

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JULIO GARCIA, individually and on  
behalf of other similarly situated,

Plaintiff,

v.

PROGRESSIVE CASUALTY  
INSURANCE COMPANY,

Defendant.

Case No.:

**COMPLAINT & DEMAND FOR JURY TRIAL**

Plaintiff, JULIO GARCIA, by and through the undersigned attorney, and sues the Defendant, PROGRESSIVE CASUALTY INSURANCE COMPANY, (hereinafter referred to as “Defendant”), and alleges as follows:

**INTRODUCTION**

1. This is an action by the Plaintiff against his former employer for unpaid overtime wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the “FLSA”), and any other relief available.

2. This action is brought under the FLSA to recover, from Defendant, overtime compensation, liquidated damages, and reasonable attorneys’ fees and costs.

**PARTIES**

3. Plaintiff was employed as a “claims generalist associate” for Defendant and performed related activities at their New Port Richey Office place of business located at the located 7916 Evolutions Way, Suite 101, New Port Richey, Florida 34655.

4. Defendant, is a Florida Corporation which operates and conducts business in the City of New Port Richey, Pasco County, Florida, and is therefore within the jurisdiction of this Court.

### **JURISDICTION**

5. This action arises under the FLSA, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. §216(b).

### **VENUE**

6. The venue of this Court over this controversy is proper based upon the claim arising in the City of New Port Richey, Pasco County, Florida.

### **FACTS**

7. Defendant, is an organization providing a several types of insurance, including, but not limited to, home and auto insurance, to the general public.

8. Plaintiff worked for Defendant without being paid the correct overtime premium rate of time and one-half his regular rate of pay for all hours worked in excess of forty (40) hours within a work week.

9. Plaintiff worked as a “claims generalist trainee” and “claims generalist associate” for Defendant and performed related activities in Pasco County, Florida.

10. In this capacity, Plaintiff was responsible for answering all telephone calls, providing customer service, and assist Defendant’s customers with the handling of their insurance claims-specifically automotive property claims.

11. Plaintiff worked for the Defendant from approximately November 2015 through August 2016.

12. Plaintiff was initially paid \$21.15 per hour during training as a Claims Generalist Trainee.

13. He was eligible and received overtime pay as a trainee.

14. Plaintiff was also eligible for shift differentials when he worked weekend hours as a trainee.

15. Progressive Insurance currently pays a shift premium to account for difficult to staff work hours.

16. However, Progressive failed to include shift premiums in Plaintiff's regular rate of pay when calculating and paying him overtime pay.

17. Similarly, Plaintiff earned additional pay entitled under Defendant's "Gainshare Program."

18. Under the Gainshare Program, Plaintiff received additional pay based on the company's performance, including his own.

19. According to Progressive, "people contribute to company results by performing their job effectively and efficiently and by providing customers with Virtually Perfect Service."

20. Progressive failed to include compensation under the Gainshare Program in Plaintiff's regular rate of pay when calculating/paying overtime compensation.

21. Subsequently, Plaintiff's was promoted to a Claims Generalist Associate.

22. Plaintiff received the same pay.

23. Plaintiff was informed that he was no longer eligible for overtime pay as a Claims Generalist Associate.

24. Plaintiff worked overtime hours on a weekly basis throughout his employment.

25. Plaintiff typically worked an average of forty-five (45) hours per week due to the demands of the job.

26. Despite working more than forty (40) hours per week, Plaintiff was not paid compensation for all hours worked over forty (40) hours within a work week during several weeks of employment.

27. Defendant was aware of the overtime hours worked.

28. Plaintiff's emails, calls, computer log-ins/off and other related electronic information readily available and reviewed by Defendant will confirm that Plaintiff worked more than forty (40) hours per week and that Defendant had knowledge of the same.

29. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of the Defendant.

### **COVERAGE**

30. At all material times relevant to this action, Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. § 203(r) and 203 (s).

31. At all material times relevant to this action (2014 to the present), Defendant made gross earnings of at least \$500,000 annually.

32. At all material times relevant to this action, Defendant accepted payments from customers based issued by out-of-state banks, nationwide.

33. At all material times relevant to this action, Defendant routinely ordered office equipment, materials, products, and supplies from out-of-state vendors and/or entities (i.e., computers, telephones, paper, etc.).

34. At all material times relevant to this action, Defendant had two (2) or more employees engaged in interstate commerce, handling or otherwise working on materials that have been moved in or produced for interstate commerce (i.e., computers, telephones, paper, etc.).

35. At all material times relevant to this action, Plaintiff was individually engaged in interstate commerce during his employment with Defendant by, including, but not limited to, answering telephones, speaking with clients pertaining to claims, and updating computer systems from other states outside of Florida.

#### **COLLECTIVE/CLASS ALLEGATIONS**

36. Plaintiff and the class members performed the same or similar job duties as one another for Defendant in that they worked as Claims Generalist Associates.

37. Plaintiff and the class members handled claims involving automobile property damage.

38. Plaintiff and the class members were required to send and answer emails, make phone calls, and check voice mails routinely at all hours of the day.

