

products that help people achieve their goals” and maintain networks that “connect banks, cardmembers and merchants around the world with innovative commerce solutions.”¹ Defendants claim “to be the leading digital bank and payments partner” and “to help people spend smarter, manage debt better and save more so they achieve a brighter financial future.”²

3. In providing the aforementioned services, Defendants employed hourly employees in their 24/7 brick and mortar call centers and in remote call center settings across the United States. Defendants used a number of titles, including, but not limited to, Account Representative, Lead Account Specialist, and Supervisor, to refer to their hourly call center employees who field and make customer calls and respond and/or troubleshoot customer inquiries and problems (collectively referred to herein as “Hourly Employees”).

4. Regardless of specific job title, all of Defendants’ Hourly Employees were: paid on an hourly basis; classified as non-exempt employees; regularly worked forty (40) or more hours per workweek; relied on a computer and essential computer programs to perform their job duties daily; required to perform work off-the-clock before and after their scheduled shifts when they were not logged into Defendants’ timekeeping system; and subject to the same relevant policies (including Defendants’ unlawful time rounding policy).

5. Defendants employed Plaintiffs as hourly call center employees.

6. The United States Department of Labor (“DOL”) recognizes that call center jobs, like those held by Defendants’ Hourly Employees, are homogenous; in July 2008, the DOL issued Fact Sheet #64 to alert call center employees to some of the abuses that are prevalent in the industry.³

¹ See <https://www.discover.com/company/our-company/> (last visited Aug. 2, 2023).

² See <https://www.discover.com/company/our-company/> (last visited July 24, 2023).

³ See DOL Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA), <https://www.dol.gov/whd/regs/compliance/whdfs64.pdf> (last visited Aug. 2, 2023).

7. One of those abuses, which is at issue in this case, is the employer's refusal to pay for work from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday." *Id.* at p. 2.

8. More specifically, DOL Fact Sheet #64 condemns an employer's non-payment of an employee's necessary pre-shift activities: "An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications and work-related emails." *Id.* Additionally, the FLSA requires that "[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept." *Id.*

9. Defendants violated the FLSA and common law by systematically failing to compensate their Hourly Employees for work tasks completed before and after their scheduled shifts when they were not logged into Defendants' timekeeping system. This policy, along with Defendants' herein described rounding policy, resulted in Hourly Employees not being paid for all overtime hours worked, overtime gap time when associated with unpaid overtime, and in non-overtime workweeks for regular hours.

10. More specifically, Defendants failed to compensate Hourly Employees for the substantial time they spent performing essential work tasks prior to clocking in to and after clocking out of Defendants' timekeeping system at the end of each shift.

11. Plaintiffs seek a declaration that their rights, and the rights of the putative Collective and Class members, were violated, a judgment awarding them unpaid back wages, liquidated damages, attorneys' fees and costs to make them and the putative Collective and Class whole for damages they suffered, and any other remedies to which they may be entitled, and to help ensure Defendants will not subject future workers to the same illegal conduct in the future.

12. At the earliest time possible, Plaintiffs will request that the Court-authorize notice of this action pursuant to 29 U.S.C. § 216(b) to all similarly situated employees who worked for Defendants at any time in the past three years.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction over Plaintiffs' FLSA claim, pursuant to 28 U.S.C. § 1331, because Plaintiffs' claim raises a federal question under 29 U.S.C. § 201, *et seq.*

14. Additionally, this Court has jurisdiction over Plaintiffs' FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer... in any Federal or State court of competent jurisdiction."

15. Defendants' annual sales exceed \$500,000, and Defendants employ more than two individuals; thus, the FLSA applies in this case on an enterprise basis. Defendants' Hourly Employees engage in interstate commerce and, therefore, they are also covered by the FLSA on an individual basis.

16. This Court also has supplemental jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. §1367 because they originate from the same facts that form the basis of her federal claims.

17. This Court has personal jurisdiction over Defendants because Defendants conduct business within the state of Illinois, employ individuals within the state of Illinois, are registered with the Illinois Office of the Secretary of State, and maintain their principal place of business in the state of Illinois.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendants employs Hourly Employees in this District, conducts business in this District, and a substantial portion of the events that give rise to Plaintiffs' claims occurred in this District.

PARTIES

19. Plaintiff Keyona Harris is a resident of Chicago, Illinois and worked for Defendants as a non-exempt Hourly Employee in Defendants' Chicago, Illinois brick and mortar call center from approximately February 2021 through November 2021 and remotely from approximately November 2021 through March 2022. Defendants compensated Plaintiff Harris through the payment of an hourly rate, most recently \$17.51 per hour. Plaintiff Harris signed a consent to join this collective action. (Doc. 1-1 at p. 2).

20. Plaintiff Janee Qualls is a resident of Pinkerington, Ohio and worked remotely for Defendants as a non-exempt Hourly Employee from approximately 2022 through April 2023. Defendants compensated Plaintiff Qualls through the payment of an hourly rate, most recently \$17.00 per hour. Plaintiff Qualls signed a consent to join this collective action. (Doc. 16 at p. 4).

21. Plaintiff Pamala Jackson is a resident of Columbus, Ohio and worked remotely for Defendants as a non-exempt Hourly Employee from April 2021 through the present. Defendants compensated Plaintiff Jackson through the payment of an hourly rate, most recently \$20.05 per hour. Plaintiff Jackson signed a consent to join this collective action. (Doc. 17, p. 4).

22. Plaintiff Randall Misner is a resident of Columbus, Ohio and worked remotely for Defendants as a non-exempt Hourly from approximately October 3, 2022 through September 2023. Defendants compensated Plaintiff Misner through the payment of an hourly rate, most recently \$20.65 per hour. Plaintiff Misner signed a consent to join this collective action. (Doc. 18, p. 4).

23. Additional Collective members were or are employed by Defendants as Hourly Employees during the past three (3) years and their consent forms will also be filed in this case.

24. Defendant Discover Products Inc. is a Utah corporation (Entity No. 5717385-

0142) headquartered in Riverwoods, Illinois. In the state of Illinois, Defendant maintains a registered agent for service of process listed as C T Corporation System, 208 SO LaSalle Street, Suite 814, Chicago, Illinois 60604-1101.

25. Defendant Discover Financial Services is a Delaware corporation (File No. 554914) headquartered in Riverwoods, Illinois. In the state of Illinois, Defendant maintains a registered agent for service of process listed as C T Corporation System, 208 SO Lasalle Street, Suite 814, Chicago, Illinois 60604-1101.

GENERAL ALLEGATIONS

26. Prior to hiring prospective Hourly Employees, Defendants provided them with a written offer setting forth the job requirements and hourly rate of pay.

27. Defendants maintained documents demonstrating the promised hourly wage for each Hourly Employee including, but not limited to: offer letters, paystubs, and/or payroll records.

28. Plaintiffs received respective offers from Defendants to work as Hourly Employees, and they each accepted Defendants' offer with the understanding that their base hourly rate would be paid for all hours worked.

