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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Malaika Sallard, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MedImpact Healthcare System, Inc.,

Defendant.

No.:

COLLECTIVE ACTION COMPLAINT

(JURY TRIAL REQUESTED)

1 Plaintiff, Malaika Sallard, individually and on behalf of all other persons similarly
2 situated, known and unknown, through her attorneys, complains against Defendant
3 MedImpact Healthcare, Systems, Inc. (“Defendant” or “MedImpact”), as follows:

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5 **NATURE OF PLAINTIFF’S CLAIMS**

6 1. This lawsuit arises under the Fair Labor Standards Act, 29 U.S.C. § 201
7 *et seq.* (“FLSA”), for Defendant’s failure to pay Plaintiff and other similarly situated
8 persons all overtime pay for all time worked in excess of forty (40) hours per week.

9 2. Defendant employs the telephone-based workers who are the putative class
10 members in this lawsuit.

11 3. Defendant knowingly required and/or permitted Plaintiff, who worked as
12 a telephone-dedicated employee in the position of customer service representative, and
13 other similarly situated telephone-dedicated employees to perform unpaid work before
14 and after the start and end times of their shifts. This unpaid work includes but is not
15 limited to booting up computers, initializing several software programs, reading company
16 issued emails and instructions, completing customer service calls, securing their
17 workstations, and securing any customer or proprietary information.

18 4. The amount of uncompensated time Plaintiff and those similarly situated to
19 her spend or have spent on these required and unpaid work activities averages
20 approximately 15 or more minutes per day.

21 5. Defendant’s conduct violates the FLSA, which requires non-exempt
22 employees to be compensated for their overtime work at a rate of one and one-half times
23 their regular rate of pay. *See* 29 U.S.C. § 207(a).

24 6. Plaintiff brings her FLSA overtime claims as a collective action pursuant to 29
25 U.S.C. § 216(b) on behalf of telephone-dedicated employees who worked for Defendant in
26 Arizona at call centers owned by Defendant.
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JURISDICTION AND VENUE

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2 7. This Court has original jurisdiction over Plaintiff’s FLSA claims in this
3 action under 29 U.S.C. § 1331 and 29 U.S.C. § 216(b).

4 8. Venue is proper in this Court as the illegal conduct alleged herein occurred
5 in this district.

6
7 **THE PARTIES**

8 9. Plaintiff Malaika Sallard is an individual who worked for Defendant from
9 approximately June 2014 to approximately May 2016 as an hourly, non-exempt
10 customer service representative at the call center owned and operated by MedImpact
11 located in Tempe, Arizona. Plaintiff Sallard resides in and is domiciled within this judicial
12 district.

13 11. MedImpact is a pharmacy benefit manager that offers services related to
14 working with health plans and pharmacies to provide information regarding medicines to
15 customers. MedImpact owns and operates telephone call centers in Tempe, Arizona and
16 elsewhere where telephone-dedicated hourly employees primarily handle phone calls
17 regarding Medicare issues and pharmacy claims.

18 12. Defendant employed Plaintiff and other similarly situated persons as
19 “employees,” as that term is defined by Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

20 13. At all material times, Defendant has been an enterprise in commerce or in
21 the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because
22 it has had employees engaged in commerce. 29 U.S.C. § 203(s)(1).

23 14. Furthermore, Defendant has had, and continues to have, an annual gross
24 business volume in excess of \$500,000.

25 15. At all relevant times, Defendant was an “employer” of Plaintiff and other
26 similarly situated persons, as that term is defined by Section 203(d) of the FLSA, 29 U.S.C.
27 § 203(d).
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1 22. At the MedImpact call center where Plaintiff worked, Defendant had
2 managers on the floor of the call center during the workday, managing the work activities
3 of the Plaintiff and other similarly situated persons.

4 23. Defendant does not allow telephone-based employees to use its phones and
5 computers for any personal use. Additionally, Defendant generally prohibits and does not
6 allow telephone-based employees to use their own personal cell phones on the call center
7 floor. Under Defendant's policies and practices, telephone-based employees are required
8 to store their personal cell phones during the work day and can generally only use them on
9 breaks and off the call center floor.

10 24. At the call center where Plaintiff worked, MedImpact's managers on the call
11 center floor could and did regularly see with their own eyes that Plaintiff and similarly
12 situated telephone-based employees arrived at their work stations before the start of their
13 scheduled shift time, logged into Defendant's computers, and began working on their
14 computers prior to the start of their scheduled shift time.

