

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

KELLY BROWN and STEPHANIE FORRESTER,
individually, and on behalf of all
others similarly situated,

COLLECTIVE ACTION and
CLASS ACTION

Plaintiffs,

v.

Case No.:

OMNI MANAGEMENT GROUP LLC, ALL
SEASONS TRAVEL AND RESORT INC. d/b/a
VACATION VILLAS OF FLORIDA; LAWRENCE
FLYNN and DESLYN PATRAM FLYNN,

Defendants.

_____ /

**COLLECTIVE ACTION AND CLASS ACTION
HYBRID COMPLAINT & DEMAND FOR JURY TRIAL**

Plaintiffs, KELLY BROWN and STEPHANIE FORRESTER (hereinafter referred to as “Plaintiffs”), individually and on behalf of all others similarly situated, by and through their undersigned counsel, sue Defendants: OMNI MANAGEMENT GROUP LLC (“OMNI”), ALL SEASONS TRAVEL AND RESORT INC.; and LAWRENCE FLYNN and DESLYN PATRAM FLYNN, individually, (hereinafter referred to as “Defendants”), pursuant to 29 U.S.C. 216(b), of the *Fair Labor Standards Act* (the “FLSA”) overtime wage provisions, and pursuant to a Rule 23 Class Action for recovery of unpaid wages under Count II based on violations of Florida’s Minimum Wage Act and Article X, Section 24 of the Florida Constitution, and torts of quantum meruit, unjust enrichment, violations of the FDUTPA, and states as follows:

INTRODUCTION AND PRELIMINARY STATEMENT

1. Defendants operate a business enterprise selling timeshare vacation packages and

other travel promotions related in part or whole to a resort called Silver Lakes, located in Kissimmee, Florida from a call center type office in Tampa Florida.

2. Defendants operate out of primarily one physical principal office location located at 10500 University Drive, in Suites #190, and 180, as well as utilizing Silver Lakes Resort for additional operations, and use the fictitious names of Astar Travel.

3. Defendants hire large people effectively working as inside sales representatives, including Plaintiffs, under various job titles of “Reservationist”; “Travel Coordinator” paid with promises of commissions, in addition to upwards of 40 employees working in the call center department under various other job titles such as customer service representative.

4. Defendants' change the pay plans and commission structure routinely and pervasively, intentionally to mislead and confuse workers and to discourage complaints and lawsuits or claims for unpaid wages and commissions.

5. Eventually, all inside sales reps are paid on some convoluted, base pay plan with eligibility for commissions.

6. Defendants hired Plaintiffs and all others similarly situated to work in high pressured sales environments with mandatory full time work schedules, micro-management, quotas, and under willful misclassifying of Plaintiffs and this class of employees salaried exempt employees in order to avoid all their obligations and and FICA taxes, and simply put, to increase profits, reduces expenses, and evade the laws.

7. Defendants also willfully edit, manipulate, and falsify time records in an intentional effort to conceal evidence of overtime hours worked by inside sales representatives.

8. Plaintiffs, individually and on behalf of all similarly situated current and former

inside sales representatives, were all misclassified by Defendants as salaried exempt employees or subjected to a common unlawful and fraudulent practice of shaving time and editing time records to evade the overtime requirements of the FLSA.

9. Plaintiffs bring this action for violation of the Fair Labor Standards Act and Florida's Minimum Wage Law in Article X, Section 24, and an action for Declaratory Relief.

10. Defendants willfully misclassified Plaintiffs and the class of similarly situated inside sales reps as exempt from overtime, and willfully refused to pay them minimum wages, overtime wages, and provide benefits as set forth in the FLSA and Article X, Section 24.

11. Alternatively, Defendants just had a policy and practice of refusing to pay a premium for overtime hours worked to Plaintiffs and the class of similarly situated, including editing or removing overtime hours they knew, saw and were aware had been worked by Plaintiffs and the class of similarly situated.

12. In this pleading, "Defendants" means the named Defendants and any other corporation, organization or entity responsible for the unlawful employment practices complained of herein (discovery may reveal additional Defendants that should be included).

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, because this action involves a Federal Statute, 29 U.S.C. §216 (b), the Fair Labor Standards Act.

14. This Court has supplemental jurisdiction pursuant to 28. U.S.C. §1367, because the state law claims and torts asserted herein also seek accrued but unpaid wages and benefits, employer's share of federal income taxes and FICA, and all other damages which relate to the

federal claims in this action and Defendants' misclassification of Plaintiffs and the class of similarly situated as independent contractors and unlawful pay practices under the FLSA including attering and manipulating time records and willful refusal to pay overtime wages. Thus, this Court should exercise supplemental jurisdiction because all causes arise out of and involve the same common issues of fact and law.

