

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

DANIELLE NUNN, Individually, and on behalf
of All Others Similarly Situated, Who Consent
to Their Inclusion in a Collective Action;

Plaintiff,

v.

Case No.:

ARS NATIONAL SERVICES, INC.,
A Foreign Limited Liability Corporation;

Defendant,

_____ /

COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DANIELLE NUNN, Individually, and on behalf of All Others Similarly Situated, Who Consent to Their Inclusion in a Collective Action, hereby files this Complaint against Defendant, ARS NATIONAL SERVICES, INC. (hereinafter referred to as “ARS”), a Foreign Limited Liability Corporation (“ARS”) and alleges as follows:

INTRODUCTION

1. Plaintiff brings this collective action for overtime compensation and other relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et. seq.*, on behalf of herself, and on behalf of other similarly situated, current and former employees of ERC working as Account Representatives (“Account Reps”).¹
2. Plaintiff seeks to represent a collective class of non-exempt Collectors who were unlawfully denied overtime compensation and underpaid overtime compensation as a

¹ In this pleading, the term Account Representative or Collector means any non-exempt employee who is employed by the Defendant to contact borrowers and attempt to collect debts working under the title of Account Representative, Collections Representative Customer Service Representative, or any other title or position where employees perform substantially the same work as Collections Representatives.

result of Defendant's practice and policy of suffering Account Representatives to work "off-the-clock", and failing to properly calculate overtime wages at the correct rates.

3. Plaintiff, and similarly situated employees are, and at all times relevant, were non-exempt employees under the FLSA as they were performing non-exempt office work. They regularly worked in excess of 40 hours per week and were not paid overtime for some or all of their work, and even when paid overtime, *willfully underpaid* overtime wages by Defendant's failure to include the value of bonuses in the regular rate and overtime rates. Plaintiff, and the class of similarly situated employees, have suffered damages as a consequence over a three (3) year period of time.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over Plaintiff's FLSA claims pursuant to 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 215(a)(3) because this action involves a federal question under the Fair Labor Standards Act.
5. This Court has supplemental jurisdiction over the State of Florida's State Claims pursuant to 28 U.S.C. § 1367.
6. Venue is appropriate here in the Jacksonville Division of the Middle District of Florida pursuant to 28 U.S.C. 1391(b) because the Defendant conducts business in Jacksonville and the acts complained of occurred in Jacksonville, Florida, as they took place at the Defendant's business at 8665 Bay Pine Road, Suite #200, Jacksonville, FL 32256.
7. Plaintiff is a resident of Jacksonville, Duval County, Florida.
8. ARS provides collection and related services and operates throughout the United States.
9. At all times material hereto, ARS was the Plaintiff's "employer" as defined pursuant to the FLSA (29 U.S.C. § 203(e)(1)) and the FWPA.

10. All conditions precedent to the filing of this action have been performed.

THE PARTIES

The Representative Plaintiff

11. **Plaintiff, Danielle Nunn**, is a resident of Duval County, Florida. Plaintiff was hired in March of 2009 as an Account Representative and worked for Defendant until December 2, 2011. Plaintiff's primary job duty was to contact persons owing debts or money on accounts, or borrowers on behalf of ARS's clients in an attempt to collect debts or money owed.
12. At all times material hereto, Plaintiff was a non-exempt employee paid an hourly wage in addition to non-discretionary bonuses based upon the amount of money she was able to collect on behalf of ARS clients. Plaintiff, as well as all account representatives or collectors operated on a common and uniform, non-discretionary bonus structure established by ARS to apply to all Account Representatives or Collectors in all of its offices.
13. Plaintiff earned a bonus on a monthly basis as well as routinely worked overtime.

The Defendant

14. **Defendant, ARS National Services, Inc. (ARS)**, is a foreign corporation duly licensed to do business in the State of Florida; with a principal office located at 201 W. Grand Ave, Escondido, California 92025. Defendant may be served through its designated Registered Agent, Corporation Service Company, 1201 Hays Street, Tallahassee, FL 32301-2525.

15. ARS is a financial services type of company or accounts receivable collections company that provides national debt and accounts receivable collections services to its clients in all fifty (50) states.
16. ARS employs up to 100 or so Collectors at their Jacksonville, Florida, office and Orange Park, Florida and Waycross, Georgia locations.
17. ARS has offices in several states, including California and Arizona, and employs at any given time, upwards of 1,000 collectors or account representatives. Upon information and belief, this size of the putative class of similarly situated employees working for Defendant within a three (3) year period is estimated to be 3,000.

