled, and paid by Defendants. They processed insurance claims in State Farm Mutual Automobile Insurance Company's ("State Farm") offices by obtaining facts from the insured, inputting those facts into State Farm's insurance database, using State Farm's software and computers, and processing insurance claims pursuant to State Farm's instructions. Claims Adjusters also secured other necessary services for the insured (e.g., rental car, body shop).

2. Mr. Smith, Mr. Harris, and the other Claims Adjusters regularly worked in excess of 40 hours in a week for which Defendants did not pay them overtime wages.

3. Mr. Smith, Mr. Harris, and other Claims Adjusters were not paid all of their wages on time as Defendants withheld pay for days outside of a 14-day pay cycle and only paid the withheld wages months later.

4. Mr. Harris and other Claims Adjusters were not paid for the last two weeks they worked and are owed back pay and unpaid overtime wages for those weeks.

5. This case seeks to compel Defendants to pay Mr. Smith and Mr. Harris and a class of similarly situated employees all of the wages they earned.

6. By the conduct described in this Collective Action Complaint, Defendants have violated the Fair Labor Standards Act (“FLSA”), by failing to pay their employees all the wages they are due and failing to pay proper overtime compensation. These violations arose out of Defendants’ company-wide policies, and pattern or practice of violating wage and hour laws.

7. Mr. Smith and Mr. Harris bring these claims as a collective action, on their own behalf and on behalf of other similarly situated employees, under the FLSA, 29 U.S.C. §§ 201 *et seq.*, and specifically, the collective action provision, 29 U.S.C. § 216(b).

THE PARTIES

Plaintiffs

8. Mr. Smith’s written consent to be a party to this action is attached hereto.

9. Mr. Smith resides in Oak Park, IL 60304.

10. Mr. Smith was employed by Defendants as a Claims Adjuster in State Farm offices in Oklahoma from approximately May 2011 until July 2011.

11. Mr. Smith was employed by Defendants as a Claims Adjuster in State Farm

offices in Florida from approximately August 2006 to January 2, 2007 and again from July 2011 to September 2011.

12. Pursuant to Defendants' policy and pattern or practice, Mr. Smith was scheduled to work Monday through Saturday from 7 a.m. to 7 p.m., and as a result, he regularly worked more than 40 hours per week for Defendants' benefit without overtime compensation.

13. Pursuant to Defendants' policy and pattern or practice, Defendants did not pay Mr. Smith all of his wages on time. Defendants paid Mr. Smith twice a month but not for all of the time he worked during the month. Defendants had a policy, pattern or practice of withholding pay for days outside of a 14-day pay cycle and eventually paying the withheld wages months later.

14. Mr. Harris' written consent to be a party to this action is attached hereto.

15. Mr. Harris resides in Fort Worth, TX 76116.

16. Mr. Harris was employed by Defendants as a Claims Adjuster in State Farm offices in Fort Worth, Texas and Arlington, Texas from approximately October 2011 until August 2013.

17. Pursuant to Defendants' policy and pattern or practice, Mr. Harris was scheduled to work Monday through Friday from 7 a.m. to 7 p.m., and as a result, he regularly worked more than 40 hours per week for Defendants' benefit without overtime compensation.

18. Pursuant to Defendants' policy and pattern or practice, Defendants did not pay Mr. Harris all of his wages on time. Defendants paid Mr. Harris twice a month but not for all of the time he worked during the month. Defendants had a policy, pattern or practice of withholding pay for days worked outside of a 14-day pay cycle and eventually paying the withheld wages months later.

19. Defendants did not pay Mr. Harris for the last two weeks he worked in State Farm's Texas office. Mr. Harris worked overtime during his last two weeks at State Farm's Texas office.

The Defendants

20. Defendant State Farm Mutual Automobile Insurance Company ("State Farm") is a family of insurance and financial services companies that together serve tens of millions of customers in the U.S. and Canada.

21. State Farm's headquarters are located at One State Farm Plaza, Bloomington, IL 61710.

22. At all times relevant to this Complaint, State Farm maintained control, oversight, and direction over the operation of the facilities and offices in which Plaintiffs worked, and was thus an employer of the employees within the meaning of 29 U.S.C. § 203(d).

23. Mr. Smith performed work on behalf of Defendants in State Farm's Tulsa, Oklahoma and Winterhaven, Florida offices.

24. Mr. Harris performed work on behalf of Defendants in State Farm's Fort Worth, Texas and Arlington, Texas offices.

25. State Farm personnel trained and supervised Mr. Smith and Mr. Harris and were involved in determining their compensation, paying them, assigning them work, scheduling their hours and approving or denying their time off requests.

