

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

KRISTAL FREEMAN, individually and on	§	
behalf of all others similarly situated,	§	
	§	Civil Action No. _____
Plaintiff,	§	
	§	
v.	§	COLLECTIVE ACTION
	§	
PROGRESS RESIDENTIAL PROPERTY	§	
MANAGER, LLC,	§	(JURY TRIAL)
	§	
Defendant.	§	

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff Kristal Freeman (“Plaintiff”), individually and on behalf of all others similarly situated, files this Original Complaint against Defendant Progress Residential Property Manager, LLC (“Defendant” or “Progress Residential”), and in support thereof would show as follows:

I. INTRODUCTION

1.1 Plaintiff, individually and on behalf of all others similarly situated who have worked for Defendant, including its affiliates and subsidiaries, as onsite leasing agents in the three years preceding the filing of this lawsuit, bring this collective action to recover overtime compensation, other wages, liquidated damages, attorney’s fees, litigation expenses, costs of court, pre-judgment and post-judgment interest and injunctive relief under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”).

1.2 The collective action consists of current and former employees who worked for Defendant who in the three years preceding the filing of this suit were misclassified as exempt and were not paid overtime compensation at time and one half their regular rates of pay for hours they worked over 40 in a week in violation of the FLSA and whose job duties included performing residential leasing sales at Defendant's privately-owned and to-be-leased properties. The collective action includes, without limitation, any individual with the job title of onsite leasing agent or with any similar title who performed similar duties of the named Plaintiff and was paid as an exempt employee (referred to herein as a "onsite leasing agent").

1.3 Plaintiff and all others similarly situated demand a jury trial.

II. PARTIES

A. PLAINTIFF

2.1 Plaintiff Kristal Freeman is a former employee of Defendant as defined by 29 U.S.C. § 203(e) and all other applicable statutes and regulations. Ms. Freeman was employed by Defendant from approximately November 2015 to approximately October 2016 as an onsite leasing agent.

Collective Action Members

2.2 The collective action members are those current and former onsite leasing agents similarly situated to Plaintiff as set forth above.

B. DEFENDANT

2.3 Defendant Progress Residential is a foreign limited liability company that is qualified to conduct business in the State of Texas and in this District. Pursuant to FED. R. CIV. P. 4(e)(1), service can be effected according to the law of the state where this District Court is located, Texas. Progress Residential can be served through its designated agent for

service of process: CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas, 75201.

2.4 Defendant Progress Residential LP is engaged in interstate commerce with an annual volume of sales of not less than \$500,000.

2.5 At all relevant times to this action, Defendant Progress Residential LP was an employer of Plaintiff and all others similarly situated within the meaning of 29 U.S.C. § 203(d) and constitutes an “enterprise” engaged in commerce as defined in 29 U.S.C. §§ 203(r), 203(s).

III. JURISDICTION AND VENUE

3.1 Jurisdiction of this action is conferred on this Court by 29 U.S.C. § 216(b) and by the provisions of 28 U.S.C. § 1337 relating to “any civil action or proceeding arising under any act of Congress regulating commerce.”

3.2 Venue is proper in the Southern District of Texas, Galveston Division pursuant to 28 U.S.C. §§ 1391(a)(2) and 1391(b), because among other reasons, Defendant conducts business in this District; Plaintiff worked for Defendant in Galveston County, Texas; and a substantial part of the events giving rise to the claim occurred in Galveston County, Texas.

IV. FACTUAL BACKGROUND

4.1 Progress Residential is one of the largest providers of single-family rental homes in the United States, with offices in at least eight states. Progress Residential engages in managing, leasing, renovating, and administering closely held residential properties.

4.2 In the past 3 years, Defendant has employed hundreds of individuals throughout the country as onsite leasing agents, including Plaintiff and all others similarly situated.

4.3 Plaintiff and all others similarly situated performed onsite residential leasing and were not paid time and one-half for hours they worked over 40 in a week (“overtime compensation”).

4.4 Plaintiff and other similarly situated onsite leasing agents worked at a Progress Residential office.

4.5 Plaintiff and all other putative collective action members performed “inside” sales work for Progress Residential.

4.6 A Progress Residential leasing office used by its onsite leasing agents is a typical business office containing a desk, telephone, computer, printer, internet access, an executive chair and chairs for lessees to sit across from the leasing agent’s desk.

4.7 Plaintiff and all other similarly situated onsite leasing agents were responsible for tending to prospective renters by demonstrating homes available for lease and completing the paperwork to finalize a lease.

4.8 Plaintiff was required to use a cellular phone to receive business-related phone calls, and was required to return any business-related call within 30 minutes of receiving the call, regardless of the time it was received.

4.9 Plaintiff was required to receive business-related calls 24 hours a day, 7 days a week.

4.10 Plaintiff and all others similarly situated regularly participated in daily “morning huddle” telephone calls, and regularly participated in in-person “morning huddle” meetings every Monday.

4.11 Plaintiff was misclassified as “exempt” under the FLSA when she worked for Progress Residential as an onsite leasing agent.

4.12 Plaintiff and the putative collective action members were falsely classified as exempt for purposes of overtime and were denied overtime compensation.

4.13 Plaintiff and all others similarly situated regularly worked over 40 hours in a

week while employed by Defendant but were not paid time and one half their regular rate of pay for all hours worked over 40 in a work week.

