

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

SAMUEL CALDERON,)	Civil Action No.: 8:10-cv-01958-RWT
)	
TOM FITZGERALD)	SECOND AMENDED CLASS
6018 Delafield Ave)	ACTION AND COLLECTIVE
Bronx, NY 10471)	ACTION COMPLAINT
)	(JURY TRIAL DEMANDED)
Joan Bischoff)	
328 Enterprise Drive)	
Bird in Hand, PA 17505)	
)	
Dennis Fulton)	
2161 Doig Hollow Rd)	
Andes, NY 13731)	
)	
Vincent Greco)	
17 Florence Ave)	
Syosset, NY 11791)	
)	
Joseph Miles, Jr.)	
115 Junard Dr)	
Bay Shore, NY 11706)	
)	
Michael Russell)	
108 Lawrence St)	
New Hyde Park, NY 11040)	
)	
individually and on behalf of other)	
similarly situated individuals,)	
)	
PLAINTIFFS,)	
)	
v.)	
)	
GEICO General Insurance Company, et. al.)	
)	
DEFENDANTS.)	

Plaintiff Samuel Calderon, individually and on behalf of other similarly situated individuals, Joan Bischoff, Dennis Fulton, Vincent Greco, Joseph Miles, Jr., Michael Russell,

and Tom Fitzgerald, individually and on behalf of putative class members who worked and lived in the State of New York, for their Amended Complaint against Defendants GEICO Corporation, GEICO General Insurance Company, GEICO Indemnity Company, and GEICO Casualty Company (collectively referred to herein as “Defendants”), states as follows:

PRELIMINARY STATEMENT

1. This is a collective action brought by named Plaintiff Samuel Calderon (“Calderon”) for unpaid overtime wages on behalf of himself and on behalf of the proposed class identified below. Plaintiffs and the putative class members were or are employed by Defendants and certain Doe Defendants, or their predecessors-in-interest, as Senior Security Investigators, Lead Security Investigators or some similar title (“Security Investigators”). As Security Investigators, Plaintiffs and the putative class members are or were covered, non-exempt employees under federal wage and hour laws, and are entitled to overtime pay consistent with the requirements of these laws. These employees are similarly situated under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §216(b).

2. The Collective Class is made of all persons who are or have been employed by Defendants as Security Investigators at any time within the United States (exclusive of California) within three years prior to this action’s filing date, through the date of disposition of this action (“the Collective Class Period”).

3. During the Collective Class Period, Defendants failed to pay appropriate compensation, including overtime compensation, to each member of the Collective Class as required by federal law. Plaintiff Calderon seeks relief for the Collective Class under the Fair Labor Standards Act. All of the relief sought is to remedy Defendants’ failure to pay all wages

due, to pay appropriate overtime compensation, and to maintain accurate time records, in addition to injunctive relief.

4. This is also a class action brought by named Plaintiff Tom Fitzgerald (the “New York Representative Plaintiff”) under the laws of New York on behalf of himself and all other similarly situated individuals who are or have been employed by Defendants as Security Investigators or other job titles performing substantially similar job duties as the New York Representative Plaintiff, who worked in the State of New York, pursuant to Rule 23 of the Federal Rules of Civil Procedure, to remedy violations of New York Labor Law, Article 19 §§ 650, et seq., and the supporting New York State Department of Labor regulations (together, “NYLL”). As Security Investigators, the New York Representative Plaintiff and the putative class members in New York are or were covered, non-exempt employees under state wage and hour laws, and are entitled to overtime pay consistent with the requirements of these laws.

5. For at least six years prior to the filing of this Amended Complaint, Defendants have willfully committed widespread violations of the FLSA and New York state laws by failing to pay these employees for overtime hours worked in excess of forty hours per week at a rate of one and one half times their regular rate of pay.

PARTIES

6. Individual and representative Plaintiff Samuel Calderon resides in Hillsborough County, Florida. Upon information and belief, Plaintiff Calderon was employed by Defendants from approximately March 17, 2008 to July 9, 2010 as a Senior Security Investigator covering the area surrounding and including Tampa, Florida. Plaintiff Calderon brings his claim on behalf of himself and the Collective Class.

7. Individual and representative Plaintiff Tom Fitzgerald resides in Bronx County, New York. Plaintiff was employed by Defendants as a Senior Security Investigator in Region 2 in the State of New York from approximately September 18, 2000 to February 1, 2010. Plaintiff Tom Fitzgerald brings his claim on behalf of himself and the New York Rule 23 Class.

