

information and belief, its members are citizens of Tennessee.

4. Defendant Anthem Health Plans of Virginia, Inc. (“Anthem”) is a Virginia corporation with its principal office in the City of Richmond and its registered office in Henrico County.

JURISDICTION AND VENUE

5. This is an individual action for benefits, actual and statutory damages, equitable and other relief under the Employee Retirement Income Security Act’s (“ERISA”) COBRA provisions.

6. In addition, this is a collective action for unpaid overtime wages, liquidated damages, and other relief under the FLSA

7. This Court has subject matter jurisdiction of Plaintiff’s claims pursuant to 28 U.S.C. § 1331.

8. A substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this district. The unpaid wages sought in this action were earned in this district. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b) and Local Civil Rule 3.

FACTUAL ALLEGATIONS

9. Dolgen is engaged in the business of retail sales under the name Dollar General. Dolgen operates a network of retail stores in multiple States, including within this District.

10. Dolgen is an enterprise engaged in commerce with annual gross receipts of more than \$500,000. Dolgen is a covered employer under the Fair Labor Standards Act.

11. For the entire period of her employment by Dolgen, Plaintiff was engaged in interstate commerce. Plaintiff regularly used the interstate mails, telephone, and internet while

performing the work assigned her by Dolgen.

12. Plaintiff and those similarly situated are or were retail workers paid on a salary basis to perform a variety of functions in Dolgen's 24 retail stores located in Central and Southeastern Virginia. Dolgen labeled these retail workers as "managers" and classified them as exempt from the overtime requirements of the FLSA, but the duties of these workers failed to qualify them as exempt.

13. 90% or more of their work time is spent performing manual labor, such as unloading and handling freight, stocking shelves and setting up displays, sweeping the store and parking lot, and washing windows, or in other non-exempt work such as ringing up sales as a cashier. 10% or less of their work time involves other duties, not all of which qualifies as exempt.

14. The most important duties performed by these retail workers to the operation of Dolgen's retail stores was non-exempt work.

15. In light of the hours worked by these "managers," their pay on an hourly basis was commensurate with the pay of workers Dolgen classified as non-exempt and to whom it paid overtime pay for hours more than 40 worked in a workweek. For example, the regular rate paid to these "managers" is less than twenty-five cents more than the regular rate paid to "assistant managers" that Dolgen classifies as non-exempt.

16. Dolgen, through its established procedures and systems and the supervision of its district managers and other management severely curtail any independent discretion by these retail workers. For example, management often direct the firing of employees, and Dolgen's strict budget guidelines and scheduling program dictate personnel and scheduling within each retail store.

17. Dolgen required these retail workers to schedule themselves and work for more than 40 hours per week. In practice, these workers actually worked in excess of the scheduled hours, and routinely worked up to and in excess of 60 hours per week. Because of Dolgen's misclassification of these workers as exempt, they were never paid any overtime pay, let alone the overtime pay required under the FLSA.

18. Plaintiff's most recent period of employment with Dolgen began in August 2014. Throughout this period, she has been assigned to the South Hill retail store as the "manager." Plaintiff continues in that position today.

19. From the start of her employment until the week ending May 20, 2016, she was paid a salary. Due to medical issues, further discussed *infra*, Dolgen switched her to an hourly wage at that point through the week ending July 22, 2016. Plaintiff's duties and title were unchanged during this period of hourly work, and she was paid overtime for hours more than 40 worked in a work week. Plaintiff worked far fewer hours during this period because of medical issues, and Dolgen scheduled other workers it classified as non-exempt to work additional hours to cover the hours Plaintiff was not working. Following a period of medical leave, she returned to work in October 2016 in her same duties as previously and on a salaried basis.

20. During the period since August 2014, through the week ending July 14, 2017, Plaintiff worked more than 40 hours and often in excess of 60 hours in 119 workweeks without payment of the overtime pay required by law. In each such week, she is owed overtime wages.

21. Dolgen had knowledge of the hours Plaintiff and these retail workers were working through the centralized scheduling system Dolgen imposed, the visits of Dolgen executives to the stores, and CCTV and alarm systems that monitored employees' comings and goings. In 2015, Plaintiff's district manager told her that she had to work at least 48-52 hours

per week.

22. Dolgen's policies forced these workers to work well in excess of 40 hours per week by prohibiting them to schedule other employees to cover the work required. This practice likewise compelled these ostensible "managers" to perform the non-exempt work of stockers, cashiers, and janitors.

23. Dolgen knew that the FLSA was applicable to its employees and did so for the three years preceding the filing of the Complaint. Dolgen has been the subject of voluminous litigation in the last decade over its pay policies concerning overtime and its misclassification of store "managers" as exempt. Dolgen knew or showed reckless disregard as to whether it was violating the FLSA in its classification of Plaintiff and those similarly situated as exempt.

24. Plaintiff and those similarly situated were subject to the same policies, procedures, and practices, including the same job duties, supervision, budget requirements, and performance standards.

25. Plaintiff and those similarly situated were non-exempt employees, eligible for overtime compensation, under the FLSA.