29. Plaintiffs performed under their respective agreements by carrying out their job duties and responsibilities. More specifically, Plaintiffs handled, among other things, Discover customer inquiries regarding payment and billing statements; potential fraudulent credit card activity; and/or customer disputes. Plaintiffs provided the aforementioned customer service via inbound and periodic outbound calls, and Plaintiffs utilized Defendants' applications and systems to track all events and customer service information. Plaintiffs additionally performed the required unpaid off-the-clock work explained below.

30. Defendants paid their Hourly Employees at varying hourly rates.

31. Defendants' Hourly Employees typically worked five (5) days each week and up to, and on occasion more than, forty (40) hours per week. While Defendants have access to all payroll records, Plaintiffs do not, and there were one or more instances during Plaintiffs' employment when they worked forty (40) hours or more in a workweek and less than forty (40) hours in a workweek.

32. Defendants provided training to Hourly Employees on, *inter alia*, how to carry out their day-to-day job duties; how to load and log into their computer programs at the beginning of the day, and how to log out at the end of the day; how to track their time in Defendants' timekeeping system; attendance, schedule, and call quality expectations; and Defendants' policies. The training that Defendants provided to all of their Hourly Employees was substantially, if not entirely, the same, and all Hourly Employees were subject to the same and/or substantially similar policies and quality assurance reviews.

33. At all relevant times, Defendants controlled Plaintiffs' and all other Hourly Employees' work schedules, duties, protocols, applications, assignments, and employment conditions.

34. Defendants required Plaintiffs and all other Hourly Employees to use a computer and a variety of integral and indispensable computer programs, applications, and servers that were necessary to the performance of their job duties.

35. Defendants instructed Plaintiffs and all other Hourly Employees to be "call ready" the moment their scheduled shift started. This required Defendants' Hourly Employees to log into and load all of their essential work-related computer programs and applications prior to the start of their shifts so they could be prepared to take calls the moment their shift began. During the boot-up and login process, Defendants' Hourly Employees often experienced technical difficulties,

increasing the amount of off-the-clock work they performed that day.

36. Additionally, Defendants maintained schedule adherence and attendance metrics pursuant to which they monitored the Hourly Employees' clock in times in relation to their start of shift time, as well as the time the Hourly Employees went into a "ready" status. Defendants enforced these policies and procedures by routinely evaluating, and at times disciplining, Hourly Employees. This discipline included, but was not limited to, supervisor coaching, verbal warnings and termination.

37. Thus, Defendants forced their Hourly Employees to perform some, if not all, of the boot-up and login process before the start of their shift and before they were allowed to clock in.

38. Defendants maintained an unlawful rounding policy pursuant to which they rounded employee clock-in times to the start of the scheduled shift if the Hourly Employees clocked in within 15 minutes of their start-of-shift time and employee clock-out times to the end of the scheduled shift if they clocked out within 15 minutes of their end-of-shift time. Defendants' rounding policy was unlawful when examined along with their attendance and adherence policies, which (1) required Hourly Employees to be call ready, with all programs and applications open, at the start of their scheduled shift, and prohibited Hourly Employees from clocking in a finite number of minutes less than 15 before their scheduled shift, and (2) resulted in Hourly Employees very rarely working 15 minutes or more past the end of their scheduled shift. The reason Defendants' policy was unlawful is because Defendants' Hourly Employees were always deprived of the opportunity to benefit from rounding without being subject to discipline.

39. In each workweek Defendants' Hourly Employees worked forty (40) hours or more in a workweek, the rounding policy resulted in an unlawful deprivation of overtime wages, as provided by the FLSA. In each workweek the Hourly Employees worked less than forty (40) hours

(an exception to their baseline forty (40) hour schedule) the rounding policy resulted in an unlawful deprivation of straight time wages.

40. All of Defendants' Hourly Employees used the same or similar computer networks, software programs, and applications in the course of performing their job responsibilities. These programs and applications were an integral and an indispensable part of the Hourly Employees' work and they could not perform their jobs without them.

41. Similarly, Defendants' Hourly Employees, including Plaintiffs, performed work off-the-clock after their scheduled shift, after clocking out of Defendants' timekeeping system, when they shut-down/logged out of the programs and applications that they utilized during their shifts.

42. At all relevant times, Defendants used their attendance and adherence policies against Plaintiffs and their Hourly Employees in order to require them to perform pre- and post-shift work off-the-clock.

43. The pre- and post-shift off-the-clock time Plaintiffs and all other Hourly Employees spent booting-up/logging into and shutting down their computers and applications and programs directly benefitted Defendants and was integral and indispensable to the Hourly Employees' job responsibilities.

44. As a result of the off-the-clock work described herein, Plaintiffs and other Hourly Employees were unlawfully deprived of approximately twelve (12) to twenty-five (25) minutes of compensation every shift.

45. At all relevant times, Defendants were able to track the amount of time Plaintiffs and other Hourly Employees spent in connection with the pre- and post-shift activities; however, Defendants failed to do so and failed to compensate Plaintiffs and all other Hourly Employees for

the off-the-clock work they performed, thus breaching their agreements with their Hourly Employees.

46. Indeed, in light of the explicit and long-standing DOL guidance cited above, there is no conceivable way for Defendants to establish that they acted in good faith.

47. Despite knowing Plaintiffs and all other Hourly Employees performed this pre- and post-shift work, Defendants and their managers failed to make any effort to stop or disallow it and instead suffered and permitted it to happen.

48. Defendants possess, control, and/or have access to information and electronic data indicating the times Plaintiffs and all other Hourly Employees booted-up and logged into their computers each shift, along with the time they logged into the timekeeping system.

49. Upon information and belief, Defendants also possess, control, and/or have access to information and electronic data indicating when Plaintiffs and all other Hourly Employees experienced technical issues.

50. Because Defendants required their Hourly Employees, including Plaintiffs, to perform pre- and post-shift work off-the-clock, the hours tracked in Defendants' timekeeping system are inaccurate representations of the total amount of time Hourly Employees spent working for Defendant. Thus, the hours reflected on the Hourly Employees' paystubs are also inaccurate representations of the hours they actually worked.

A. Pre-Shift Off-the-Clock Work

51. The off-the-clock pre-shift process took substantial time, approximately ten (10) to twenty (20) minutes per shift. Specifically, before each shift, Hourly Employees were required to undertake essential work tasks such as turning on or warming up their computer; waiting for the computer to turn on; logging into their computer with a username and password; and connecting

to Defendants' virtual private network ("VPN").

52. Defendants' Hourly Employees had to complete the off-the-clock work before the start of their scheduled shifts and before fielding calls. Consequently, the Hourly Employees had to begin working at least ten (10) to twenty (20) minutes before their scheduled shifts to complete their start-up and log-in activities.

53. Defendants' Hourly Employees were not compensated for all of this time because Defendants prohibited Hourly Employees from clocking into their timekeeping software until a limited and finite number of minutes before the start of their scheduled shift, and the described duties took longer than this amount of time to perform each day.