15. This Court has personal jurisdiction over this action, because Defendants operated substantial business in this District in Tampa, Hillsborough County, Florida and the damages at issue occurred in this District.

16. Venue is proper to this Court pursuant to 29 U.S.C. §216(b), and the acts complained of accrued within this District at Defendants' primary office located in Tampa, Hillsborough County Florida.

THE PLAINTIFFS

Stephanie Forrester:

17. Plaintiff Forrester resides in Tampa, Florida during all material times.

18. Plaintiff Forrester has worked for Defendants from November until December 2017 in the call center as a Sales Representative, and then from December 2017 to the present in the position of Travel Coordinator and also called a Reservationist.

19. In the call center, Plaintiff's primary duties were to schedule appointments and solicit people to tour Silver Lake Resort timeshare properties and also to sell vacation packages.

20. As a call center employee, Plaintiff Forrester was paid \$10.00 per hour for the first week of training then \$8.05 per hour, less than the Florida Minimum Wage of \$8.10, as an hourly employee, plus commissions.

21. As a call center hourly employee, Plaintiff was never paid a premium for overtime hours, and her pay stub would reflect never more than 40 and usually “40” as the total hours, despite the fact that she had a mandatory corporate schedule which required overtime hours, working Monday to Saturday from 3pm until 11pm.

22. As a reservationist or Travel Coordinator, after December 2017, Plaintiff worked the same schedule, but her duties and pay were only slightly different.

23. Plaintiff’s primary duties were then to solicit, quote, and sell vacation packages for Defendants, hinged upon visiting primarily a timeshare property known as Silver Lake Resort in Kissimmee, Florida.

24. At all times pertinent to this lawsuit, Plaintiff worked for the Defendants at an office at the corporate office in Tampa, Florida.

25. Plaintiff was paid only \$200 during any weeks she failed to meet a designated quota, less than the lawful minimum wage, and also without being paid a premium for overtime hours worked.

26. Otherwise, reservationsist or travel coordinators were paid on straight commission, but never paid overtime wages, was subjected to receiving less than time and one half of minimum wage for all hours worked and subjected to a policy of deductions and paybacks from commissions earned.

27. Plaintiff was required to work a fixed schedule of Monday to Saturday, from 2pm until 11pm, 6 days a week as a reservationist or travel coordinator.

28. Plaintiff averaged working at a minimum of 47.5 hours per week, and rarely was able to take any meal break.

29. Plaintiff was strangely classified by Defendants as a “salaried” employee, but in fact was not on any salary, and was subject to deductions for being late or leaving early, and changes in her weekly pay depending upon sales and hours.

30. Plaintiff was subject to discipline if she was late or left early and could not vary her schedule or shift or come and go as she pleased.

31. Plaintiff was never paid a premium for overtime hours worked, and Plaintiff’s pay stubs always reflected no more than 40 hours.

Kelly Brown:

32. Plaintiff Brown was hired on or about May 2018, and was terminated from her position by Defendants in June 2018, working approximately 5 weeks.

33. Plaintiff Brown was not given any formal job title, but through communications with co-workers in the same position, and communications with her superiors, came to be known also as a Reservationist or Travel consultant.

34. Plaintiff Brown also had the same fixed schedule of being required Monday to Saturday, 2pm until 11pm, 6 days a week.

35. Brown also had a mandatory overtime schedule, and she only took 2 meal breaks the entire 5 weeks of working.

36. Brown was required to work overtime hours, and subjected to a quota as well, like Forrester, and if not met, she was to be paid just \$200.00 for the week.

37. Defendants required Plaintiff, and her job commanded her, to routinely work over forty (40) hours per week. Defendants also required to perform the majority of all work at the

Defendants' offices, and to work a set schedule set by the Defendants throughout her employment selling insurance policies and products.

38. Brown was not paid a premium for any overtime hours worked, and believed this to be the policy of Defendants: we don't pay overtime wages.

39. While she earned commissions in some weeks, she did not earn the equivalent of time and one half of minimum wages for all hours worked.

40. Her paystubs also reflected 40 hours and no more, and her pay varied week to week depending upon the commission earned.

41. In the last several weeks, Plaintiff received less than the equivalent of time and one half of minimum wage for all hours worked, and no pay for overtime hours.

42. She was also subjected to a policy of deductions and if didn't hit the quota was to be paid \$200 for the week as a flat sum.

The Defendants

43. OMNI MANAGEMENT GROUP LLC. ("OMNI") is a Florida For Profit Corporation, with its principal place of business located at 10500 University Drive, in Suites #190, and 180, Tampa, Fl 33612. The company is owned, managed, and controlled by Defendants Lawrence Flynn and Deslyn Flynn ("FLYNNS"). Defendants may be served through its registered Agent, Lawrence Flynn at the same corporate address in Suite #180.