COVERAGE UNDER THE FLSA

18. Defendant qualifies for and is subject to both traditional and enterprise coverage under the FLSA for all the relevant time periods contained in this Complaint. Said differently, Defendant is subject to the FLSA.
19. During the times relevant to this Complaint, ARS employed more than 100 employees and has generated more than \$500,000.00 in revenues for the years of 2011, 2012, 2013 and 2014.
20. At all relevant times Defendant has been and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a).
21. The FLSA defines “employer” as any “person” acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. § 203(d). *See also Boucher v. Shaw*, 572 F.3d1087, 1090 (9th Cir. Nev. 2009) (the definition of "employer" under the Fair Labor Standards Act (FLSA) is not limited by the common law concept of

"employer," but is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes).

22. Defendant employed Plaintiff, and the class of similarly situated as employees within the meaning of the FLSA § 203.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

23. This collective action includes all employees similarly situated to Plaintiff, performing some or all of the duties of a non-exempt Collector or Account Representative, however variously titled, at any location or facility of ARS who worked in excess of forty (40) hours per workweek in one or more workweeks on or after October 2011 and who did not receive the legally required overtime compensation for all of their overtime hours within each workweek as a result of (a) Defendant's failure to accurately track and compensate Collectors for **all** of their overtime hours; (b) Defendant's unlawful reduction of compensable time and overtime hours; (c) Defendant's requirement that Collectors work off-the-clock; (d) Defendant's suffering Collectors to work off-the-clock; and/or (e) Defendant's failing to include non-discretionary bonuses or incentive awards in the calculation of Collector's overtime wages. (collectively, the "Putative Class").
24. At all times material hereto, Plaintiff and similarly situated Account Representatives or Collectors in the Putative Class were performing their duties for the benefit of and on behalf of ARS.
25. During the three (3) year statute of limitations period between October 2011 through the present, Plaintiff and the other similarly situated current and former Account Reps of the Putative Class regularly worked in excess of forty (40) hours per week, including working through meal breaks.

26. At all material times to this Complaint, ARS utilized policies and/or practices of deducting “non-productive” hours from Account Rep’s time records and thereby reducing their overtime compensation.
27. ARS ran the operation in a sweat shop or boiler room type atmosphere, commanding quotas be hit, and intimidating employees with threats of loss of employment if they did not hit their goals or quotas. As a result, Plaintiff and the class of similarly situated employees, routinely worked through their lunch breaks and off the clock to hit their goals in order to keep their jobs.
28. At all material times to this Complaint, ERC utilized policies and/or practices of requiring Account Representatives to work off-the-clock without overtime compensation.
29. Plaintiffs and similarly situated Collectors were required to attend meetings off-the-clock, and without overtime compensation.
30. Account Representatives were not permitted to clock back in during meal breaks as the company had a mandatory time deduction for this break. Further, unless during a period of time when ARS announced “approved overtime” for representatives, Plaintiff and the class of similarly situated were coerced and intimidated into working after their shifts ended off the clock.
31. At all material times, Defendant, through its team of managers and supervisors readily observed Plaintiff and many other Account Representatives working off the clock during meal breaks and after their shift ended, turning a blind eye to it and knowing that such employees would be working without compensation.

32. The theme Defendants stressed routinely to Account Representatives was to do what it takes to get the job done and hit your numbers or lose your job. As such, there was a high turn-over rate and employees came and went on a revolving door basis.
33. At all material times to this Complaint, ERC utilized policies and/or practices of permitting and suffering Account Representatives to work off-the-clock without overtime compensation.
34. Plaintiff and similarly situated Account Representatives were encouraged and permitted to work off-the-clock in order to meet incentive award benchmarks.
35. At all material times to this Complaint, ARS utilized policies and/or practices of knowingly and willfully failing to include non-discretionary incentive awards (bonuses) in the calculation of Account Representative's overtime compensation as required under the FLSA, thus UNDERPAYING Plaintiff and the class of similarly situated Account Representatives for any overtime hours worked.
36. Defendant knew or should have known that the failure to include the value of all bonuses or incentive awards in the calculation of the regular rate of pay and in the overtime rates paid was an unlawful practice under the FLSA.
37. Defendants willfully chose to underpay Account Representatives overtime wages and force them to work off the clock without compensation in order to save millions of dollars each year in labor costs and increase profits.
38. At all material times to this Complaint, ARS utilized policies and/or practices of failing to accurately record Collector's compensable working hours; including but not limited to work Collectors performed (a) prior to logging into their work stations; (b) during Collector's lunch breaks and (c) after logging out of their work stations.