8. Plaintiffs Joan Bischoff, Dennis Fulton, Vincent Greco, Joseph Miles, Jr., and Michael Russell work or worked in New York as Security Investigators for Defendants and live or have lived in New York. They along with Plaintiff Tom Fitzgerald may be referred to throughout this Amended Complaint as the “New York Plaintiffs.” Plaintiffs regularly worked hours in excess of forty per week and did not receive the proper overtime compensation for all hours worked. The New York Plaintiffs seek to recover, among other things, unpaid overtime compensation on behalf of themselves under the applicable New York state wage and hour laws.

9. Upon information and belief, Defendant GEICO General Insurance Company (“GEICO General”) is a domestic corporation, and an affiliate or subsidiary of Defendant GEICO Corporation. Upon information and belief, GEICO General’s headquarters are in Montgomery County, Maryland and it does business and maintains offices in states throughout the United States including the State of New York.

10. Upon information and belief, Defendant GEICO Corporation is a foreign corporation doing business, and maintaining offices (upon information and belief through its subsidiaries and affiliates) in numerous locations across the country including the State of Maryland and the State of New York.

11. Upon information and belief, Defendant GEICO Indemnity Company (“GEICO Indemnity”) is a domestic corporation, and an affiliate or subsidiary of Defendant GEICO Corporation. Upon information and belief, GEICO Indemnity’s headquarters are in Montgomery

County, Maryland and it does business and maintains offices in states throughout the United States including the State of New York.

12. Upon information and belief, Defendant GEICO Casualty Company (“GEICO Casualty”) is a domestic corporation, and an affiliate or subsidiary of Defendant GEICO Corporation. Upon information and belief, GEICO Casualty’s headquarters are in Montgomery County, Maryland and it does business and maintains offices in states throughout the United States including the State of New York.

13. Defendants Does 1-10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained, Plaintiff will amend this Complaint by inserting their true names and capacities herein. Upon information and belief, each of the fictitiously-named Defendants is responsible in some manner for the occurrences herein alleged, and that the damages of Plaintiff and the putative class members herein alleged were proximately caused by such Defendants.

14. Plaintiffs and the similarly situated employees are individuals who were, or are, employed by Defendants as Senior Security Investigators, Lead Security Investigators, or some similar title, working on insurance claims that involve potentially questionable, suspect, or fraudulent activity brought pursuant to policies of insurance owned and/or maintained by Defendants. Plaintiffs and the Collective Class and the New York Rule 23 Class gathered and reported facts acquired during their investigations and reported such facts pursuant to Defendants’ policies and guidelines to other claims personnel who, on information and belief, made all significant decisions regarding the claims.

JURISDICTION

15. This Court has subject matter jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, as this action is being brought under the FLSA, 29 U.S.C. § 207 et seq. Plaintiff Calderon has signed a consent form to join this lawsuit, attached to the Complaint, ECF No. 1, as **Exhibit A**.

16. Venue is proper in the United States District Court, District of Maryland pursuant to 28 U.S.C. § 1391, because Defendants individually or through affiliates maintain their principal places of business in the District of Maryland, conduct business in such District, and a substantial part of the events giving rise to the claims occurred in this District.

17. In addition, this Court has supplemental jurisdiction over the New York state law wage and hour claims brought herein pursuant to 28 U.S.C. § 1337 as those claims derive from a common nucleus of operative fact relative to the allegations pled in the original complaint.

COLLECTIVE ACTION ALLEGATIONS

18. Plaintiff Calderon brings this action on behalf of himself and other employees similarly situated as authorized under FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:

Collective Class: All persons who are or have been employed by Defendants with the job title of "Senior Security Investigator", "Lead Security Investigator"; or some similar title, who were classified as exempt, and therefore denied overtime compensation as required by federal wage and hour laws, at any time within the United States (exclusive of California) within three years prior to this action's filing date through the date of final disposition of this action.

19. Upon information and belief, Defendants suffered and permitted Plaintiff Calderon and the Collective Class to work more than forty hours per week without overtime compensation.

20. Defendants' unlawful conduct has been widespread, repeated and consistent.

21. Upon information and belief, Defendants knew that Plaintiff Calderon and the Collective Class performed work that required overtime pay.

22. Upon information and belief, Defendants have been, or should have been, on notice that the primary duties of Plaintiff Calderon and the Collective Class do not allow for Defendants to classify them as exempt from the requirements of the FLSA.

23. Defendant's conduct was willful and in bad faith, and has caused significant damages to Plaintiff Calderon and the Collective Class.

24. Defendants are liable under the FLSA for failing to properly compensate Plaintiff Calderon and the Collective Class, and as such, notice should be sent to the Collective Class. Upon information and belief, there are numerous similarly situated current and former employees of Defendants who have been denied overtime pay 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 in the present lawsuit. Those similarly situated employees are known to Defendants and are readily identifiable through Defendants' records.