44. ALL SEASONS TRAVEL AND RESORT INC. ("ASTAR") is a FOREIGN For Profit Corporation, with its principal place of business located at 10500 University Drive, in Suites #190, and 180, Tampa, Fl 33612. The company is owned, managed, and controlled by Defendants Lawrence Flynn and Deslyn Flynn ("FLYNNS"). Defendants may be served through

its registered Agent, Lawrence Flynn at the same corporate address in Suite #180.

45. Upon information and belief both ASTAR and OMNI operated under the business name of Vacation Villas of Florida.

46. Defendant, Lawrence Flynn, is an owner of OMNI and ASTAR, the highest ranking officer, and day to day manager of the businesses including the Vacation Villas of Florida.

47. Defendant, Deslyn Patron Flynn, upon information and belief, is also an owner of OMNI and ASTAR, an officer and part of management in both including the Vacation Villas of Florida.

48. Neither OMNI nor ASTAR have a human resources department or HR officer, and are involved with make decisions regarding all hiring, firing and disciplinary decisions, compensation policies, plans and pay practices including the unlawful pay practices complained of herein.

49. Upon information and belief, Defendants operated all businesses at a single principal place of business, with the same officers, owners and sharing of employees, independent contractors and all work being performed as single common business enterprise.

50. Both Deslyn and Lawrence Flynn are individually "Employers" within the meaning of the FLSA and the FMWA/Article X Section 24, as they set the compensation plans, work schedules, direct and supervise the work of Plaintiffs and all others similarly situated.

51. Defendants qualify for and are subject to both traditional and enterprise coverage under the FLSA for the relevant time periods pertinent to this Complaint. Said differently, Defendants are subject to the Fair Labor Standards Act and the FMWA.

52. Defendants also employ ten (10) or more employees, with or without counting the

falsely and fraudulently labeled independent contractors, and are employers within the meaning of the Florida Minimum Wage Act, and FDUPTA.

53. At all relevant times Defendants have been and continue to be employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a), selling vacation plans across state lines, accepting and processing payments over the internet and wires, sending mail interstate, and contacting and calling upon citizens of the USA and citizens of foreign countries from their offices.

54. Plaintiffs, Forrester and Brown, are/were employees of Defendants within the meaning of FLSA § 203.

55. Upon information and belief the Defendants' corporations individually and combined have business revenues exceeding \$500,000.00 annually and are an employer subject and covered by the FLSA under enterprise coverage.

56. Alternatively, Plaintiffs each were engaged in interstate commerce, sending mail interstate and internationally, calling upon and soliciting persons interstate and internationally, processing and accepting payments of funds including by credit cards across state lines.

GENERAL ALLEGATIONS

57. Payroll Checks were paid to Plaintiffs on the accounts of Vacation Villas of Fla, (a fictitious name operated by Defendants All Seasons Travel and Resort Inc.), and as well as under the OMNI company.

58. Defendants commingled funds, for the multiple corporations, shared employees, offices, supervision, policies and procedures and pay practices such that they are essentially the alter-ego of each other, a single business enterprise and Joint Employers.

59. Employees, including Plaintiffs really had no idea which corporation or company they were performing work for and which company or entity would pay them, as Defendants were evasive, and less than forthright about who they worked for.

60. The FLSA provides that, with certain exceptions, employers must pay employees a minimum hourly wage for all compensable hours worked and overtime of at least one and one-half times their regular hourly rate of pay for any hours worked over forty in a week. *See 29 U.S.C. §§ 206, 207(a)(1)*. The Act exempts certain employees from the minimum wage and overtime requirements. However, an “employer who claims an exemption from the FLSA has the burden of showing that the exemption applies” *See Donovan v. Nektan, Inc., 703 F.2d 1148, 1151 (9th Cir. 1983)*.

61. Forrester and Brown and the Class of similarly situated sales representatives and customer service reps cannot be classified as exempt under any applicable exemption in the FLSA or FMWA or Article X, Section 24 of the Florida Constitution..

62. At no time did Defendants claim or assert any Retail Service 207(i) exemption applicable to Plaintiffs and the class of similarly situated, nor did they have a bona fide commission plan, and Plaintiffs did not receive at least time and one half of minimum wage for all hours worked.

63. Further, Defendants cannot rely upon the administrative or executive exemptions as the Inside Sales Agent position fails the salary basis test as Plaintiffs were never paid a salary of at least \$455.00 per week.

64. Regardless, the position of an inside sales representative or customer service rep is not an exempt position, and does not satisfy any of the elements of an executive or administrative

exemption. Moreover, the sales work of Plaintiffs was completely inside telephonic sales.