26. State Farm required Mr. Smith and Mr. Harris to work in State Farm's offices, use State Farm's computers and databases, and follow State Farm's instructions.

27. Defendant Alamo Claim Service ("Alamo") is a privately held company that provides customer service in claim handling and claim management for the insurance industry.

28. Alamo headquarters are located at 8200 IH 10 West, Suite 215 San Antonio, TX 78230.

29. Alamo provides services to State Farm in several states including Illinois, Florida, Michigan, Oklahoma, and Texas.

30. Alamo maintains control, oversight, and direction over the operation of the facilities and offices in which Plaintiffs worked, including the payroll and other employment practices therein.

31. Alamo personnel hired Mr. Smith and Mr. Harris, supervised them and were involved in determining their compensation, paying them, assigning them work, scheduling their hours and approving or denying their time off requests.

32. During time relevant to this Complaint, Defendant Peter Perrine was an owner and President of Alamo Claim Service. Upon information and belief, as President, Mr. Perrine acted directly and indirectly in Alamo's interest in relation to its employees, including the Plaintiffs, and was thus an employer of the employees within the meaning of 29 U.S.C. § 203(d).

33. During time relevant to this Complaint, Defendant Thorlin Lee was one of two Vice Presidents of Alamo Claim Service. Upon information and belief, as Vice President, Mr. Lee acted directly and indirectly in Alamo's interest in relation to its employees, including the Plaintiffs, and was thus an employer of the employees within the meaning of 29 U.S.C. § 203(d).

34. During time relevant to this Complaint, Defendant David Serfass was an owner and the other Vice President of Alamo Claim Service. Upon information and belief, as Vice President, Mr. Serfass acted directly and indirectly in Alamo's interest in relation to its employees, including the Plaintiffs, and was thus an employer of the employees within the meaning of 29 U.S.C. § 203(d).

35. Defendant CIS Alamo, LLC (“CIS Alamo”) is a privately held company that provides customer service in claim handling and claim management for the insurance industry.

36. CIS Alamo’s principle place of business is located at 8950 E. Highway 114, Suite 150, Southlake, TX 76092.

37. CIS Alamo purchased Alamo on or about December 2012.

38. CIS Alamo maintains control, oversight, and direction over the operation of the facilities and offices in which Plaintiffs worked, including the payroll and other employment practices therein.

JURISDICTION AND VENUE

39. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

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

41. Upon information and belief, Defendants are subject to personal jurisdiction in Illinois.

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

43. Venue is proper in the Central District of Illinois pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants are subject to personal jurisdiction here.

COLLECTIVE ACTION ALLEGATIONS

44. Mr. Smith and Mr. Harris bring FLSA claims on behalf of themselves and all similarly situated persons:

who have worked for Alamo Claim Service or CIS Alamo in State Farm offices, outside of Illinois, as claims adjusters who were classified as independent contractors, paid a day

rate, and not paid overtime premium pay for working more than 40 hours in a workweek during any period during the three years prior to the filing of this complaint and the date of final judgment in this matter (the “FLSA Collective Members”).

45. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and the FLSA Collective Members.

46. Upon information and belief, there are many similarly situated current and former employees of Defendants 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 Defendants, are readily identifiable, and can be located through Defendants’ records. Notice should be sent to the FLSA Collective Members pursuant to 29 U.S.C. § 216(b). Because the FLSA statute of limitations runs on a weekly basis, notice should be sent as soon as possible.

47. Defendants jointly employed Mr. Smith and Mr. Harris and the FLSA Collective Members as Claims Adjusters.

48. Defendants required Mr. Smith and Mr. Harris and the FLSA Collective Members to work a schedule of more than 40 hours a week at specified work sites.

49. Defendants trained Mr. Smith and Mr. Harris and the FLSA Collective Members in how to perform their work.

50. Defendants closely monitored Mr. Smith and Mr. Harris and the FLSA Collective Members’ work.

51. Defendants directed Mr. Smith and Mr. Harris and the FLSA Collective Members’ work.

52. Defendants supervised Mr. Smith and Mr. Harris and the FLSA Collective Members’ work.

53. Defendants provided Mr. Smith and Mr. Harris and the FLSA Collective Members with the work space and work tools, including computers, software, phones, e-mail accounts, and desks, necessary to perform their work.

