

5. Defendant also required other Asset Resolution Specialists to perform the essential duties and responsibilities of a Call Center Customer Service Representative during the workweek.

6. Defendant required Plaintiff and other Asset Resolution Specialists to continue performing the essential duties and responsibilities of a Call Center Customer Service Representative on weekends, in excess of a 40 hour workweek.

7. Defendant did not pay Plaintiff and other Asset Resolution Specialists overtime for work, performing the essential duties and responsibilities of a Call Center Customer Service Representative on weekends, in excess of a 40 hour workweek.

8. Plaintiff brings this collective action on his own behalf, and on behalf of other similarly situated current and former Asset Resolution Specialists employed by Defendant who may opt-in to this lawsuit, for damages and other legal and equitable relief from Defendant's violations of the laws requiring payment of overtime compensation.

9. Defendant terminated Plaintiff's employment within one week of Plaintiff complaining to Defendant about Plaintiff having to work in excess of a 40 hour workweek, performing the essential duties and responsibilities of a Call Center Customer Service Representative, without compensation.

10. Plaintiff also seeks relief on behalf of himself due to Defendant's retaliatory discharge of him in violation of 29 U.S.C. § 215(a)(3).

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

12. Venue is proper in the Northern District of Texas because a substantial portion of the events giving rise to the cause of action alleged herein occurred in this District and Division, and Defendant does a significant percentage of its business in this District.

PARTIES AND PERSONAL JURISDICTION

13. Plaintiff is an individual residing in Dallas County, Texas. Plaintiff's written consent to this action is attached as Exhibit "A."

14. The Class Members are all current and former employees of Defendant who work, or have worked, for Defendant as an Asset Resolution Specialist, who may opt-in to this lawsuit.

15. Defendant, Rushmore Loan Management Services, LLC, is registered in Texas as a Foreign Limited Liability Company that may be served with process through its registered agent: Corporation Service Company d/b/a CSC-Lawyer's Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701.

FLSA COVERAGE

16. At all material times, Defendant is an "employer" as to Plaintiff, and/or to the Class Members, within the meaning 29 U.S.C. § 203(d) of the FLSA.

17. At all material times, Defendant is an "enterprise" within the meaning of 29 U.S.C. § 203(r) of the FLSA.

18. At all material times, Defendant has been an enterprise engaged in commerce, or in the production of goods for commerce, within the meaning of 29 U.S.C. § 203(s)(1) of the FLSA, because Defendant has had and continues to have employees engaged in commerce.

19. Further, Defendant has had, and continues to have, an annual gross income of sales made or business done of not less than \$500,000.

20. At all material times, Plaintiff and Class Members were individual employees who are and were employed by Defendant as Asset Resolution Specialists, and who are and were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 206-207.

FACTUAL BACKGROUND

21. Plaintiff and Class Members were and are employed by Defendant as an Asset Resolution Specialist (“ARS”).

22. ARS is a non-supervisory position.

23. During Plaintiff and Class Members’ regular 40 hour workweek, Defendant required Plaintiff and Class Members to be logged into a Predictive Dialer 6 – 8 hours per day, receiving and handling inbound calls.

24. Receiving and handling inbound calls within the Predictive Dialer is one essential duty and responsibility of a Call Center Customer Service Representative.

25. During Plaintiff and Class Members’ regular 40 hour workweek, and while logged into the Predictive Dialer receiving and handling inbound call, Plaintiff and Class Members were also required by Defendant to: a) perform welcome calls on newly acquired loans; b) document and update information in Fidelity MSP; c) assist borrowers with general inquiries; d) process routine transactions: promise to pay, internet assistance, ACH; e) assist customers with general inquiries regarding: insurance, taxes and escrow; and f) conduct light skip tracing to locate borrowers; which are all essential duties and responsibilities of a Call Center Customer Service Representative.

26. Employees of Defendant who work as a Call Center Customer Service Representative are entitled to overtime pay.

27. In addition to working a 40 hour workweek, and while employed as an ARS, Defendant also required Plaintiff and Class Members to “volunteer” one Saturday of each month, from 8am to Noon, to continue receiving and handling inbound calls within the Predictive Dialer.

28. Although Plaintiff and Class Members were required to work more than 40 hours per workweek, they were not compensated at the FLSA mandated time-and-a-half rate for hours worked in excess of 40 hours per workweek.

29. Plaintiff and Class Members were paid a flat rate for all hours worked, regardless of the number of hours actually worked.

30. As part of its normal practice, Defendant circulated a sign-up list for ARS’s to “volunteer” to work from 8AM – Noon.

31. Plaintiff did not sign up to “volunteer” to work on Saturday, August 20, 2016.

32. Defendant terminated Plaintiff’s employment on or about August 26, 2016.

33. Within 14 calendar days of Plaintiff’s termination, Defendant revised the Hours of Operation stated in its Employee Policies and Procedures Manual, to read that its “core business hours” include “8:00AM – Noon on Saturday.”

COLLECTIVE ACTION ALLEGATIONS

34. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute his FLSA claim, stated in Count I below, as a collective action on behalf of all persons who were/are employed by Defendant as an Asset Resolution Specialist, at any time during the three-

year period preceding the filing of this complaint. Plaintiff and the Class Members are similarly situated and are/were subject to Defendant's company-wide policy of failing and refusing to pay overtime to Asset Resolution Specialists.

COUNT I

**FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF
29 United States Code § 207(a)(1)**

35. Plaintiff re-alleges the information contained in Paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Defendant has engaged in a general practice of failing to pay overtime compensation to Plaintiff and Class Members.

37. Defendant's failure to compensate current and former Asset Resolution Specialists for overtime violates the overtime compensation requirements of the FLSA, 29 U.S.C. § 207(a)(1).