65. Defendants set quotas, production goals, and other metrics which if not met, would result in termination of Plaintiffs' employment, and reductions their compensation.

66. Plaintiffs and the class of similarly situated employees were all willfully misclassified by Defendants as exempt employees.

67. Alternatively, Plaintiffs and the class of similarly situated were simply subjected to a willful policy and practice of Defendants refusing to pay overtime wages, and/or a De Facto Policy against paying overtime wages, coupled with their willful practice of fraudulently edited and shaving all overtime hours from the time records and simply refusing to comply with Section 207 of the FLSA.

68. Upon information and belief, Defendants have employed 46 or more inside sales representatives at a single time from their offices in Tampa, and upon information and belief with turn over in the past 3 years, the class of similarly situated numbers in the range of 200, and if going back 5 years, upwards of 350.

69. The Call Center department and employees were simply called sales employees and the department referred to as the Sales department and employed upwards of 40 people at any given time.

70. All company policies, pay-practices and employment oversight is conducted from the corporate office in Tampa in a uniform policy applicable to all inside sales representatives.

71. Defendants are required by the Fair Labor Standards Act to compensate Plaintiffs and the putative class of similarly situated for all hours worked both minimum wages and overtime wages.

72. Defendants willfully engaged in practices that denied Plaintiffs and other similarly situated employees overtime compensation and minimum wages under the FLSA.

73. Defendants are required, pursuant to the FLSA, to track and record the work hours for all non-exempt employees, and in this instance failed to do so.

74. Alternatively, Defendants willfully manipulated, edited and deleted or shave off tracked hours of Plaintiffs and the class of similarly situated to avoid records of overtime hours incurred in the event of a lawsuit or claim, and also to deceive, confuse and mislead employees.

75. Defendants do not and cannot have a good faith basis under the FLSA, the FWMA, Article X, Section 24, or any other law for willfully refusing to pay Plaintiffs and the putative class of similarly situated minimum wages and overtime wages for all hours worked.

COLLECTIVE ACTION ALLEGATIONS

76. Forrester and Brown bring this suit pursuant to Section 216(b) of the FLSA for recovery of minimum wages and overtime wages, on behalf of a collective class of similarly situated persons composed of:

MINIMUM WAGE CLASS A:

ALL PERSONS EMPLOYED AS HOURLY OR COMMISSIONED EMPLOYEES WITH OMNI MANAGEMENT GROUP LLC, OR ALL SEASONS TRAVEL AND RESORT INC., D/B/A VACATION VILLAS OF FLORIDA PRESENTLY OR IN THE 3 YEARS PRECEDING THE FILING OF THIS COMPLAINT AS INSIDE SALES REPRESENTATIVES OR CUSTOMER SERVICE TYPE EMPLOYEES UNDER VARIOUS TITLES INCLUDING BUT NOT LIMITED TO: RESERVATIONISTS, TRAVEL CONSULTANTS OR SALES REPS.

OVERTIME WAGE CLASS B:

ALL PERSONS EMPLOYED AS HOURLY OR COMMISSIONED EMPLOYEES WITH OMNI MANAGEMENT GROUP LLC, OR ALL SEASONS TRAVEL AND RESORT INC., D/B/A VACATION VILLAS OF FLORIDA PRESENTLY OR IN THE 3 YEARS PRECEDING THE FILING OF THIS COMPLAINT AS INSIDE SALES

REPRESENTATIVES OR CUSTOMER SERVICE TYPE EMPLOYEES UNDER VARIOUS TITLES INCLUDING BUT NOT LIMITED TO: RESERVATIONISTS, TRAVEL CONSULTANTS OR SALES REPS.

77. Forrester and Brown allege on behalf of the Putative Classes who elect to opt-in to this action that they are entitled to unpaid overtime wages, as required by 29 U.S.C. § 207, minimum wages under Section 206, and unpaid wages as required by §448.08, *Florida Statutes*.

78. The exact number of the members of the Class is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, but upon information and belief is upwards in the range of 200 to 350 persons.

79. As a result of Defendants' willful violations of the Florida and federal minimum wage laws, and the FLSA overtime wage provision, Brown, Forrester and members of the Classes were unlawfully and grossly under-compensated for their work in violation of the FLSA, FMWA and Article X, Section 24 of the Florida Constitution, and were also subjected to harm by receiving reduced Social Security earnings and coverage.

80. Although the FLSA provides for certain exemptions to the mandates of paying minimum wages and overtime compensation, no exemptions apply in the instant matter to Plaintiffs and the class of similarly situated.