26. Plaintiff and those similarly situated routinely worked more than forty hours in a week but were not paid overtime.

27. All of the retail workers of Dolgen in the same district as Plaintiff misclassified as exempt "managers" are similarly situated to Plaintiff in the manner in which:

- a. They were suffered or permitted to work more than 40 hours in one or more workweeks in the relevant time period;
- b. They were supervised by the same district manager and other management personnel;

- c. They were compelled to comply with the same employment practices and procedures of Dolgen;
- d. Their job duties failed to meet the requirements for an exemption to the overtime pay requirement of the FLSA; and,
- e. They have not been paid the overtime premium due for all hours worked.

28. Plaintiff is an appropriate representative for the purposes of the Court certifying a collective action and approving a notice of the action to potential class members. Plaintiff's FLSA claim is the same or similar to the claims of the other potential class members. In particular, Plaintiff is the appropriate representative for a class of all employees employed as retail "managers" in the 24 retail stores of Dolgen's district 621 since August 15, 2014.

29. Upon information and belief, the number of potential class members is approximately 45.

30. In July 2016, following medical issues related to her pregnancy, Plaintiff went on maternity leave prior to the birth of her child. At that time, she was a participant in Dolgen's group health benefit plan administered through and by Anthem (the "Plan").

31. Plaintiff's maternity leave, and corresponding reduction of hours, was a qualifying event under 29 U.S.C. § 1163, yet at no time did Defendants send her a COBRA notice as required by 29 U.S.C. § 1166 and their fiduciary obligations to Plaintiff.

32. Dolgen cancelled Plaintiff's coverage under the Plan on July 30, 2016, prior to the date she gave birth to her child.

33. Plaintiff's address at the time was her address of record with the Defendants, and she had lived there for almost four years. It was the same address at which she had received all employment and benefits paperwork, including explanations of benefits, from Defendants for the

entire period of her employment by Dolgen and enrollment in the Plan.

34. Plaintiff was hospitalized with complications for the birth of her child and incurred in excess of \$23,000 in medical bills for the appropriate and necessary medical care she received.

35. As the result of Defendants failure to provide her with the COBRA notice required by law, Plaintiff was unable to continue her medical insurance coverage under the Plan or obtain other insurance, and her medical services were not covered by the Plan or other insurance, causing her substantial damages.

36. Defendants violated their fiduciary obligation to Plaintiff to provide and not mislead her about the availability and status of her coverage and benefit continuation rights.

COUNT ONE – UNPAID OVERTIME UNDER THE FLSA

37. The allegations in paragraphs 1 through 37 above are incorporated by reference as if fully set forth herein.

38. Plaintiff and others similarly situated worked in excess of 40 hours in some workweeks and were not paid the overtime pay required by law.

39. Dolgen knew or showed reckless disregard for the matter of whether its failure to pay overtime pay was prohibited by law.

40. Plaintiff and others similarly situated have been damaged from Dolgen's failure to pay the overtime pay required by law.

COUNT TWO – FAILURE TO PROVIDE COBRA NOTICE

41. The allegations in paragraphs 1 through 41 above are incorporated by reference as if fully set forth herein.

42. Defendants failed to provide the notice of eligibility for benefit continuation to

Plaintiff as required by COBRA.

43. Plaintiff has been damaged by Defendants' failure to provide the notice required by law.

44. Defendants' failure to provide notice of eligibility for benefit continuation subjects them to liability for statutory damages payable to Plaintiff.

WHEREFORE, Plaintiff respectfully prays the Court:

1. That the Court direct that notice of this action be provided to all others similarly situated to Plaintiff on the FLSA claim;

2. That the Court certify a class of similarly situated employees for whom a collective action under the FLSA will proceed to trial;

3. That Plaintiff and others similarly situated recover unpaid overtime wages, liquidated damages, attorney fees, and other relief by reason of Dolgen's violations of the FLSA;

4. That Plaintiff recover actual and statutory damages, attorney fees, and other relief by reason of Defendants' violations of the COBRA requirements under ERISA;

5. That Plaintiff be awarded equitable relief to include the benefits she was deprived of by virtue of Defendants' violations of the COBRA requirements under ERISA;

6. For a trial by jury on all issues so triable; and,

7. For such other and further relief as the Court may deem just and proper.

This the 9th day of August, 2017.

**ELLEANA FIELDING on behalf of herself and all
others similarly situated,**

/s/

Counsel

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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

Elleana Fielding

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

James R. Theuer
555 E. Main St., Ste 1212
Norfolk, VA 23510 (757)446-8047

DEFENDANTS

Dolgen, LLC, t/a Dolgencorp, LLC,
Anthem Health Plans of Virginia, Inc.

County of Residence of First Listed Defendant (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: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, 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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 216
Brief description of cause:
Unpaid overtime

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: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/09/2017 SIGNATURE OF ATTORNEY OF RECORD /s/James R. Theuer

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [Suit Says Dollar General Operating Co. Refuses to Pay OT Wages, Denies COBRA Rights](#)