NEW YORK CLASS ALLEGATIONS

25. The New York Representative Plaintiff, Tom Fitzgerald, brings New York state wage and hour claims on behalf of himself and as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The New York Rule 23 Class is defined as "all persons who work or worked for Defendants as Senior Security Investigators, Lead Security Investigators or some similar title ("Security Investigators") in the State of New York at any time from six years prior to the filing of this Complaint to the entry of judgment in the case" (the "New York Rule 23 Class" and "New York Class Period," respectively).

26. The persons in the New York Rule 23 Class identified above are so numerous that joinder of all members is impracticable. Upon information and belief, Defendants have employed at least eighty (80) persons who satisfy the definition of the New York Class.

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

- a. Whether Defendants unlawfully failed to pay overtime compensation in violation of and within the meaning of New York Labor Law, New York Labor Law Article 6 §§ 190 et seq., the New York Minimum Wage Act, New York Labor Law §§ 650 et seq., and the supporting New York State Department of Labor regulations, 12 N.Y.C.R.R. Part 142;
- b. Whether the New York Representative Plaintiff and the New York Rule 23 Class are non-exempt employees and are due overtime compensation for hours worked under the pay requirements of New York Law;
- c. Whether Defendants employed the New York Representative Plaintiff and the New York Rule 23 Class within the meaning of the New York Labor Law;
- d. Whether Defendants failed to keep accurate time records for all hours worked by the New York Representative Plaintiff and the New York Rule 23 Class;
- e. Whether Defendants failed to keep accurate time records for all hours worked by the New York Representative Plaintiff and the New York Rule 23 Class; and
- f. Whether Defendants should be enjoined from such violations in the future.

28. The New York Representative Plaintiff's claims are typical of those of the New York Rule 23 Class. The New York Representative Plaintiff, like other members of the New

York Rule 23 Class, were subjected to Defendants' policy and practice of refusing to pay overtime compensation in violation of New York law. The New York Representative Plaintiff's job duties as a Security Investigator were typical of those other New York Rule 23 Class members who were or are employed by Defendants as Security Investigators.

29. The New York Representative Plaintiff will fairly and adequately protect the interests of the New York Rule 23 Class, and has retained counsel experienced in complex wage and hour class and collective action litigation.

30. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against a large corporate defendant.

31. Class certification of the Second Cause of Action is appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the New York Rule 23 Class, thereby making appropriate declaratory and injunctive relief. The New York Rule 23 Class is also entitled to injunctive relief to end Defendants' common and uniform practice of failing to compensate its employees for all work performed for the benefit of Defendants.

32. Class certification of the Second Cause of Action is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the New York Rule 23 Class predominate over any questions affecting only individual members of the New York Rule 23 class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants' common and uniform policies and practices denied the New York Rule 23 Class overtime pay to which they are entitled. The damages suffered by

the individual New York Rule 23 Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

33. Defendants' unlawful conduct has been widespread, repeated and consistent.

34. Upon information and belief, Defendants knew that the New York Representative and the New York Rule 23 Class performed work that required overtime pay.

35. Upon information and belief, Defendants have been, or should have been, on notice that the primary duties of the New York Representative and the New York Rule 23 Class do not allow for Defendants to classify them as exempt from the requirements of New York law.

36. Defendant's conduct was willful and in bad faith, and has caused significant damages to the New York Representative and the New York Rule 23 Class.

FIRST CAUSE OF ACTION

Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act (On Behalf of the FLSA Collective Class)

37. Plaintiff Calderon, on behalf of himself and the Collective Class, allege and incorporate by reference the allegations in the preceding paragraphs.

38. Plaintiff Calderon consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). Plaintiff Calderon's written consent form is attached to the Complaint, ECF No. 1, as **Exhibit A**. Plaintiff Calderon anticipates that as this case proceeds, other individuals will sign consent forms and join as plaintiffs.

39. At all relevant times, Defendants have been, and continue to be, “employers” engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

40. The FLSA requires each covered employer such as Defendants to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per workweek.

41. During their employment with Defendants, within the applicable statutory period, Plaintiff Calderon and the other Collective Class members worked in excess of forty (40) hours per week. Despite the hours worked by Plaintiff Calderon and the Collective Class members, Defendants willfully, in bad faith, and in knowing or reckless violation of the FLSA, failed and refused to pay them the appropriate overtime compensation for all the hours worked as well as those in excess of forty per week.

42. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiff Calderon and the Collective Class, Defendants have failed to make, keep, and preserve records with respect to each of their employees sufficient to determine such employees’ wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, et seq.

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

44. Plaintiff Calderon, on behalf of himself and the Collective Class, seeks damages in the amount of their respective unpaid compensation, including overtime compensation, liquidated damages from three years immediately preceding the filing of this action, plus interest

and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

45. Plaintiff Calderon, on behalf of himself and the Collective Class, seek recovery of attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

Failure to Pay Overtime Compensation in Violation of New York Labor Law

Article 19 §§ 650 et seq.; 12 N.Y.C.R.R. Part 142

On Behalf of the New York named Plaintiff and the New York Rule 23 Class

46. The New York Plaintiffs and the New York Rule 23 Class allege and incorporate by reference the allegations in the preceding paragraphs.