81. Defendants thumbed their noses at the wage laws, having been subjected to similar lawsuits and claims for allegedly willfully violating the minimum wage and overtime laws in the case of *Lentz, Bratton, et al v. All Seasons Travel and Resort Inc., Lawrence Flynn*, Case No: 8:10-cv-02270-VMC-AEP, Middle District of Florida, which was settled in March 2011.

82. Unless proven to be exempt from the protection of the FLSA, all employees are entitled to premium overtime pay for work in excess of forty (40) hours per week and at least the

minimum wage for all hours worked.

83. Unless proven to be exempt from the protection of the FLSA, all employees are entitled to be paid minimum wages under the FLSA and FWMA and Article X, Section 24 of the Florida Constitution for all hours worked.

84. Forrester, Brown and members of the Overtime Wage Class were/are required to work overtime hours without compensation, in order for Defendants to maximize profits by selling insurance policies and save money on labor costs rather than employing licensed insurance agents to work as employees.

85. Evidence reflecting the precise number of overtime hours worked by Brown, Forrester and every other member of the Class, as well as the applicable compensation rates, are partly in the possession of the Defendants. If records are available, Plaintiffs and members of the Class may establish the hours they worked solely by their testimony, and the burden of overcoming such testimony shifts to the employer. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

86. Forrester and Brown will fairly and adequately protect the interests of the Classes and have retained counsel that is experienced and competent in class/collective actions and employment litigation. Brown and Forrester have no interest that is contrary to, or in conflict with, members of the Classes.

87. A collective action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for

the wrongs done to them.

88. A collective action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, the members of the Class likely will not obtain redress of their injuries.

89. Furthermore, even if any member of the Class could afford individual litigation against Defendants, it would be unduly burdensome to the judicial system. The instant methodology, when compared to voluminous individual actions, has fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Class, and provide for judicial consistency.

90. There is a well-defined community of interest in the questions of law and fact affecting the Class as a whole. The question of law and fact common to each of the Class predominate over any questions affecting solely individual members of the action. Among common questions of law and fact are:

- a. Whether Brown, Forrester and the members of the Putative Class were underpaid for all overtime hours worked in violation of the FLSA;
- b. Whether Defendants actions of editing, withholding, manipulating time tracking systems and records and otherwise willfully refusing to pay a premium for all overtime hours worked violates the FLSA and are unlawful pay practices under the FLSA;
- c. Whether Defendants failed to pay Brown and Forester and the members of

the class minimum wages for all hours worked by virtue of their common, unlawful pay practices;

- d. Whether Defendants failed to maintain and preserve accurate and true records of all hours worked and wages earned by the Plaintiffs Forrester, Brown and the putative Classes; and
- e. Whether Defendants have willfully and without good faith, violated the minimum wage and overtime requirements of the FLSA, the FMWA, Article X, Section 24 of the Florida Constitution such that liquidated damages and respective 3 and 5 year statute of limitations should apply.

91. Forrester and Brown know of no difficulty that will be encountered in the management of this litigation as a collective action or that would preclude a single trier of fact from determining the damages owed to the class.

92. Pursuant to 20 U.S.C. § 216(b), Ganier seeks to prosecute the FLSA claims as a collective action on behalf of the Class.

93. Notice of the pendency and any resolution of this action can be provided to Putative members of the class by mail, print, and/or internet publication.

94. Forrester and Brown bring this action as a collective action pursuant Section 216(b) of the FLSA.

RULE 23 CLASS ALLEGATIONS FOR VIOLATION OF ARTICLE X, SECTION 24 OF THE FLORIDA CONSTITUTION

95. Forrester and Brown bring a second claim individually and on behalf of a class of similarly situated persons composed pursuant to Rule 23(b)(1), 23(b)(3) for recovery of Minimum wages in the State of Florida for the following class:

ALL HOURLY OR COMMISSION PAID PERSONS EMPLOYED WITH OMNI MANAGEMENT GROUP LLC, OR ALL SEASONS TRAVEL AND RESORT INC., D/B/A VACATION VILLAS OF FLORIDA PRESENTLY OR IN THE 5 YEARS PRECEDING THE FILING OF THIS COMPLAINT AS INSIDE SALES REPRESENTATIVES OR CUSTOMER SERVICE TYPE EMPLOYEES UNDER VARIOUS TITLES INCLUDING BUT NOT LIMITED TO: RESERVATIONISTS, TRAVEL CONSULTANTS OR SALES REPS.

96. Forrester alleges on behalf of herself and the Putative Class that they are entitled to unpaid wages as required by Article X, Section 24 of the Fla. Constitution and owed compensation for non payment and underpayment of minimum wages for all hours worked.