15 25. Despite seeing and knowing that Plaintiff and similarly situated telephone-
16 based employees performed work at their work stations prior to their scheduled shift time
17 start, Defendant and its managers on the floor of the call center did not make any effort to
18 stop or otherwise disallow this pre-shift work and instead allowed and permitted it to
19 happen.
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21 26. Defendant possesses, controls and/or has access to information and
22 electronic data that shows the times Plaintiff and similarly situated telephone-based
23 employees logged into their computers each day and the time they logged into their
24 telephone systems.

25 27. By possessing, controlling and/or accessing this information, Defendant
26 knew that Plaintiff and similarly situated telephone-based employees worked prior to the
27 start of their scheduled shift time.
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1 28. Despite having this information and knowing that Plaintiff and similarly
2 situated telephone-based employees logged into their computers, initialized necessary
3 software programs, and read company issued emails and instructions prior to the start of
4 their scheduled shift time, Defendant did not make any effort to stop or otherwise disallow
5 this pre-shift work and instead allowed and permitted it to happen.

6 29. Defendant knowingly required and/or permitted Plaintiff and those similarly
7 situated to her to perform unpaid work before and after the start and end times of their
8 shifts, including but not limited to booting up computers, initializing several software
9 programs, and reading company issued emails and instructions prior to the start of their
10 scheduled shift time, and completing customer service calls, closing down the software
11 programs, logging off the system, securing their workstations, and securing any customer
12 or proprietary information after the end of their scheduled shift times.

13 30. The amount of uncompensated time Plaintiff and those similarly situated to
14 her spend or have spent on these required and unpaid work activities averages
15 approximately 15 or more minutes per day.

16 31. Defendant monitored and directed the work activities of Plaintiff and other
17 similarly situated persons, including the unpaid work at issue.

18
19 ***B. Defendant Knew of and Assented to the Pre-Shift Work***

20 32. Defendant's policy and practice permits and/or requires telephone-based
21 employees to be logged into their phones by the employee's scheduled start time.

22 33. In order to be logged into MedImpact's telephone systems, Defendant
23 required and/or permitted Plaintiff and similarly situated telephone-based employees to
24 arrive at their work station prior to their scheduled shift time and boot up computers,
25 initialize several software programs, and read company emails and instructions.

26 34. Defendant's policy and practice disciplines telephone-based employees if
27 they are not logged into their phones and ready to handle calls by the start of their scheduled
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1 shift time.

2 35. This policy and practice of Defendant results in telephone-based employees,
3 including the Plaintiff, to boot up their computers, initialize several software programs
4 and/or read company emails and instructions prior to their start of their scheduled shift
5 time.

6 36. As set forth herein, via its policies and practices and through its own
7 telephone and computer systems, Defendant knew and was aware that the telephone-based
8 employees performed work prior to the start of their scheduled shift.

9 37. Defendant did not instruct Plaintiff and similarly situated telephone-based
10 employees to not log into their computers or telephone, or to not read company emails prior
11 to the start of their scheduled shift time. Rather, Defendant required, permitted and/or
12 allowed Plaintiff and the putative class members to work prior to their scheduled shift time.

13 38. By knowing of, permitting and/or requiring Plaintiff and similarly situated
14 telephone-based employees to log into their computers, initialize their various software
15 programs and/or read company email and instructions prior to the start of their scheduled
16 shift time, Defendant assented to them performing this work.

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18 ***C. Defendant's Failure to Pay Overtime Wages to Its Telephone-Based***
19 ***Hourly Employees***

20 39. Defendant determined the rate of pay for Plaintiff other similarly situated
21 persons.

22 40. Defendant's managers reviewed and approved Plaintiff and other similarly
23 situated persons' time records prior to receiving their paychecks.

24 41. Defendant supervised and controlled the work schedule of Plaintiff and other
25 similarly situated persons.

26 42. Defendant issued paychecks to Plaintiff other similarly situated persons, and
27 was involved in determining the actual amount of compensation paid by the paycheck.
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1 43. Plaintiff and those employees similarly situated are individuals who were, or
2 are, employed by Defendant in customer service and similar positions at MedImpact's
3 Tempe, Arizona call center who were not paid for some or all of their work activities prior
4 to the beginning of their shifts, and after the end of their shifts.

5 44. Plaintiff and the other employees are similarly situated to one another
6 because their duties consisted primarily of providing services related to handling phone calls
7 regarding Medicare issues and pharmacy claims. Plaintiff and others similarly situated all
8 shared similar policies, job titles, job descriptions, training, job duties and compensation,
9 among other things.