54. The pre-shift off-the-clock work Hourly Employees performed directly benefitted Defendants, and was integral and indispensable to their job duties and responsibilities as Hourly Employees.

B. Post-Shift Off-the Clock Work

55. Pursuant to Defendants' policies, training, and direction, Plaintiffs and all other Hourly Employees were required to clock-out at the end of their scheduled shift or as soon as they were done fielding their last customer query for the day and *before* closing all work applications and systems.

56. After they clocked out for the day, Hourly Employees, including Plaintiffs, were required to shut-down/log-out of the various computer programs and software applications they utilized in performing their job duties. This resulted Plaintiffs and other Hourly Employees performing an additional two (2) to five (5) minutes of off-the-clock work every day.

57. The post-shift off-the-clock work Plaintiffs and other Hourly Employees performed was compensable, directly benefitted Defendants and the tasks undertaken in connection with the

off-the-clock work were integral and indispensable to the Hourly Employees' job duties and responsibilities.

C. The Off-the-Clock Work Results in Viable "Gap Time" Claims

58. "Gap time" claims are those "in which an employee has not worked 40 hours in a given week but seeks recovery of unpaid time worked, or in which an employee has worked over 40 hours in a given week but seeks recovery for unpaid work under 40 hours." *Kinkead v. Humana at Home, Inc.*, 450 F.Supp.3d 162, 182 (D. Conn. Mar. 31, 2020); *see also Conner v. Cleveland Cty., N.C.*, 22 F.4th 412, 426 (4th Cir. 2022) ("we hold that overtime gap time claims are cognizable under the FLSA").

59. Plaintiffs, and all similarly situated Hourly Employees, regularly worked non-overtime hours (i.e. "gap time") for which they were not paid.

60. During the weeks that Hourly Employees did not work over forty (40) hours in a workweek, the outcome of Defendants' policies and practices was a deprivation of straight time wages, in breach of Defendants' agreements with their Hourly Employees.

D. Plaintiffs' Exemplary Workweek

61. The FLSA and regular wage violations discussed herein occurred throughout Plaintiffs' employment with Defendants; however, as an example of one instance where Defendants failed to pay Plaintiffs Harris and Misner regular wages for work performed and overtime for hours worked in excess of forty (40) hours (as mandated by the FLSA), Plaintiffs identify the following workweeks:

Plaintiff Harris

August 23 – September 5, 2021 Pay Period

- Plaintiff Harris worked less than 40 hours in one week at a rate of \$17.25 per hour and upon information and belief was paid \$17.25 for each regular hour worked.

- With pre- and post-shift off-the-clock work, Plaintiff Harris should have been paid an additional twelve (12) to twenty-five (25) minutes or more at her regular rate of \$17.25 for each regular hour.

Ex. A, Harris August 23 – September 5, 2021 Paystub.

December 27, 2021 Workweek

- Plaintiff Harris states that she worked more than 40 hours workweek of December 27, 2021.
- With pre- and post-shift off-the-clock work, Plaintiff Harris should have been paid an additional twelve (12) to twenty-five (25) minutes or more at her overtime rate for each hour worked in excess of forty (40) in the overtime workweek.

Plaintiff Misner

April 17 – April 30, 2023 Pay Period

- Plaintiff Misner worked less than 40 hours in one week at a rate of approximately \$20.65 per hour and upon information and belief was paid approximately \$20.65 for each regular hour worked.
- With pre- and post-shift off-the-clock work, Plaintiff Misner should have been paid an additional twelve (12) to twenty-five (25) minutes or more at his regular rate of approximately \$20.65 for each regular hour.

Ex. B, Misner April 17-30, 2023 Paystub.

April 3 – 16, 2023 Pay Period

- Plaintiff Misner states that he worked more than 40 hours in one or more workweeks within the April 3 – 16, 2023 pay period.
- With pre- and post-shift off-the-clock work, Plaintiff Misner should have been paid an additional twelve (12) to twenty-five (25) minutes or more at his overtime rate for each hour worked in excess of forty (40) in the overtime workweek.

JOINT EMPLOYMENT ALLEGATIONS

62. At all relevant times, Defendants were, at minimum, joint employers of Plaintiffs and other Hourly Employees who worked in Defendants' call centers.

63. For example, Defendants' website provides tabs and information regarding "**Our**

Company”, “**Our** Products”, “**Our** Commitment”, “**Our** History”, “**Our** Sponsorships”, and “**Our** Advertising.”⁴ With regard to customer service, the website identifies “**our** employees”, notes, “**We** Treat You Like You’d Treat You”, and explains how “[**w**e] provide competitive paying jobs to customer service representatives who have a stake in the success of **our** business and the care of **our** customers.” (*Id.*) (emphasis added). At the bottom of Defendants’ “Our Company” tab, Defendants provide visitors a Quick Link to “Contact **Us**”. (*Id.*) (emphasis added). Further, on the job opportunities section of Defendants’ website, Defendants explain “What **We** Offer” and “Who **We** Are”.⁵

64. Likewise, Defendants’ correspondence and paystubs clearly illustrate a joint employment relationship. For instance, Plaintiff Misner’s separation letter “confirm[ed] [his] final day of employment with [Defendant] Discover Financial Services[;]” however, the paystubs Plaintiff Misner received throughout his employment, as well as his IRS Form W-2, identified Defendant Discover Products Inc. as his employer. (*See e.g.* **Ex. B**, Misner April 17-30, 2023 Paystub). Moreover, the separation letter and Plaintiff Misner’s paystubs identified the same Discover® signature logo and contained the same address: 2500 Lake Cook Road, Riverwoods, Illinois 60015. (*See id.*).

65. At all relevant times, Defendants managed the day-to-day supervision and direction of the Hourly Employees.

66. At all relevant times, Defendants’ corporate policies and procedures dictated, guided, and mandated Plaintiffs and the Hourly Employees’ jobs.

67. At all relevant times, Defendants maintained the Plaintiffs and other Hourly

⁴ See <https://ww.w.discover.com/company/our-company/> (last visited Oct. 8, 2023) (emphasis added).

⁵ See <https://jobs.discover.com/who-we-are/> (last visited Oct. 8, 2023) (emphasis added).

Employees' employment records.

68. The unlawful conduct at issue in this case arises from Defendants' corporate policies for Hourly Employees.

COMMON ENTERPRISE ALLEGATIONS

69. “[T]wo or more individuals, entities or business units are considered a single enterprise if (1) they perform related activities; (2) through unified operation or common control, and (3) for a common business purpose.” *Villareal v. El Chile, Inc.*, 776 F.Supp.2d 778, 791 (N.D. Ill. 2011)

70. As discussed herein, Defendants were engaged in a common enterprise relative to the operations and employment of Plaintiffs and the Hourly Employees. More specifically, and as alleged herein, Defendants represented themselves as being a top financial services company.