97. **NUMEROSITY:** The persons in this Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, upon information and belief, Defendants employ approximately 45 or more sales representatives and customer services type employees at a given time, from one to two offices in the same building and considering the prior five (5) years with turnover, the number of employees who would conceivably make up this class is upwards of 350 or more, thus satisfying the numerosity requirement for the Class.

98. **COMMONALITY:** There are questions of law and fact common to the Rule 23 Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- a. Whether Defendants unlawfully failed to pay the minimum wages as required by §448.110, Florida Statutes, and Article X, Section 24 of the Florida Constitution, when their commissions fell short of satisfying the minimum wage requirements for any workweek, or otherwise not paying minimum wages for all hours worked.

- b. Whether Defendants violated the the Florida minimum wage law intentionally and in bad faith.
- c. Whether Defendants willfully underpaid Plaintiffs and the class of similarly situated full minimum wages for all hours worked in violation of Florida law.

99. **TYPICALITY:** Plaintiff's claims are typical of those of the Class. Plaintiff Forrester, like other class members, was subjected to Defendants' policy and practice of improperly paying all wages earned by employees in violation of Florida Law. Upon information and belief, Defendants have willfully underpaid Plaintiff and the putative class when their commissions failed to meet a threshold, and when they paid commissioned employees less than the equivalent of full minimum wage for all hours worked. The Defendants track hours worked, but edited off time and manipulated time records to eliminate employees' work hours, and then failed to do any accounting to provide the classes an accurate and full breakdown for each hour worked. Plaintiff and the Putative Class have similar violations alleged because both are based upon Defendants unlawful conduct of willful underpayment and non-payment of minimum wages. These claims are intertwined with the overtime violations and both Plaintiff and the Class have been purposefully underpaid by Defendants.

100. **ADEQUACY:** Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel that is experienced and competent in similar class actions and employment litigation. Plaintiff has no interest that is contrary to, or in conflict with, members of the Class, and Plaintiff is prepared to act on behalf of the Class and serve as class representative.

101. A class action, such as the instant one, is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by individual

members of the class may be relatively small when compared with the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to them. One person may have damages of \$250, while others, over the course of 5 years, could be as much as \$10,000.00. The total damages at issue for the class are over \$75,000.00.

102. Furthermore, if every member of the Class brought their cases individually against Defendants, it would be create a morass that was unduly burdensome on the judicial system. The class action is most efficient way to address this controversy on behalf of such a large group of people.

103. A ruling that one member of the class was suffered a non-payment or underpayment of receiving full minimum wages in violation of Article X, Section 24 would be dispositive of the interests of all other class members, as each would be owed minimum wages or the balance of minimum wages for whatever hours they worked.

104. Since Plaintiff and the class all had a mandatory, minimum 40 hour work week, they all would have similar claims for underpayment of minimum wages.

COUNT I
UNPAID OVERTIME DUE UNDER SECTION 207 FLSA
THE FLSA: 216(b) COLLECTIVE ACTION

105. Plaintiffs reallege and incorporate by reference paragraphs 1 through 94, as if fully set forth in this Count.

106. When hired, Plaintiffs relied upon promises and representations from Defendants that they would be paid for all hours worked according to state and federal wage laws.

107. At all relevant times, Defendants employed Brown and Forrester within the

meaning of the FLSA.

108. Defendants may have mis-classified Plaintiffs and all inside sales representatives as salaried, exempt employees refusing to pay or failing to pay overtime compensation due to Plaintiffs and the class of inside sales representatives for hours worked in excess of forty (40) hours per week at rates of one and half times their regular rate of pay.

109. Alternatively, Defendants just simply refused to pay a premium for overtime hours worked for Plaintiffs and the class of similarly situated.

110. Defendants edited, shaved off and removed overtime hours from time records, and otherwise just willfully withheld paying overtime wages as a policy to Plaintiffs and all others similarly situated.

111. Plaintiffs and the class of similarly situated regularly worked overtime hours without being paid any compensation for their work hours, despite having mandatory similar work schedules of Monday to Saturday, from 2pm to 11pm, (54 hours).

112. When Forrester worked in the Call Center as well as a Sales Representative during the time frames of November to December 2017, she and all call center employees likewise had the same work schedules of 3pm to 11pm, Monday to Saturday and routinely worked overtime hours.

113. Brown and Forrester routinely worked overtime hours (more than 40 in a work-week) without being paid a premium for all such hours worked.

114. Through communications with co-workers, it was clear that Defendants subjected all employees to the same pay practice, De Facto Policy, editing and shaving of overtime hours, and had the same unlawful pay practices of refusing to pay a premium for all overtime hours

worked to all of their employees.