10 45. Plaintiff and the other employees are also similar because Defendant did not
11 pay them for all time they actually worked. Defendant knowingly required Plaintiff and the
12 similarly situated individuals to perform unpaid work before and after their scheduled
13 shifts, including but not limited to booting-up computers, initializing several software
14 programs, reading company emails and instructions, completing customer service calls,
15 securing their workstations, and securing any customer or proprietary information.

16 46. The net effect of Defendant's policies and practices, instituted and approved
17 by company managers, is that Defendant willfully failed to pay regular and overtime
18 compensation to Plaintiff and others similarly situated, and willfully failed to keep accurate
19 time records to save payroll costs. Defendant thus enjoyed ill-gained profits at the expense
20 of its hourly employees.

21 47. Plaintiff and others similarly situated at times work or worked in excess of
22 forty hours per week for Defendant in a given workweek.

23 48. Defendant's policy and practice of requiring and/or permitting its employees,
24 including Plaintiff and other non-exempt, hourly employees, to perform work without pay
25 for such work performed, violates Section 6 of the FLSA, 29 U.S.C. § 206.

26 49. Defendant's policy and practice of requiring its employees to perform work
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1 without pay in many instances has caused and continues to cause Plaintiff and certain other
2 similarly situated hourly employees to work in excess of forty hours per week, without
3 being properly compensated at a wage of 1.5 times their respective hourly rate for such
4 work performed, as required by Section 7 of the FLSA, 29 U.S.C. § 207.

5 50. Defendant's failure to compensate its non-exempt, hourly call center
6 employees with the full amount of the applicable regular wage or overtime wage has caused
7 Plaintiff and other similarly situated non-exempt call center employees to suffer harm.

8 51. Defendant's non-exempt, call center hourly employees are entitled to
9 compensation for all time they worked without pay in any given workweek.

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11 **COLLECTIVE ACTION ALLEGATIONS**

12 52. Plaintiff brings Count I of this Complaint as a collective action on behalf of
13 herself and all other current and former hourly employees of Defendant who Defendant
14 required to perform the work described herein without pay at any time during the three
15 years prior to the commencement of the action to present at call centers owned or operated
16 by Defendant.

17 53. Plaintiff has actual knowledge that FLSA Class Members have also been
18 denied overtime pay for hours worked over forty hours per workweek. That is, Plaintiff
19 worked with other telephone dedicated employees who worked at the MedImpact call
20 center. As such, she has first-hand personal knowledge that the same pay violations
21 occurred to other class members. Furthermore, other telephone dedicated employees at
22 MedImpact's call centers have shared with her similar pay violation experiences as those
23 described in this complaint.

24 54. Other employees similarly situated to Plaintiff work or have worked at
25 MedImpact's call centers, but were not paid overtime at the rate of one and one-half their
26 regular rate when those hours exceeded forty hours per workweek.
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1 55. Although Defendant permitted and/or required the FLSA Class Members to
2 work in excess of forty hours per workweek, Defendant has denied them full compensation
3 for their hours worked over forty. Defendant has also denied them full compensation at
4 the federally mandated minimum wage rate.

5 56. FLSA Class Members perform or have performed the same or similar work
6 as Plaintiff.

7 57. FLSA Class Members regularly work or have worked in excess of forty hours
8 during a workweek.

9 58. FLSA Class Members are not exempt from receiving overtime pay at the
10 federally mandated wage rate under the FLSA.

11 59. As such, FLSA Class Members are similar to Plaintiff in terms of job duties,
12 pay structure, and the denial of overtime wages.

13 60. Defendant's failure to pay the overtime compensation wage rate required by
14 the FLSA results from generally applicable policies or practices, and does not depend on
15 the personal circumstances of the FLSA Class Members.

16 61. The experiences of Plaintiff, with respect to her pay, are typical of the
17 experiences of the FLSA Class Members.

18 62. The specific job titles or precise job responsibilities of each FLSA Class
19 Member do not prevent collective treatment.

20 63. All FLSA Class Members, irrespective of their particular job requirements,
21 are entitled to overtime compensation for hours worked in excess of forty during a
22 workweek.

23 64. Although the exact amount of damages may vary among FLSA Class
24 Members, the damages for the FLSA Class Members can be easily calculated by a simple
25 formula. The claims of all FLSA Class Members arise from a common nucleus of facts.
26 Liability is based on a systematic course of wrongful conduct by Defendant that caused
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1 harm to all FLSA Class Members.