39. Plaintiff and the class members had limited levels of authority to make monetary decisions.

40. Plaintiff and the class members typically could not approve any checks more than \$500.

41. Plaintiff and the class members worked in a call center with other adjusters.

42. Plaintiff and the class members received similar, if not the same training.

43. Plaintiff and the class members are required to go through a two week training class, Claims Ownership.

44. Plaintiff and the class members are paid by the hour during training.

45. Plaintiff and the class members are eligible for overtime pay during the training.

46. Defendant did not include shift differential pay in Plaintiff and the class members' regular rate of pay when calculating overtime pay during training.

47. Defendant did not include Gainshare Program pay in Plaintiff and the class members' regular rate of pay when calculating overtime pay during training.

48. Plaintiff and the class members are scheduled based on a forty (40) hour workweek.

49. However, due to the demands of the job, Plaintiff and the class members usually work an extra five (5) to ten (10) hours or more per week.

50. Despite the extra hours, Plaintiff and the class members were subjected to the same pay provisions in that they were not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

51. Thus, the class members are owed overtime compensation for the same reasons as Plaintiff.

52. Plaintiff and the class members are not exempt from overtime pay.

53. Plaintiff and the class members do not supervise other employees of Defendant.

54. Plaintiff and the class members do not hire or fire.

55. Plaintiff and the class members do not make suggestions regarding hiring or firing.

56. Plaintiff and the class members do not make decisions that relate to the general business operations.

57. Defendant's failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that their claims generalist associates were paid for all overtime hours worked based on the Defendant's failure to credit the claims generalist associates with all hours worked.

58. This policy or practice was applicable to Plaintiff and the class members.

59. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the same policies or practices which resulted in the non-payment of overtime to Plaintiff also apply to all class members.

60. Accordingly, the class members are properly defined as:

**All Claims Generalist Trainees who worked for Defendant, **PROGRESSIVE CASUALTY INSURANCE COMPANY**, within the United States within the last three (3) years and whom were not compensated at time and one-half their full regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.**

**All Claims Generalist Associates whom worked for Defendant, PROGRESSIVE CASUALTY INSURANCE COMPANY, within the state of Florida within the last three (3) years and whom were not compensated at time and one-half their full regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.**

61. The precise size and identity of the class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendant.

62. The exact number of members of each class can be determined by reviewing Defendant's records. Plaintiff, under information and belief, is informed there are numerous of eligible individuals in the defined class.

63. Defendant failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

64. Defendant was aware of the requirements of the FLSA yet it acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

65. Defendant has been previously sued for similar overtime allegations involving the same group of employees.

66. Yet, Defendant continues to violate the provisions of the FLSA for this group of employees.

67. Plaintiff has hired the undersigned law firm to represent him in this matter and is obligated to pay them reasonable attorneys' fees and costs if they prevail.

68. The claims under the FLSA may be pursued by others who opt-in to this case pursuant to 29 U.S.C. § 216(b).



69. A collective action suit, such as the underlying, is superior to other available means for fair and efficient adjudication of the 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.

**COUNT I**  
**RECOVERY OF OVERTIME COMPENSATION**  
**AGAINST PROGRESSIVE CASUALTY INSURANCE COMPANY**

70. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 69 above.

71. Plaintiff and the class members are entitled to be paid time and one-half their regular rate of pay for each hour worked in excess of forty (40) hours per work week.

72. During Plaintiff and the class members' employment with Defendant, Plaintiff and the class members worked overtime hours but were not paid time and one-half their regular rate of pay for the same during several weeks.

73. As a result of Defendant's intentional, willful, and unlawful acts in refusing to pay Plaintiff and the class members time and one-half their regular rate of pay for each hour worked in excess of forty (40) hours per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

74. Defendant neither maintained nor kept accurate time records as required by the FLSA for Plaintiff.

75. As a result of Defendant's willful violation of the FLSA, Plaintiff and the class members are entitled to liquidated damages.

WHEREFORE, Plaintiff, JULIO GARCIA, demands judgment against PROGRESSIVE CASUALTY INSURANCE COMPANY, for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by Plaintiff and the class for which Defendant did not properly compensate Plaintiff and the class, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court determines to be just and appropriate.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 28<sup>th</sup> day of April, 2017.

Respectfully submitted,

/s/ Carlos V. Leach  
**Carlos V. Leach, Esq.**  
FL Bar No.: 0540021  
**MORGAN & MORGAN, P.A.**  
20 N. Orange Avenue, 16<sup>th</sup> Floor  
Post Office Box 4979  
Orlando, Florida 32802-4979  
Telephone: (407) 420-1414  
Facsimile: (407) 245-3341  
Email: [CLEach@forthepeople.com](mailto:CLEach@forthepeople.com)  
*Attorneys for Plaintiff*

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

JULIO GARCIA, individually and on behalf of other similarly situated

DEFENDANTS

PROGRESSIVE CASUALTY INSURANCE COMPANY

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

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

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

Attorneys (If Known)

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

Carlos V. Leach, Esq., MORGAN & MORGAN, P.A., 20 N. Orange Avenue, 16th Floor, P.O. Box 4979, Orlando, FL 32802-4979; Tel: (407) 420-1414; Fax: (407) 245-3341; Email: CLeach@forthepeople.com

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, 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): Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b)

Brief description of cause: Unpaid overtime compensation

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 04/28/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Carlos V. Leach

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print

Save As...

Reset

**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: [Wage and Hour Suit Filed Against Progressive Casualty Insurance Co.](#)

---