115. Plaintiffs rarely took breaks, routinely worked through breaks, and even when took breaks were less than 1 hour.

116. Defendants have willfully violated the FLSA by misclassifying or treating its employees as exempt from overtime, or alternatively, by willfully refusing to pay Plaintiffs and the class a premium for all overtime hours worked.

117. Defendants' failure to pay Forrester, Brown and all similarly situated inside sales representatives and call center employees overtime compensation at a rate no less than time and one-half (1.5) times their regular rate of pay for hours worked over forty (40) in a given workweek, is a violation of the FLSA, in particular, 29, U.S.C. § 207.

118. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(A).

119. Due to Defendants' FLSA violations, Forrester, Brown and the class of similarly situated employees has suffered damages, and are entitled to recover from Defendants the unpaid overtime compensation, an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

120. Defendants do not have a good faith basis under the FLSA for misclassifying Plaintiffs as exempt, or from willfully refusing to pay a premium to Plaintiffs and the class of similarly situated for all overtime hours worked over 40 in a work week.

121. Defendants knew that Plaintiffs and the class of similarly situated worked more than 40 hours routinely, and aside from willfully refusing to pay for all hours, also edited, shaved off and removed or manipulated time records to erase and conceal the overtime hours worked

COUNT II
UNPAID MINIMUM WAGES UNDER SECTION 206 OF THE FLSA FOR PLAINTIFF
FORRESTER AND THE CLASS OF SIMILARLY SITUATED COLLECTIVE
ACTION

122. Plaintiffs reallege and incorporate by reference paragraphs 1 through 94 as if fully set forth in this Count.

123. When hired, Plaintiffs relied upon promises and representations from Defendants that they would be paid for all hours worked within the requirements of state and federal wage laws.

124. Plaintiffs and all other inside sales representatives, including SAMU were entitled to be paid the mandatory and applicable minimum wage rate for all hours worked during their employment with Defendants throughout their employment. Although Defendants classified Plaintiffs and all other inside sales representatives as independent contractors, they were employees under the FLSA, Florida law and the IRS codes.

125. Plaintiffs and all inside sales representatives were required to be compensated at the applicable minimum wage rate for all hours worked during their term of employment with Defendants.

126. As a result of Defendants' intentional, willful and unlawful violations of the Florida Minimum Wage Act Plaintiff and all others similarly situated have suffered damages for all unpaid minimum wages owed plus liquidated damages.

127. Defendants do not have a good faith basis for misclassifying Plaintiffs and all other inside sales reps as independent contractors, such that Plaintiffs and the class of similarly situated are entitled to liquidated damages.

128. Defendants' actions are willful violations of the FLSA.

129. Plaintiffs and all other similarly situated inside sales reps have been harmed, and not been paid minimum wages for all hours worked.

CLASS ACTION CLAIMS AND COUNTS PURSUANT TO RULE 23

**COUNT III VIOLATION OF ARTICLE X SECTION 24
OF THE FLORIDA CONSTITUTION**

130. Plaintiffs reallege and incorporate herein paragraphs 1 through 100 as if fully set forth in this Count.

131. Plaintiffs and all other employees or other persons working and performing work for Defendants in the State of Florida were improperly, unlawfully and without justification not paid the full minimum wages for all hours worked up to 40 in each workweek.

132. Plaintiffs routinely worked with receiving less than full minimum wages for all hours worked, and during one or more workweeks, was paid just \$200 for working up to or exactly 40 hours of work.

133. Additionally, Defendants took deductions from Plaintiffs' pay which resulted in her receiving less than the equivalent of minimum wages for all hours worked.

134. Upon information and belief, all other inside sales representatives who failed to earn sufficient commissions to meet the quotas also suffered the same by being paid less than minimum wages for all hours worked and did not receive minimum wages for all hours worked up through 40 in a work week.

135. Defendants were required to supplement the pay of Plaintiffs and the class of similarly situated, whenever the compensation paid to them fell short of meeting the requirements of receiving minimum wages for all hours worked.

136. Defendants willfully refused to pay the full minimum wage for all hours worked

up to 40 in a work week.

137. Plaintiffs are and were non-exempt employees.

138. Plaintiffs, and the class of similarly situated were willfully underpaid by Defendants, and have been harmed by Defendants' unlawful, and pay practices and policies.

COUNT IV
DECLARATORY JUDGMENT PURSUANT TO 28 U.S.C. Section 2201,
and CHAPTER 86, FLORIDA STATUTES

139. Plaintiffs adopt, incorporates and reallege paragraphs 1 through 100 as if fully set forth herein verbatim.

140. Plaintiffs, individually and on behalf of all others similarly situated, seeks declaratory relief and determination that the Defendants' Conduct violates the FLSA, the Florida Minimum Wage Act and Article X, Section 24 of the Fla. Constitution.