71. Defendants were engaged in the aforementioned business for the joint purpose of “provid[ing] banking and credit products that help people achieve their goals” and having “networks [that] connect banks, cardmembers and merchants around the world with innovative commerce solutions.”⁶

72. As discussed herein, Defendants loosely operated in the same or similar manner, under a common name, and through unified or common control. They also advertised collectively as Discover®.

COLLECTIVE ACTION ALLEGATIONS

73. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on behalf of themselves and on behalf of:

All current and former hourly call center employees who worked for Defendants at any time in the past three years and required the use of a

computer and programs and applications in order to perform their job duties.

(hereinafter referred to as the “FLSA Collective”). Plaintiffs reserve the right to amend this definition if necessary.

74. Excluded from the proposed FLSA Collective are Defendants’ executives, administrative and professional employees, including computer professionals and outside sales persons.

75. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and others similarly situated.

76. Consistent with Defendants’ policies and practices, Plaintiffs and the proposed FLSA Collective members were not paid for all straight and/or premium overtime compensation in workweeks during which they worked forty (40) hours or more when considering the uncompensated off-the-clock work discussed herein.

77. All of the work Plaintiffs and the proposed FLSA Collective members performed was assigned by Defendants, and/or Defendants were aware of all of the work Plaintiffs and the proposed FLSA Collective members performed.

78. Defendants were aware, or should have been aware, that federal law required them to pay Plaintiffs and the proposed FLSA Collective members for all hours worked and an overtime premium for all hours worked in excess of forty (40) per workweek.

79. As part of their regular business practice, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective members. This policy and pattern or practice includes, but is not limited to:

- a. Willfully failing to pay their employees, including Plaintiffs and the FLSA

Collective members, for all regular hours they worked off-the-clock in non-overtime workweeks;

- b. Willfully failing to pay their employees, including Plaintiffs and the FLSA Collective members, for all overtime gap time and premium overtime wages for hours they worked off-the-clock in excess of forty (40) hours per workweek; and
- c. Willfully failing to record all of the time that their employees, including Plaintiffs and the FLSA Collective members, worked for Defendants' benefit.

80. Defendants' unlawful conduct has been widespread, repeated, and consistent.

81. A collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiffs under 29 U.S.C. § 216(b). The employees on behalf of whom Plaintiffs bring this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are performing the same or similar job duties; (c) they were or are subject to the same or similar unlawful practices, policy, or plan; and (d) their claims are based upon the same factual and legal theories.

82. The employment relationships between Defendants and every proposed FLSA Collective member are the same and differ only by name, location, and rate of pay. The key issues are the same for every proposed FLSA Collective member, to wit: whether the FLSA Collective members are (1) required to work without compensation due to uncompensated boot-up and shut-down time; and (2) entitled to their regular hourly wage, including a shift differential where applicable, in non-overtime workweeks, overtime gap time in applicable weeks and overtime for hours worked over forty (40) in a week.

83. Plaintiffs estimate the FLSA Collective, including both current and former Hourly Employees over the relevant period, includes hundreds, if not thousands, of members. The precise number should be readily available from a review of Defendants' personnel and payroll records.

84. The FLSA Collective should be notified of this action and allowed to opt-in

pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective members, who were unlawfully deprived of pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which Defendants unlawfully withheld from them.

RULE 23 ILLINOIS STATE LAW CLASS ACTION ALLEGATIONS

85. Plaintiff Harris brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on behalf of:

All current and former hourly call center employees who worked for Defendants at any location in Illinois during the applicable statutory period and required the use of a computer and programs and applications in order to perform their job duties.

(hereinafter referred to as the “Rule 23 Illinois Class”). Plaintiff Harris reserves the right to amend this definition if necessary.

86. The members of the Rule 23 Illinois Class are so numerous that joinder of all Rule 23 Illinois Class members in this case would be impractical. Plaintiff Harris reasonably estimates there are hundreds, if not thousands, of Rule 23 Illinois Class members. Rule 23 Illinois Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

87. There is a well-defined community of interests among Rule 23 Illinois Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Illinois Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether Rule 23 Illinois Class members performed unpaid pre- and post-shift work activities, and if so, whether such work activities are compensable; and
- b. Whether Rule 23 Illinois Class members are owed wages for time spent performing pre- and post-shift work activities, and if so, the appropriate amount thereof.

88. Plaintiff Harris' claims are typical of those of the Rule 23 Illinois Class in that she and all other Rule 23 Illinois Class members suffered damages as a direct and proximate result of the Defendants' common and systemic payroll policies and practices. Plaintiffs' claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Illinois Class members' claims and her legal theories are based on the same legal theories as all other Rule 23 Illinois Class members.

89. Plaintiff Harris will fully and adequately protect the interests of the Rule 23 Illinois Class and Plaintiff retained counsel who are qualified and experienced in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Illinois Class.

90. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Illinois Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

91. This case will be manageable as a Rule 23 class action. Plaintiff Harris and her counsel know of no unusual difficulties in this case and Defendants have advanced networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

92. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

93. Because Defendants have acted and refused to act on grounds that apply generally

to the Rule 23 Illinois Class, and because declaratory relief is appropriate in this case with respect to the Rule 23 Illinois Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

RULE 23 OHIO STATE LAW CLASS ACTION ALLEGATIONS

94. Plaintiffs Qualls, Jackson, and Misner bring this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on behalf of:

All current and former hourly call center employees who worked for Defendants at any location in Ohio during the applicable statutory period and required the use of a computer and programs and applications in order to perform their job duties.

(hereinafter referred to as the “Rule 23 Ohio Class”). Plaintiffs Qualls, Jackson, and Misner reserve the right to amend this definition if necessary.

95. The members of the Rule 23 Ohio Class are so numerous that joinder of all Rule 23 Ohio Class members in this case would be impractical. Plaintiff Qualls, Jackson, and Misner reasonably estimate there are hundreds, if not thousands, of Rule 23 Ohio Class members. Rule 23 Ohio Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

96. There is a well-defined community of interests among Rule 23 Ohio Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Ohio Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether Rule 23 Ohio Class members performed unpaid pre- and post-shift work activities, and if so, whether such work activities are compensable; and
- b. Whether Rule 23 Ohio Class members are owed wages for time spent performing pre- and post-shift work activities, and if so, the appropriate amount thereof.

97. Plaintiff Qualls, Jackson, and Misners’ claims are typical of those of the Rule 23

Ohio Class in that they and all other Rule 23 Ohio Class members suffered damages as a direct and proximate result of the Defendants' common and systemic payroll policies and practices. Plaintiffs' claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Ohio Class members' claims and their legal theories are based on the same legal theories as all other Rule 23 Ohio Class members.

98. Plaintiffs Qualls, Jackson, and Misner will fully and adequately protect the interests of the Rule 23 Ohio Class and Plaintiff retained counsel who are qualified and experienced in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiffs Qualls, Jackson, and Misner nor their counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Ohio Class.

99. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Ohio Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

100. This case will be manageable as a Rule 23 class action. Plaintiff Qualls, Jackson, and Misner and their counsel know of no unusual difficulties in this case and Defendants have advanced networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

101. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

102. Because Defendants have acted and refused to act on grounds that apply generally

to the Rule 23 Ohio Class, and because declaratory relief is appropriate in this case with respect to the Rule 23 Ohio Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

RULE 23 NATIONWIDE CLASS ACTION ALLEGATIONS

103. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) on behalf of herself and on behalf of:

All current and former similarly situated hourly employees who worked for Defendants at any time during the applicable statutory period and required the use of a computer and programs and applications in order to perform their job duties.

(hereinafter referred to as the “Rule 23 Nationwide Class”). Plaintiffs reserve the right to amend this definition if necessary.

104. The members of the Rule 23 Nationwide Class are so numerous that joinder of all Rule 23 Nationwide Class members in this case would be impractical. Plaintiffs reasonably estimate there are thousands of Rule 23 Nationwide Class members. Rule 23 Nationwide Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

105. There is a well-defined community of interests among Rule 23 Nationwide Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Nationwide Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the pre-shift time Rule 23 Nationwide Class members spent on startup and login activities each shift is compensable time under applicable law;
- b. Whether the post-shift time Rule 23 Nationwide Class members spent closing all programs, applications and networks is compensable time under applicable law;
- c. Whether Defendants’ non-payment of wages for all compensable time amounted to a breach of contract; and

- d. Whether Defendants' non-payment of wages for all compensable time resulted in an unjust enrichment to Defendants.

106. Plaintiffs' claims are typical of those of the Rule 23 Nationwide Class in that they and all other Rule 23 Nationwide Class members suffered damages as a direct and proximate result of the Defendants' common and systemic payroll policies and practices. Plaintiffs' claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Nationwide Class members' claims and their legal theories are based on the same legal theories as all other Rule 23 Nationwide Class members.

107. Plaintiffs will fully and adequately protect the interests of the Rule 23 Nationwide Class and Plaintiffs retained counsel who are qualified and experienced in the prosecution of nationwide wage-and-hour class actions. Neither Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Nationwide Class.

108. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Nationwide Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

109. This case will be manageable as a Rule 23 Class action. Plaintiffs and their counsel know of no unusual difficulties in this case and Defendants have advanced networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

110. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose

suit meets the specified criteria to pursue his claim as a class action”).

111. Because Defendants have acted and refused to act on grounds that apply generally to the Rule 23 Nationwide Class and declaratory relief is appropriate in this case with respect to the Rule 23 Nationwide Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

COUNT I
FLSA COLLECTIVE ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. -- FAILURE TO PAY OVERTIME

112. Plaintiffs re-allege and incorporate all previous paragraphs herein.

113. At all times relevant to this action, Defendants were subject to the mandates of the FLSA, 29 U.S.C. § 201, *et seq.*

114. At all times relevant to this action, Defendants were engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

115. At all times relevant to this action, Plaintiffs and the FLSA Collective were “employees” of Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

116. At all times relevant to this action, Defendants jointly employed Plaintiffs and all other members of the FLSA Collective within the meaning of the FLSA.

117. At all times relevant to this action, Defendants “suffered or permitted” Plaintiffs and the FLSA Collective to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

118. Plaintiffs and other FLSA Collective members, by virtue of their job duties and activities actually performed, were all non-exempt employees.

119. Plaintiffs either: (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in the

production of goods for commerce.

120. The FLSA requires an employer to pay employees for all hours worked and the federally mandated overtime premium rate of 1.5 times their regular rate of pay for every hour worked in excess of forty (40) hours per workweek. 29 U.S.C. § 207.

121. The FLSA requires all employers to keep accurate payroll records and time records for at least three (3) years (including all basic timecards and daily starting/stopping times of individual employees). *See* 29 U.S.C. § 211(c); 29 C.F.R. 516.1, *et seq.*

122. At all times relevant to this action, Defendants engaged in an unlawful policy and practice of requiring Plaintiffs and all the proposed FLSA Collective members to perform off-the-clock work, every shift, and failed to pay these employees their regular hourly rate for all hours worked in non-overtime workweeks, overtime gap time in weeks where it occurred and the federally mandated overtime compensation for all work performed over forty (40) hours per week.

123. The off-the-clock work performed every shift by Plaintiffs and the proposed FLSA Collective members was an essential part of their jobs and these activities and the time associated with these activities was significant.

124. In workweeks where Plaintiffs and other FLSA Collective members worked forty (40) hours or more, or close enough to forty (40) hours to have worked over forty (40) hours when considering the uncompensated off-the-clock work time discussed herein, all of this overtime should have been paid at the federally mandated rate of 1.5 times each employee's regular hourly wage, including a shift differential where applicable. 29 U.S.C. § 207. Further, all "gap time" should have been paid at Plaintiffs' and the FLSA Collective's regular hourly rate.

125. Defendants maintained an unlawful time-rounding policy that did not comply with 29 C.F.R. § 785.48(b) because the policy did not "average out so that the employees [we]re fully

compensated for all the time they actually work,” and instead “result[ed], over a period of time, in a failure to compensate the employees properly for all the time they have actually worked.” *Id.*

126. As a result of Defendants’ unlawful policies and practices (including Defendants’ rounding policy), Plaintiffs and the FLSA Collective members were deprived of both straight time and overtime wages in violation of the FLSA.

127. Defendants’ violations of the FLSA were knowing and willful. Defendants could have easily accounted for and properly compensated Plaintiffs and the proposed FLSA Collective members for all work activities, but did not.

128. As a result of the foregoing, Plaintiffs were injured and seek appropriate relief against Defendants including unpaid wages, an additional equal amount in liquidated damages (double damages), reasonable attorneys’ fees and costs, interest, and all other relief just and appropriate under the circumstances.

COUNT II
RULE 23 ILLINOIS CLASS ACTION
VIOLATION OF ILLINOIS MINIMUM WAGE LAW (“IMWL”),
§§ 820 ILCS 105/1, et seq. AND ILLINIOS WAGE PAYMENT AND COLLECTION ACT
(“IWPCA”), §§ ILCS 115/1, et seq.

129. Plaintiff Harris re-alleges and incorporates all previous paragraphs herein.

130. At all times relevant to the action, Defendants were an employer covered by the mandates of the IMWL, and Plaintiff Harris and the Rule 23 Illinois Class were employees entitled to the IMWL’s protections. *See* §§ 820 ILCS 105/3(c)-(d).

131. The IMWL, §§ 820 ILCS 105/1, *et. seq.* requires employers to pay their employees minimum wages and time-and-a-half their regular rate of pay for hours worked in excess of forty (40) per week. *See* §§ 820 ILCS 105/4; 820 ILCS 105/4a.

132. 820 ILCS 105/12(a) provides that an employee who is not paid in accordance with

the Illinois Minimum Wage Law “may recover in a civil action treble the amount of any such underpayments together with costs and such reasonable attorney fees as may be allowed by the Court, and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid.” § 820 ILCS 105/12(a).