2 65. As such, Plaintiff brings her FLSA overtime as a collective action on behalf
3 of the following class, and Plaintiff's Counsel seek to send notice of this lawsuit to the
4 following described persons:

5 All persons who worked for Defendant as telephone-dedicated
6 employees, however titled, who were compensated, in part or
7 in full, on an hourly basis at the MedImpact, Tempe, Arizona
8 call center at any time between July 10, 2014 and the present
9 who did not receive the full amount of overtime wages earned
and owed to them.

10 66. There are questions of law or fact common to the employees described in
11 paragraph 65.

12 67. Plaintiff is similarly situated to the employees described in paragraph 65, as
13 Plaintiff's claims are typical of the claims of those persons.

14 68. Plaintiff's claims or defenses are typical of the claims or defenses of the
15 persons described in paragraph 65.

16 69. This is not a collusive or friendly action. Plaintiff has retained counsel
17 experienced in complex employment litigation, and Plaintiff and her counsel will fairly and
18 adequately protect the interests of the persons described in paragraph 65.

19 70. A collective action is the most appropriate method for the fair and efficient
20 resolution of the matters alleged in Count I.

21 71. At all relevant times, Defendant employed Plaintiff and the persons described
22 in paragraph 65.

23 72. At all relevant times, Defendant paid Plaintiff and the persons described in
24 paragraph 65 to work.

25 73. At all relevant times, Defendant has been an "employer" of Plaintiff and the
26 persons described in paragraph 65 as the term "employer" is defined by Section 3(d) of the
27 FLSA, 29 U.S.C. § 203(d).
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c. Defendant encouraged Plaintiff and other similarly situated employees to not record all time worked.

82. As a direct and proximate result thereof, Plaintiff and the members of the class described in paragraph 65 are due unpaid back wages and liquidated damages, pursuant to 29 U.S.C. § 216.

DAMAGES SOUGHT

83. Plaintiff and the FLSA Class Members are entitled to recover compensation for the hours they worked for which they were not paid at the federally mandated overtime wage rate.

84. Plaintiff and the FLSA Class Members are also entitled to an amount equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

85. Plaintiff and FLSA Class Members are entitled to recover their attorneys' fees and costs as required by the FLSA. 29 U.S.C. § 216(b).

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, by and through her attorneys, demands judgment against Defendant and in favor of Plaintiff and all others similarly situated, for a sum that will properly, adequately and completely compensate them for the nature, extent and duration of their damages, the costs of this action and as follows:

A. Conditionally certify the class described in paragraph 65, and grant Plaintiff's counsel leave to send notice of this lawsuit to the members of the class and allow them the opportunity to opt-in as party plaintiffs pursuant to Section 16 of the FLSA, 29 U.S.C. § 216;

B. Declare and find that the Defendant committed one or more of the following acts:

i. Violated provisions of the FLSA for Plaintiff and all persons who opt-in as party plaintiffs; and

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LOCAL COUNSEL:
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20 mmatheson@mathesonlegal.com
21 Attorney for Plaintiff

18 IN THE UNITED STATES DISTRICT COURT

19 FOR THE DISTRICT OF ARIZONA

21 MALAIKA SALLARD, individually and
22 on behalf of all others similarly situated,

23 Plaintiff,

24 v.

25 MEDIMPACT HEALTHCARE
26 SYSTEMS, INC.,

27 Defendant.

No.:

28 CONSENT TO BECOME A PARTY
PLAINTIFF

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Now comes Malaika Sallard, pursuant to 29 U.S.C. §216(b), and files this consent to become a party plaintiff in the above-styled lawsuit.

I hereby consent to be a party plaintiff in this lawsuit and specifically authorize counsel of record to represent me and all those similarly situated.


Malaika Sallard

Date

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff
(s): **Malaika Sallard**

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Defendant
(s): **MedImpact Healthcare, Systems, Inc.**

County of Residence: Outside the State of Arizona

Plaintiff's Atty(s):

**Michelle Ray Matheson , Attorney
Matheson & Matheson, PLC
15300 N 90th St., Ste 550
Scottsdale, Arizona 85260
480-889-8951**

Defendant's Atty(s):

II. Basis of Jurisdiction: **3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties
(Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **710 Fair Labor Standards Act**

VI. Cause of Action: **29 U.S.C. § 201 et seq. ("FLSA")**

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand:
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /S Michelle R. Matheson

Date: 7/10/17

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Customer Service Phone Worker Alleges MedImpact Healthcare Owes Overtime](#)