141. Pursuant to F.S. 86.11 "the existence of another adequate remedy does not preclude a judgment for declaratory relief. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar. The court has power to give as full and complete equitable relief as it would have had if such proceeding had been instituted as an action in chancery.

142. The Plaintiffs have been deprived of his rights to wages and benefits conferred by the FLSA, FWMA, Article X, Section 24 and as employees of Defendants or any other company in the state, and Defendants have unlawfully, unjustly and willfully misclassified Plaintiffs as exempt or have alternatively, willfully refused to pay overtime wages.

143. Additionally, Plaintiffs seek a declaration of this Court determining that Defendants' policy and practice of underpaying, or paying less than the equivalent of full

minimum wages for all hours worked up to 40 in a work week violates Section 206 of the FLSA, Article X, Section 24 of the Fla. Constitution and the Florida Minimum Wage Act (FMWA).

144. Pursuant to the Restatement (Third) of Restitution & Unjust Enrichment § 2(2) cmt. c. Relief may be available on a theory of unjust enrichment, for example, when a supposed **contract** is "**illegal**," id. § 32, when it is **unenforceable** by reason of fraud, duress, or undue influence, id. § 31 cmt. a., when a party to the **contract** was incapable of entering it, id. § 33, or when the **contract** is subject to [*26] avoidance by reason of mistake or supervening change of circumstances, id. § 34.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs KELLY BROWN and STEPHANIE FORRESTER, Individually and on behalf of all others similarly situated prays for the following relief:

- a. An order designating this action as a collective action and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Join pursuant to §216(b), and that this notice be sent to all past and present employees of Defendants at any time during the three year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice;
- b. An order designating this action as a class action and issuance of a notice to the class;
- c. An order appointing a Plaintiffs Forrester and Brown as the respective class representatives and Mitchell L. Feldman Esq. and Benjamin Williams, Esq. as class counsel to represent the Putative Class of similarly situated inside sales representatives and all center employees;
- d. A judgment finding that Defendants willfully and in bad faith violated the overtime compensation provisions of the FLSA and the Florida Minimum Wage Act and Article X, Section 24;
- e. An order instructing Defendants cease the unlawfully employment practices under the FLSA and Florida Law;

- f. That the Court award Plaintiffs Forrester and Brown and the members of the putative Class, overtime compensation for all the previous hours worked over forty (40) hours that they did not receive at least one and one-half time compensation for, in any given week during the past three years, AND liquidated damages of an equal amount of the owed overtime; in addition to penalties and interest on said award pursuant to §216 of the FLSA;
- g. That the Court award Plaintiffs Forrester and Brown and the members of the putative Class the minimum wage compensation for all previous hours worked up to 40 in each and every workweek for which they did not receive minimum wage for the past five years and liquidated damages of an equal amount of the owed minimum wage amounts in addition to any penalties and interest on said award.
- h. That the Court award Plaintiffs Forrester and Brown a collective action and class action representative incentive or service award for their efforts and time dedicated to bringing justice through this action and the extra efforts he put in for leading this litigation;
- i. An order awarding attorneys' fees and costs pursuant to § 216 of the FLSA and the Florida Minimum Wage Act and Article X, Section 24; and,
- j. That the Court award any other legal and equitable relief as this Court may deem appropriate, including barring any retro-active applications of exemptions.

WHEREFORE, Plaintiffs KELLY BROWN and STEPHANIE FORRESTER,

Individually and on behalf of all others similarly situated seeks all damages available at law and in equity this court deems just and fair, and an award of reasonable attorney's fees and expenses of litigation pursuant to F.S 448.104.

Respectfully submitted,

Date: July 19, 2018

/s/ Mitchell L. Feldman, Esq.

Mitchell L. Feldman

Florida Bar No. 0080349

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Attorney for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KELLY BROWN and STEPHANIE FORRESTER

(b) County of Residence of First Listed Plaintiff HILLSBOROUGH (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Mitchell L. Feldman, FELDMAN WILLIAMS PLLC; 6940 W. Linebaugh Ave., Suite 101, Tampa, FL 33625; Tel: (813) 639-9366; Fax: (813) 639-9376; mitch@feldmanwilliams.com

DEFENDANTS

OMNI MANAGEMENT GROUP LLC, ALL SEASONS TRAVEL AND RESORT INC. d/b/a VACATION VILLAS OF FLORIDA; LAWRENCE FLYNN and DESLYN PATRAM FLYNN

County of Residence of First Listed Defendant HILLSBOROUGH (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act, 29 U.S.C. 216(b)
Brief description of cause: Minimum wage and overtime violation.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/19/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Mitchell L. Feldman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Florida Call Center Sued for Allegedly Unpaid Wages](#)