133. The IWPCA “applies to all employers and employees in [Illinois], ... but excepting employees of the State or Federal governments.” *See* §§ 820 ILCS 115/1. Plaintiff Harris and the Rule 23 Illinois Class were not employees of the State or Federal government, therefore, they are entitled to the protections of the IWPCA.

134. Under 820 ILCS 115/4, “[a]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned.”

135. Under 820 ILCS 115/5, “every employer shall pay the final compensation of separated employees in full, at the time of separation, if possible, but in no case later than the next regularly scheduled payday for such employee.”

136. As discussed herein, Defendants had a binding and valid contract with Plaintiff Harris and every other Rule 23 Illinois Class member to pay each employee for each hour they worked at a pre-established (contractual) regular hourly rate, plus any overtime pay required by applicable law, in consideration of the work duties Plaintiff Harris and the Rule 23 Illinois Class members performed on Defendants’ behalf.

137. For example, Defendants offered to compensate Plaintiff Harris at a minimum of \$17.51 per hour, plus any overtime pay required by applicable law, if she agreed to perform services for Defendants, as an Hourly Employee. Plaintiff Harris accepted Defendants’ offer and performed under the contract by fulfilling her duties as an Hourly Employee, which included, but

was not limited to, the pre- and post-shift work activities required of her, in reliance on the offer.

138. Evidence of these contracts include Defendants' letters offering employment, pay statements, and other documentary evidence in Defendants' possession. Additionally, Defendants made verbal offers for payment at a specified, above minimum wage for Hourly Employee work, which Plaintiff Harris and the Rule 23 Illinois Class accepted and performed, including the unpaid pre- and post-shift work activities described herein, but Defendants failed to perform by paying Plaintiff and the Rule 23 Illinois Class the promised wages for all work.

139. Upon information and belief, each Rule 23 Illinois Class member, including Plaintiff Harris, was contractually entitled to a minimum hourly rate of approximately \$17.51 per hour within the applicable period, in addition to applicable overtime premiums.

140. Plaintiff Harris and every other Rule 23 Illinois Class member accepted the terms of Defendants' contractual promises contained in Defendants' offer letters, and performed under the contracts by doing their jobs and carrying out the work they performed each shift, which included the unpaid off-the-clock work that was required of them in connection with pre- and post-shift work described herein.

141. Defendants breached their contractual promises by failing to pay Plaintiff Harris and the Rule 23 Illinois Class for all wages (regular and overtime) owed.

142. Plaintiff Harris and the Rule 23 Illinois Class also did not receive accurate wage statements that detailed each hour worked and their rate of pay because Defendants failed to include the compensable time discussed herein in the paystubs provided to Plaintiff and the Rule 23 Illinois Class.

143. Additionally, 820 ILCS 115/14(a) provides that an employee aggrieved by an employer's violation of the Illinois Wage Payment and Collection Act "shall be entitled to recover

through a claim filed with the Department of Labor or in a civil action, but not both, the amount of any such underpayments and damages of 5% of the amount of any such underpayments for each month following the date of payment during which such underpayments remain unpaid. In a civil action, such employee shall also recover costs and all reasonable attorney's fees.”

144. Defendants violated the IMWL and the IWPCA by regularly and repeatedly failing to compensate Plaintiff Harris and the Rule 23 Illinois Class for the time spent on the work activities described in this Complaint.

145. As a result, Plaintiff Harris and the Rule 23 Illinois Class have and will continue to suffer loss of income and other damages. Accordingly, Plaintiff Harris and the Rule 23 Illinois Class are entitled to recover unpaid wages owed, liquidated damages, costs and attorneys' fees, and other appropriate relief under the IMWL at an amount to be proven at trial.

COUNT III
RULE 23 OHIO CLASS ACTION
VIOLATIONS OF THE OHIO MINIMUM FAIR WAGE STANDARDS ACT
(“OMFWSA”), O.R.C. §§ 4111, *et seq.* AND OHIO CONSTITUTION ART. II, § 34a

146. Plaintiffs Qualls, Jackson, and Misner re-allege and incorporate all previous paragraphs herein.

147. At all times relevant to this action, Defendants were subject to the mandates of the OMFWSA, O.R.C. §§ 4111, *et seq.*, and Section 34a of Article II of the Ohio Constitution.

148. At all times relevant to this action, Plaintiffs Qualls, Jackson, and Misner and the Rule 23 Ohio Class worked for and were “employees” of Defendants in Ohio and were therefore covered by Section 34a of Article II of the Ohio Constitution and the OMFWSA.

149. At all times relevant to the action, Defendants were employers covered by Section 34a of Article II of the Ohio Constitution and the overtime and wage mandates of the OMFWSA, O.R.C. § 4111, *et seq.*

150. The OMFWSA provides that employees are entitled to a minimum wage, O.R.C. § 4111.02, as well as “overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, O.R.C. § 4111.03. *See also* Ohio Const. art. II § 34a.

151. At all times relevant to this action, Defendants engaged in an unlawful policy and practice of requiring Plaintiffs Qualls, Jackson, and Misner and the Rule 23 Ohio Class members to perform pre- and post-shift work off-the-clock, every shift, and failed to pay these employees the minimum wage and overtime compensation to which they were entitled under Section 34a of Article II of the Ohio Constitution, Ohio Const. art. II § 34a, and the OMFWSA, O.R.C. §§ 4111.02 and 4111.03, for the work they performed.

152. By failing to pay Plaintiff Qualls, Jackson, and Misner and members of the Rule 23 Ohio Class the minimum wage and overtime compensation to which they were entitled for performing the off-the-clock work described herein, Defendants violated Section 34a of Article II of the Ohio Constitution, Ohio Const. art. II § 34a, and the OMFWSA, O.R.C. §§ 4111.02 and 4111.03.

153. Section 34a of Article II of the Ohio Constitution and § 4111.14(A)(3) of the OMFWSA allow an employee who has not been paid minimum wage for all hours worked to bring a civil action to recover “[double] back wages, damages, and the employee's costs and reasonable attorney's fees.” O.R.C. § 4111.14(A)(3); *see also* Ohio Const. art. II § 34a.

154. Pursuant to O.R.C. § 4111.10(A), an employer who fails to pay its employees for all overtime wages outlined in O.R.C. § 4111.03 “is liable to the employee affected for the full amount of the overtime wage rate, less any amount actually paid to the employee by the employer, and for costs and reasonable attorney's fees.” O.R.C. § 4111.10(A)

155. Additionally, § 4111.08 of the OMFWSA requires employers to maintain and preserve payroll records, including “the amount paid each pay period to each employee, the hours worked each day and each work week by the employee.” O.R.C. § 4111.08.

156. Defendants violated the OMFWSA, O.R.C. § 4111.08, by failing to properly maintain accurate records of all hours Plaintiff Qualls, Jackson, and Misner and the members of the Rule 23 Ohio Class worked each workday and within each workweek.

157. Defendants’ uniform policy and practice, as described above, was willful, intentional, unreasonable, arbitrary, and in bad faith.