54. The work that Mr. Smith and Mr. Harris and the FLSA Collective Members performed, claims services, is an integral part of Defendants' business.

55. Defendants paid Mr. Smith and Mr. Harris and the FLSA Collective Members the same sum each day for working their scheduled work hours.

56. If Mr. Smith and Mr. Harris and the FLSA Collective Members did not work their scheduled hours, Defendants reduced the sum paid for that day.

57. Defendants did not pay Mr. Smith and Mr. Harris and the FLSA Collective Members additional pay when they worked beyond their scheduled hours.

58. Mr. Smith and Mr. Harris and the FLSA Collective Members were paid at the same rate each day regardless of the quality of their work.

59. Mr. Smith and Mr. Harris and the FLSA Collective Members regularly worked more than 40 hours in a week. Mr. Smith was scheduled to work from 7:00 a.m. to 7:00 p.m. Monday through Saturday each week, and he often worked more. Mr. Harris was scheduled to work from 7:00 a.m. to 7:00 p.m. Monday through Friday each week and often worked more. The FLSA Collective Members worked on the same or similar schedule and were required to work more than 40 hours each week.

60. Defendants did not pay Mr. Smith and Mr. Harris or the FLSA Collective Members an overtime premium for the hours they worked over 40 in a week. Upon information and belief, it was Defendants' willful policy and pattern or practice not to pay their employees, including Mr. Smith and Mr. Harris and the FLSA Collective

Members an overtime premium for work that exceeded 40 hours in a week.

61. Defendants were aware or should have been aware that the law required them to pay non-exempt employees, including Mr. Smith and Mr. Harris and the FLSA Collective Members, an overtime premium of time and one half for all work-hours they suffered or permitted in excess of 40 per workweek. Upon information and belief, Defendants applied the same unlawful policies and practices to all Claims Adjusters in all States, including Illinois, Florida, Michigan, Oklahoma, and Texas.

62. Defendants did not pay Mr. Smith and Mr. Harris and the FLSA Collective Members their wages, including overtime wages, on time. Upon information and belief, Defendants had a policy of delaying payment by several months.

63. Upon information and belief, it was Defendants' willful policy and pattern or practice not to pay Mr. Smith, Mr. Harris, and the FLSA Collective Members all of the wages they were owed in a timely manner.

64. Defendants' unlawful conduct, as set forth in this Complaint, has been intentional, willful, and in bad faith, and has caused significant damages to Mr. Smith and Mr. Harris and the FLSA Collective Members.

FIRST CAUSE OF ACTION
Fair Labor Standards Act: Unpaid Wages
On behalf of Plaintiffs and the FLSA Collective

65. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

66. Defendants engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Complaint.

67. At all times relevant, Mr. Smith and Mr. Harris and the FLSA Collective

Members 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).

68. The overtime wage provisions set forth in the FLSA apply to Defendants and protect Mr. Smith and Mr. Harris and the FLSA Collective Members.

69. Defendants were employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

70. At all times relevant, Mr. Smith and Mr. Harris and the FLSA Collective Members were or have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

71. Defendants jointly employed Mr. Smith and Mr. Harris and the FLSA Collective Members as employers.

72. Defendants failed to pay Mr. Smith and Mr. Harris and the FLSA Collective Members the overtime wages to which they are entitled under the FLSA.

73. Defendants failed to pay Mr. Smith and Mr. Harris and the FLSA Collective Members their overtime wages in a timely manner as required under the FLSA.

74. Defendants' violations of the FLSA, as described in this Complaint, have been willful and intentional.

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

76. As a result of Defendants' violations of the FLSA, Mr. Smith and Mr. Harris and the FLSA Collective Members 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.*

PRAYER FOR RELIEF

WHEREFORE, Mr. Smith and Mr. Harris, individually and on behalf of all other similarly situated persons, pray for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action to the FLSA Collective Members and that Defendants provide Plaintiffs with names, addresses, telephone numbers, e-mail addresses, 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 Defendants and who fall within the FLSA Collective Members described in this 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. Declaring that Defendants violated the FLSA;

C. Declaring that Defendants' violations of the FLSA were willful;

D. Awarding unpaid wages, an additional and equal amount as liquidated damages, interest, attorneys' fees, costs (including expert fees), and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

E. Granting such further relief as the Court finds just.

Dated: October 10, 2013

Respectfully submitted,

/s/ Michael J.D. Sweeney

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