4.14 Defendant's policy and/or practice was to not pay Plaintiff and all others similarly situated overtime compensation for hours worked over 40 in a week as required by the FLSA.

4.15 Plaintiff and all others similarly situated are non-exempt current and/or former employees of Defendant and worked uncompensated overtime hours as on-site leasing agents and were misclassified as exempt.

4.16 Plaintiff and all others situated were not paid an hourly rate for work performed as on-site leasing agents.

4.17 Plaintiff and all others similarly situated were falsely classified as exempt for purposes of overtime and were paid on a salary basis without any overtime compensation.

4.18 Plaintiff and all others similarly situated worked in excess of 40 hours per week without any overtime compensation.

4.19 Defendant's business operations, and the wages and compensation of Plaintiff and all others similarly situated are substantially similar, if not identical, at all of Defendant's locations throughout the country.

4.20 Defendant knowingly failed to pay overtime to Plaintiff and all others similarly situated in violation of the FLSA.

4.21 Defendant's conduct has been willful and in bad faith. Plaintiff and all others similarly situated are entitled to liquidated damages for such conduct.

4.22 Defendant's practice is to be deliberately indifferent to violations of overtime requirements.

4.23 No exemption excused Defendant from paying Plaintiff and all others similarly situated overtime compensation.

V. COLLECTIVE ACTION ALLEGATIONS

5.1 Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

5.2 Other employees have been victimized by this pattern, practice, and policy of the Defendant that is in violation of the FLSA. Plaintiff is aware that the illegal practices and policies of Defendant have been imposed on other workers.

5.3 Plaintiff and all others similarly situated shared common job duties and responsibilities as onsite leasing agents. Thus, Plaintiff's experiences are typical of the experience of Defendant's other onsite leasing agents.

5.4 Plaintiff files this case as an "opt-in" collective action as specifically allowed by 29 U.S.C. § 216(b).

5.5 Plaintiff brings these claims on her behalf and on behalf of all other similarly situated onsite leasing agents who have not been fully compensated for all work performed, time spent, and activities conducted for the benefit of Defendant.

5.6 Plaintiff and those similarly situated frequently performed work for which they were not compensated.

5.7 Plaintiff requests that Defendant fully identify all others similarly situated in order that proper notice of their right to consent to participation in this collective action may be distributed, including immediately providing the name, last known address, telephone number, dates of employment, and job title(s) of all those similarly situated so that notice may be sent to those persons immediately.

5.8 Plaintiff seeks to represent those similarly situated who have provided consent in writing to join this action as required by 29 U.S.C. § 216(b).

5.9 Those individuals who choose to opt in will be listed on subsequent pleadings and copies of the written consents to sue will be incorporated herein by reference.

5.10 Plaintiff will fairly and adequately represent and protect the interests of those who are similarly situated.

VI. COUNT 1—VIOLATIONS OF THE FLSA

6.1 Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

6.2 Plaintiff and all others similarly situated are lawfully non-exempt employees and were improperly classified as exempt employees.

6.3 Defendant has violated the FLSA by failing to pay Plaintiff and all other similarly situated onsite leasing agents overtime compensation at a rate of one and one half times their regular hourly rate for all hours worked in excess of 40 hours per week.

6.4 Defendant has not made a good faith effort to comply with the FLSA.

6.5 Defendant's conduct was willful within the meaning of 29 U.S.C. § 255(a).

6.6 In further violation of the FLSA, Defendant has failed to maintain accurate employee pay records, including the number of hours worked per work week, by Plaintiff and by all other similarly situated employees.

6.7 Defendant deliberately misclassified Plaintiff and all others similarly situated as exempt employees to avoid paying them overtime compensation.

6.8 No exemption excused the Defendant from paying Plaintiff and all others similarly situated overtime compensation.

6.9 Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice regarding overtime compensation owed to Plaintiff and to all other similarly situated employees.

VII. JURY DEMAND

7.1 Plaintiff hereby demands a trial by jury.

PRAYER

WHEREFORE Plaintiff and all those similarly situated who have or will opt into this action, respectfully pray that this Court follow the certification procedures of § 216 of the Fair Labors Standards Act and conditionally certify a collective action as described herein pending the identification of and receipt of consent from others similarly situated, and that subsequent thereto Plaintiffs and all others who opt-in to this action recover the following:

- a. an order preliminarily and permanently restraining and enjoining Defendant from engaging in the aforementioned pay violations;
- b. damages and restitution for all unpaid wages (including fringe benefits and bonuses), unpaid overtime compensation (at time and one-half), and other injuries, as provided by the FLSA;
- c. liquidated damages, as provided by the FLSA, equal to the sum of the amount of wages and overtime compensation that were not properly paid;
- d. all applicable penalties for the violations set forth herein;
- e. an award of reasonable attorney's fees, expenses, expert fees and costs incurred in vindicating the rights of Plaintiff and all those similarly situated;
- f. an award of pre-judgment and post-judgment interest at the highest rate permitted by law; and
- g. such other and further relief, at law or in equity, as this Court deems just and appropriate.

DATED: December 19, 2016

Respectfully submitted,

By: /s/ Rhonda H. Wills

Rhonda H. Wills

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