158. As a result, the Rule 23 Ohio Class has and will continue to suffer loss of income and other damages. Accordingly, Plaintiff Qualls, Jackson, and Misner and the Rule 23 Ohio Class is entitled to recover double back wages, damages, attorneys’ fees plus costs, interest, and other appropriate relief under Section 34a of Article of the Ohio Constitution and the OMFWSA at an amount to be proven at trial.

COUNT IV
RULE 23 NATIONWIDE CLASS ACTION
BREACH OF CONTRACT

159. Plaintiffs re-allege and incorporate all previous paragraphs herein.

160. At all times relevant to this action, Defendants had a binding and valid contract with Plaintiffs and every other Rule 23 Nationwide Class member to pay each employee for each hour they worked at a pre-established (contractual) regular hourly rate in consideration of the work duties Plaintiffs and the Rule 23 Nationwide Class members performed on behalf of Defendants.

161. Evidence of these contracts include Defendants’ offer letters, pay statements, and other documentary evidence in Defendants’ possession. Additionally, Defendants made verbal offers for payment at a specified, above minimum wage for Hourly Employee work, which

Plaintiffs accepted and performed, but Defendants failed to perform by paying Plaintiffs and the Rule 23 Class the promised wages.

162. For example, Defendants offered to compensate Plaintiff Harris, Qualls, Jackson, and Misner at a minimum of \$17.51, \$17.00, \$20.05, and \$20.65 per hour, respectively, if they agreed to work for Defendants as Hourly Employees. Plaintiffs accepted Defendants' respective offers and performed their duties as Hourly Employees in reliance on the respective offers.

163. Defendants breached their contractual promises by failing to pay Hourly Employees at their fixed, pre-agreed upon hourly rate for *all* of the hours worked. This time includes hours worked before Plaintiffs and the Rule 23 Nationwide Class reached forty (40) hours per week and at a rate that averaged out to **more** than the applicable minimum wage.

164. Upon information and belief, each Rule 23 Nationwide Class member, including Plaintiffs, was contractually entitled to a minimum hourly rate of approximately \$17.00 per hour within the applicable period.

165. Plaintiffs and every other Rule 23 Nationwide Class member accepted the terms of Defendants' contractual promises contained in Defendants' offer letters, and performed under the contracts by doing their jobs and carrying out the work they performed each shift, which included the unpaid off-the-clock work that was required of them in connection with pre- and post-shift work described herein.

166. By not paying Plaintiffs and every other Rule 23 Nationwide Class member the agreed upon hourly wage for all of the work they performed each shift in connection with the off-the-clock work described herein, Defendants systematically breached their contracts with Plaintiffs and each member of the Rule 23 Nationwide Class.

167. Defendants can easily ascertain the amount of damages owed to Plaintiffs and the

Rule 23 Nationwide Class members based on the allegations made in this complaint (specifically the amount of off-the-clock work claimed each shift) in conjunction with Defendants' payroll records, which will provide the number of shifts worked by each Rule 23 Nationwide Class member.

168. Plaintiffs and the Rule 23 Nationwide Class members' remedies under the FLSA are inadequate in this case to the extent Defendants paid them *more* than the federally mandated minimum wage of \$7.25 per hour, but less than forty (40) hours per week (*i.e.*, pure "gap time" claims for non-overtime hours/workweeks).

169. Defendants also breached their duty of good faith and fair dealing by failing to keep track of the time Plaintiffs and other Rule 23 Class members spent performing off-the-clock activities, which is a fundamental part of an "employer's job."

170. As a direct and proximate result of Defendants' contractual breaches, Plaintiffs and the Rule 23 Nationwide Class members were damaged in an amount to be determined at trial.

COUNT V
RULE 23 NATIONWIDE CLASS ACTION
UNJUST ENRICHMENT

171. Plaintiffs re-allege and incorporate all previous paragraphs herein.

172. This Count is pled in the alternative to Count IV, *supra*, pursuant to Fed. R. Civ. P. 8(d)(2)-(3).

173. At all times relevant to this action, Defendants promised Plaintiffs and every other Rule 23 Nationwide Class member a pre-established regular hourly rate in consideration of the work duties Plaintiffs and the Rule 23 Nationwide Class members performed for Defendants' benefit.

174. Plaintiffs and every other Rule 23 Nationwide Class member relied upon

Defendants' promise for the pre-established regular hourly rate and performed by doing their jobs and carrying out their required work duties.

175. Throughout their employment, Plaintiffs and the Rule 23 Nationwide Class worked up to, but sometimes not reaching or in excess of, forty (40) hours in a workweek.

176. By not paying Plaintiffs and every other Rule 23 Nationwide Class member the agreed upon hourly wage for the off-the-clock work they performed each shift, Defendants were unjustly enriched.

177. Plaintiffs and the Rule 23 Nationwide Class members performed off-the-clock work tasks at the request of and without objection by Defendants.

178. Defendants received and accepted the above-referenced off-the-clock work from Plaintiffs and every other Rule 23 Nationwide Class member and enjoyed the benefits derived therefrom.

179. Despite this, Defendants did not pay Plaintiffs and the Rule 23 Nationwide Class members for all of their work, which included that which they performed up to, but not reaching, forty (40) hours per week, and at a rate that averaged out to more than the applicable minimum wage.

180. Upon information and belief, Defendants used the monies owed to Plaintiffs and every other Rule 23 Nationwide Class member to finance their various business ventures or pay their equity owners.

181. Defendants were unjustly enriched by the retention of monies received pursuant to the services Plaintiffs and the Rule 23 Nationwide Class performed for Defendants' benefit, without having compensated Plaintiffs and the Rule 23 Nationwide Class for the same.

182. Plaintiffs and the Rule 23 Nationwide Class suffered detriment due to Defendants'

failure to compensate them for the off-the-clock work described herein, in that Plaintiffs and the Rule 23 Nationwide Class were deprived of the ability to utilize that time, effort and their resources in a profitable manner.

183. As a direct and proximate result of Defendants' actions, Plaintiffs and every other Rule 23 Nationwide Class member suffered damages, including but not limited to, loss of wages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request the following relief:

- a. An Order conditionally certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);
- b. An Order certifying this action as a class action (for the Rule 23 Illinois Class) pursuant to Rule 23(b)(3) with respect to Plaintiff Harris' state law claims under the IMWL and IWPCA (Count II);
- c. An Order certifying this action as a class action (for the Rule 23 Ohio Class) pursuant to Rule 23(b)(3) with respect to Plaintiffs Qualls, Jackson, and Misners' state law claims under the OMFWSA and Ohio Constitution Art. II, § 34a (Count III);
- d. An Order certifying this action as a class action (for the Rule 23 Nationwide Class) pursuant to Rule 23(b)(3) with respect to Plaintiffs' breach of contract and unjust enrichment claims (Counts IV and V);
- e. An Order compelling Defendants to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all FLSA Collective members, and authorizing Plaintiffs to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the Collective members of their right to join and participate in this lawsuit;
- f. An Order designating Plaintiffs as representative of the FLSA Collective, and the Rule 23 Nationwide Class, and undersigned counsel as class counsel for the same;
- g. An Order designating Plaintiff Harris as representative of the Rule 23 Illinois Class, and undersigned counsel as class counsel for the same;