39. Plaintiff and similarly situated Account Representatives were not paid for work performed before they logged into their workstations; work performed during lunch breaks and worked performed after logging out of their workstations.
40. Plaintiff and similarly situated Account Representatives of the Putative Class were not paid their proper overtime compensation for all of the actual overtime hours worked.
41. Upon information and belief, the records of the compensation actually paid, or not paid to Plaintiff and similarly situated Account Representatives in the possession, custody, and control of ERC.
42. For purposes of calculating overtime pay, section 7(e) of the FLSA provides that non-discretionary bonuses must be included in the regular rate of pay. Non-discretionary bonuses include those that are announced to employees to encourage them to work more steadily, rapidly, or efficiently, and bonuses designed to encourage employees to remain with a facility. SEE 29 CFR 778.108.
43. The proposed Putative Class is defined as follows: **“All persons currently employed by ARS National Services, Inc., or employed within 3 years preceding the filing of this Complaint as Account Representatives or under any other title performing collection type services, who worked over 40 hours in any work week and who consent to their inclusion in this collective action.”**
44. The position of Account Representative or other titles used to describe persons performing collection type services is performed in a similar manner in all of Defendant’s locations.

45. Defendant required Plaintiff and the class of similarly situated employees to follow policies, procedures, and protocols applicable to all of their locations in a uniform and standardized manner.
46. The unlawful pay practices alleged herein applied to all of Defendant's locations or offices where Account Representatives or collectors worked.

COUNT I
VIOLATION OF THE FLSA (29 U.S.C. § 207)

47. Plaintiff readopts and realleges paragraphs eleven (11) through Forty six (46) as if fully set forth herein verbatim.
48. Plaintiff is entitled to be paid proper overtime rates of pay for each and every hour Plaintiff worked as a non-exempt Account Representative in excess of forty (40) hours in any given week during the three (3) year statute of limitations period between October 2011 and the date this filing, and continuing.
49. All similarly situated Account Representatives in the Putative Class are likewise entitled to be paid their federally mandated overtime rate for each overtime hour that they worked and were not properly paid.
50. Defendant's actions are, and were at all times material, intentional, willful, and unlawful.
51. By reason of Defendant's intentional, willful, and unlawful acts, the Plaintiff and similarly situated Account Representatives of the Putative Class have suffered and continue to suffer damages. As such, Defendants are liable for unpaid overtime compensation and an additional equal amount as liquidated damages. *Johnson v. Big Lots Stores, Inc.*, 604 F.Supp.2d 903 at 925 (E.D. La. 2009).

52. By failing to record, report, and/or preserve records of hours worked by the Plaintiffs, and the class of similarly situated inside sales representatives, the Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA 29 U.S.C. §201 *et. seq.*, including 29 U.S.C. §211(c) and 215 (a).
53. Due to Defendant's FLSA violations, Plaintiff and similarly situated Account Representatives of the Putative Class are entitled to recover from Defendant the unpaid overtime compensation owed, an additional equal amount as liquidated damages, prejudgment interest and reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated Account Representatives, whom the Plaintiff seeks to represent in this action, requests the following relief:

- a. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
- b. Certification of this action as a collective action brought pursuant to 29 U.S.C §216(b);
- c. Designation of Plaintiff Nunn as a class representatives of this FLSA Collective Action on behalf of the Putative Class of Account Representatives;
- d. That Plaintiff be allowed to deliver notice of this collective action and the right to opt into this case, or that this Court issue such notice at the earliest possible time; to all past and present Account Representatives during the three year period immediately

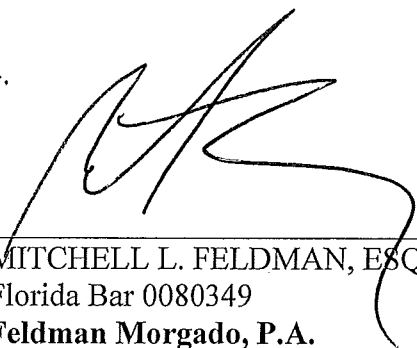
preceding the filing of this suit, through and including the date of this Court's issuance by Court supervised notice;

- e. That the Court find the Defendant's violations of the FLSA were willful;
- f. That the Court award the Plaintiff and all similarly situated employees, overtime compensation for previous hours worked in excess of forty (40), for any given week during the past three (3) years in amounts to be determined at trial, AND liquidated damages of an equal amount to the unpaid overtime compensation;
- g. Costs of action incurred herein, including expert fees;
- h. Attorneys' fees, including fees pursuant to 29 U.S.C. §216 and other applicable statutes;
- i. Pre-judgment and post-judgment interest as provided by law; AND
- j. Any other legal and equitable relief as this Court may deem appropriate.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure, Rule 38, Plaintiff demands a trial by jury on all questions of fact raised by the complaint.

Respectfully filed this 15th day of October 2014.


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