38. Defendant knew, had reason to know, or recklessly disregarded that its failure to pay overtime compensation to Plaintiff and to Class Members for all hours worked in excess of 40 hours in any workweek constituted a violation of the overtime compensation requirements of the FLSA, 29 U.S.C. § 207(a)(1). Such violation is willful under the FLSA, 29 U.S.C. § 216(b).

39. Plaintiff has actual knowledge that Class Members have also been denied overtime pay for hours worked over 40 hours in a week as a result of Defendant's misclassification of its employees.

40. Although Defendant permitted, and/or requires the Plaintiff and Class Members to work in excess of 40 hours per workweek, Defendant has improperly

classified class members as “exempt” employees under the FLSA and denied them compensation for their hours worked in excess of 40 hours in a workweek.

41. No FLSA exemption applies to Plaintiff and to Class Members.

42. The Class Members perform or have performed the same or similar work in the provision of services to clients of Defendant.

COUNT II

RETALIATION IN VIOLATION OF FLSA 29 United States Code § 215(a)(3)

43. Plaintiff re-alleges and incorporates the allegations contained in Paragraphs 1 through 42, as if fully stated herein.

44. Defendant terminated Plaintiff after Plaintiff complained to Defendant about its continued willful misclassification of Plaintiff under the FLSA, and Defendant’s continued failure to pay Plaintiff for overtime hours worked. Plaintiff’s complaint falls within the meaning of 29 U.S.C. § 215(a)(3). Defendant’s actions are unlawful under the FLSA, 29 U.S.C. § 215(a)(3).

45. As a result of Defendant’s unlawful retaliation, Plaintiff has suffered and will continue to suffer, actual damages in the form of lost wages (wages and bonuses) and lost employment benefits for which he hereby sues.

46. As a further result of Defendant’s actions, Plaintiff has also suffered non-pecuniary losses, including but not limited to, emotion pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. Plaintiff is therefore entitled to compensatory damages under 29 U.S.C. § 216(b).

47. Plaintiff sues for liquidated damages under 29 U.S.C. § 216(b).

48. Defendant's actions were done with malice and/or reckless indifference to Plaintiff's federally protected rights. Plaintiff is therefore entitled to punitive damages for which he hereby sues.

49. Reinstatement is not feasible.

50. Plaintiff also seeks attorney's fees, and costs of suit under 29 U.S.C. § 216(b).

JURY DEMAND

51. Plaintiff and Class Members hereby demand trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks that Defendant be cited to appear and answer and, upon trial on the merits, that the Court award the following:

52. **Collective Remedies**

a. That collective action opt-in procedures be adopted with respect to the collective claims asserted under the FLSA.

b. That the practice of Defendant complained of herein be adjudged, decreed and declared to be in violation of the rights of Plaintiff and the Class Members under the FLSA, 29 U.S.C. § 206, et seq.

c. That judgment be entered in favor of Plaintiff and the Class Members against Defendant for all unpaid overtime compensation and additional equal amounts as liquidated damages, all in amounts to be established at trial.

d. For entry of Order enjoining Defendant and its agents and employees from subjecting Class Members to any acts of retaliation for prior actions, or for brining or participating in this action.

e. That the Court order Defendant to pay counsel for the Plaintiff and the Class Members' reasonable attorney's fees and the costs and expenses of this action.

f. That Plaintiff and the Class Members be awarded such other and further relief as may be found appropriate, just and/or equitable.

53. **Non-Collective Remedies.**

a. Declare that Defendant terminated Plaintiff in retaliation for filing FLSA complaint(s) in violation of Plaintiff's rights and Defendant's obligations under 29 U.S.C. § 215(a)(3).

b. Award Plaintiff judgment against Defendant for:

- i. Actual damages, including lost wages and benefits;
- ii. Compensatory damages;
- iii. Liquidated damages;
- iv. Punitive and/or exemplary damages;
- v. Prejudgment and post-judgment interest;
- vi. Costs of suit;
- vii. Attorney's fees; and
- viii. All other relief the Court deems appropriate.

Respectfully submitted,

/s/ Stephen E. Jones

Stephen E. Jones

State Bar of Texas No. 24043744

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ATTORNEY FOR PLAINTIFF

CONSENT TO BECOME A PARTY PLAINTIFF

Name: Edgar Bernard Jacobs

1. I consent and agree to pursue my claims of unpaid overtime and/or minimum wage through the lawsuit filed against my former employer, Rushmore Loan Management, Services, LLC.
2. I understand that this lawsuit is brought to recover unpaid wages under the Fair Labor Standards Act and/or any applicable state laws. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if the court approves. If someone else serves as the class representative, the I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.
4. In the event the case is certified and then decertified, I authorize Plaintiff's counsel to use this Consent Form to re-file my claims in a separate or related action against Rushmore Loan Management Services, LLC.

Signature Edgar B Jacobs Date Signed 10-25-2014



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

EDGAR BERNARD JACOBS, On Behalf of Himself and All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Stephen E. Jones; Law Offices of Stephen E. Jones, P.C. P. O. Box 222232, Dallas, TX 75222-2232; (214) 796-0011

DEFENDANTS

RUSHMORE LOAN MANAGEMENT SERVICES, LLC

County of Residence of First Listed Defendant DALLAS (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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Motor Vehicle, Personal Injury, etc.

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 - 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): 29 U.S.C. Section 207, et seq and 29 U.S.C. Section 215, et seq. Brief description of cause: Willful misclassification and failure to pay overtime, and retaliatory termination for complaining of failure to pay OT.

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 SIGNATURE OF ATTORNEY OF RECORD

11/01/2016

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 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 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. (7) 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 a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or a similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.
- 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: [FLSA Suit Filed Against Rushmore Loan Management Service](#)