- h. An Order designating Plaintiffs Qualls, Jackson, and Misner as representatives of the Rule 23 Ohio Class, and undersigned counsel as class counsel for the same;
- i. An Order declaring Defendants violated the FLSA;
- j. An Order declaring Defendants' violations of the FLSA were willful;
- k. An Order declaring Defendants violated Illinois wage-and-hour law;
- l. An Order declaring Defendants violated Ohio wage-and-hour law;
- m. An Order declaring Defendants breached their contracts with Plaintiffs and the members of the Rule 23 Nationwide Class (or, in the alternative, that Defendants was unjustly enriched) by failing to pay them for mandatory pre- and post-shift work activities described herein at a pre-established (contractual) regularly hourly rate;
- n. An Order granting judgment in favor of Plaintiffs and against Defendants and awarding Plaintiffs, the FLSA Collective, the Rule 23 Illinois Class, the Rule 23 Ohio Class, and the Rule 23 Nationwide Class the full amount of damages and penalty damages available by law;
- o. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiffs in prosecuting this action as required by statute;
- p. An Order awarding pre- and post-judgment interest to Plaintiffs on these damages; and
- q. An Order awarding such other and further relief as this Court deems appropriate.

Dated: October 12, 2023

Respectfully Submitted,

/s/Matthew L. Turner
Matthew L. Turner
Alana A. Karbal
SOMMERS SCHWARTZ, P.C.
One Towne Square, 17th Floor
Southfield, Michigan 48076
Telephone: 248-355-0300
mturner@sommerspc.com
akarbal@sommerspc.com

*Attorneys for Plaintiffs and the
Putative Collective/Class Members*

JURY DEMAND

Plaintiffs, Keyona Harris, Janee Qualls, Pamala Jackson, and Randall Misner, individually and on behalf of all others similarly situated, by and through their attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

Dated: October 12, 2023

Respectfully Submitted,

/s/ Matthew L. Turner
Matthew L. Turner
Alana A. Karbal
SOMMERS SCHWARTZ, P.C.
One Towne Square, 17th Floor
Southfield, Michigan 48076
Telephone: 248-355-0300
mturner@sommerspc.com
akarbal@sommerspc.com

*Attorneys for Plaintiffs and the
Putative Collective/Class Members*

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2023, I electronically filed the foregoing with the Clerk of the Court using the EFC system, which will send notification of such filing to all counsel of record.

/s/ Matthew L. Turner
Matthew L. Turner

EXHIBIT A



Discover Products Inc 2500 Lake Cook Road Riverwoods, IL 60015 +1 (844) 337-6947

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Keyona Harris	Discover Products Inc	0486C	08/23/2021	09/05/2021	09/10/2021	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	73.50	1,435.21	116.44	234.70	0.00	1,084.07
YTD	162.00	3,050.86	205.78	429.67	0.00	2,415.41

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Imputed income - Domestic Part			0		28.46	OASDI	87.98	186.14
Imputed income - Domestic Part	08/23/2021 - 09/05/2021	0		28.46	56.92	Medicare	20.57	43.53
Overtime			0		13.12	Federal Withholding	63.98	63.98
Regular Pay (Hourly)	08/23/2021 - 09/05/2021	73.5	17.25	1,267.88	2,785.88	State Tax - IL	62.17	136.02
Sick Time with 20% shift	08/23/2021 - 09/05/2021	6.5	20.7	134.55	134.55			
Weekend - Premium	08/23/2021 - 09/05/2021	9.5	3.45	32.78	117.31			
Earnings				1,463.67	3,136.24	Employee Taxes	234.70	429.67

Pre Tax Deductions		
Description	Amount	YTD
401k EE Contribution (Regular) - Before Tax	71.77	71.77
Dental (Retro)		30.75
Dental	30.75	61.50
Vision (Retro)		13.92
Vision	13.92	27.84
Pre Tax Deductions	116.44	205.78

Taxable wages		
Description	Amount	YTD
OASDI - Taxable Wages	1,419.00	3,002.23
Medicare - Taxable Wages	1,419.00	3,002.23
Federal Withholding - Taxable Wages	1,347.23	2,930.46

	Federal	State
Marital Status	Head of Household	
Allowances	0	1
Additional Withholding	0	0

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
	*****	*****		1,084.07 USD

EXHIBIT B



Discover Products Inc 2500 Lake Cook Road Riverwoods, IL 60015 +1 (844) 337-6947

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Randall Misner	Discover Products Inc	5654D	04/17/2023	04/30/2023	05/05/2023	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	67.75	1,521.12	302.92	133.62	18.17	1,066.41
YTD	601.50	18,338.67	2,195.08	1,674.46	137.00	14,332.13

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Fixed Weekend Schedule Premi	04/17/2023 - 04/30/2023	67.75	3.7546	254.39	2,166.35	OASDI	81.62	1,022.83
Holiday OT (worked)			0		318.76	Medicare	19.09	239.21
Internet Stipend			0		240.00	City Tax - CLMBS	32.91	412.42
Night Differential - 10 %	04/17/2023 - 04/30/2023	38.5	1.8773	72.29	542.23			
Night Differential - 15 %	04/17/2023 - 04/30/2023	27.25	2.816	76.74	603.92			
Overtime			0		365.70			
Paid Holiday			0		693.60			
Paid Time Off - Non Exempt	04/17/2023 - 04/30/2023	15.5	18.7731	290.99	1,197.52			
Pay On-Demand Gross Up			0		910.39			
Pay On-Demand Offset	04/17/2023 - 04/30/2023	0	0	-445.18	-910.39			
Details Not Displayed				1,271.89	12,210.59			
Earnings				1,521.12	18,338.67	Employee Taxes	133.62	1,674.46

Pre Tax Deductions			Post Tax Deductions		
Description	Amount	YTD	Description	Amount	YTD
401k EE Contribution (Regular) - Before Tax	98.32	353.68	Legal Assistance Plan	7.38	66.42
Dental	28.80	259.20	Long Term Disability	3.79	7.58
Medical	168.84	1,519.56	Supplemental Life Insurance - Spouse	0.54	4.86
Vision	6.96	62.64	Supplemental Life Insurance	6.46	58.14
Pre Tax Deductions	302.92	2,195.08	Post Tax Deductions	18.17	137.00

Taxable wages		
Description	Amount	YTD
OASDI - Taxable Wages	1,316.52	16,497.27
Medicare - Taxable Wages	1,316.52	16,497.27
Federal Withholding - Taxable Wages	1,218.20	16,143.59

	Federal	State
Marital Status	Married filing jointly (or Qualifying widow(er))	
Allowances	0	0
Additional Withholding	0	0

Payment Information				
Bank	Account Name	Account Number	USD Amount	Amount
		*****		939.41 USD
		*****		127.00 USD