47. At all times relevant to this action, the New York Plaintiffs and the New York Rule 23 Class were employed by Defendants within the meaning of New York Labor Law, Article 19.

48. By the course of conduct set forth above, Defendants have violated the 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 (collectively, "New York Labor Laws").

49. New York Labor Law requires an employer, such as Defendants to pay overtime compensation to all non-exempt employees. The New York Labor Law also requires an employer to pay employees for all hours worked at the agreed upon rate of pay.

50. Defendants have had a policy and practice of failing and refusing to pay the proper overtime pay to the New York Plaintiffs and to the New York Rule 23 Class for their hours worked.

51. As a result of Defendants' failure to pay wages earned and due, and its decision to withhold wages earned and due to the New York Plaintiffs and the New York Rule 23 Class, Defendants have violated and continue to violate the New York Labor Law.

52. Defendant's conduct was willful and in bad faith.

53. The New York Plaintiffs, including the New York Representative Plaintiff, Tom Fitzgerald, on behalf of himself and the New York Rule 23 Class, seek the amount of their underpayments based on Defendants' failure to pay one and one half times the regular rate of pay for work performed in excess of forty per week as provided by the New York Labor Law, liquidated damages, and such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

54. The New York Plaintiffs, including the New York Representative Plaintiff, on behalf of himself and the New York Rule 23 Class, seek recovery of attorneys' fees and costs to be paid by Defendants as provided by the New York Labor Law.

PRAYER FOR RELIEF

55. WHEREFORE, Plaintiff Calderon, on behalf of himself and all employees similarly situated who join in this action prays for the following relief:

- a. Designation of this action as a collective action on behalf of the FLSA Collective Class and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the Collective Class apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- b. That Defendants are found to have violated the overtime provisions of the FLSA as to Plaintiff and the Collective Class;
- c. Judgment against Defendants for an amount equal to Plaintiff's and the Collective Class's unpaid back wages at the applicable overtime rate;

- d. That Defendants are found to have violated the FLSA by failing to maintain accurate time records of all the hours worked by Plaintiff and the Collective Class;
- e. That Defendants' violations as described above are found to be willful;
- f. An award to Plaintiff Calderon and the Collective Class for the amount of unpaid wages owed, liquidated damages and penalties where provided by federal law, and interest thereon, subject to proof at trial;
- g. For an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. section 216;
- h. An award of prejudgment interest;
- i. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
- j. Leave to amend to add claims under applicable state laws; and
- k. For such further relief as the Court deems just and equitable.

56. WHEREFORE, the New York Plaintiffs, including the New York Representative Plaintiff, Tom Fitzgerald, on behalf of himself and all members of the Class he represents, prays for the following relief:

- a. Certification of this action as a class action on behalf of the New York Rule 23 Class;
- b. Designation of the New York Representative Plaintiff as a Representative of the Class he seeks to represent;
- c. A declaratory judgment that the practices complained of herein are unlawful under appropriate state law;
- d. Appropriate equitable and injunctive relief to remedy Defendants' violations of state law, including but not necessarily limited to an order enjoining Defendants from continuing its unlawful practices;

- e. Appropriate statutory penalties;
- f. An award of damages, liquidated damages, and restitution to be paid by Defendant according to proof;
- g. Restitution;
- h. Pre-Judgment and Post-Judgment interest, as provided by law;
- i. Attorneys' fees and costs of suit, including expert fees; and
- j. Such other injunctive and equitable relief as the Court may deem just and proper.

Dated:

/s/

ALDERMAN, DEVORSETZ & HORA PLLC
(Signed by Timothy C. Selander with permission of
Sundeep Hora)
Sundeep Hora, MD State Bar No. 28208
1025 Connecticut Avenue NW, Suite 615
Washington, DC 20036
Telephone (202) 969-8220
Facsimile (202) 969-8224
shora@adhlawfirm.com

/s/

NICHOLS KASTER, PLLP
Paul J. Lukas, MN State Bar No. 22084X
(admitted *pro hac vice*)
Matthew H. Morgan, MN State Bar No. 304657
(admitted *pro hac vice*)
Timothy C. Selander, MN State Bar No. 0387016
(admitted *pro hac vice*)
4600 IDS Center, 80 South 8th Street
Minneapolis, MN 55402
Telephone (612) 256-3200
Facsimile (612) 215-6870
lukas@nka.com
morgan@nka.com
selander@nka.com

ATTORNEYS FOR PLAINTIFFS