

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED IN CLERK'S OFFICE
U.S.D.C. - Atlanta

DEC 21 2009

JAMES M. HATTEN, Clerk
BY *[Signature]* Deputy Clerk

TIANNA WINGATE,)
DELPHIA HUDSON,)
on behalf of themselves and all those)
similarly situated who consent)
to representation,)

Plaintiffs,)

v.)

THOMPSON INSURANCE)
ENTERPRISES, LLC,)

Defendant.)

CIVIL ACTION NO.

1 09-CV-3579

FAIR LABOR STANDARDS ACT
COLLECTIVE ACTION

CAP

COMPLAINT

I. NATURE OF CLAIM

Plaintiffs, for themselves and on behalf of others similarly situated, assert claims against Defendant under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") for unpaid overtime compensation, liquidated damages, reasonable expenses of litigation and attorney's fees, on the grounds set forth below.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. § 216(b).

2. This Court has venue for all causes of action stated herein pursuant to 28 U.S.C § 1391(b)(2) as some of the acts alleged as a basis for the federal claims took place within this Court's jurisdictional boundaries and because Defendant is located in this District and subject to the jurisdiction of this Court.

III. PARTIES

3. Plaintiff Tianna Wingate is a former employee of Defendant Thompson Insurance Enterprises, LLC (“Thompson”), who has been denied overtime compensation during the period of her employment.

4. Plaintiff was hired by Thompson in 2002 and worked there until her separation on September 14, 2009, during which time she worked in various positions including customer service technician, assistant underwriter, underwriter, supervisor, and underwriting manager. Defendant classified Plaintiff as an exempt, salaried employee during the FLSA liability period.

5. Plaintiff Delphia Hudson is a former employee of Thompson, who has been denied overtime compensation during the period of her employment.

6. Plaintiff was hired by Thompson in 2006 and worked there until her separation on September 22, 2009, during which time she worked in various positions including renewal underwriter and service team underwriter. Defendant

classified Plaintiff as an exempt, salaried employee during the FLSA liability period.

7. The named Plaintiffs bring this action as a collective action on behalf of themselves and all other similarly situated current or former employees who consent to representation, pursuant to 29 U.S.C. § 216(b). Each of the named Plaintiffs consents to participate in this suit and to represent the interests of the putative class. These consents are incorporated herein as Exhibits 1 and 2. The consents of other similarly situated individuals to participate in this suit may be filed with the Court from time to time as they “opt-in” to this litigation, pursuant to 29 U.S.C. § 216(b).

8. Defendant is a corporation incorporated under the laws of the State of Delaware, and is subject to personal service upon its registered agent, Corporation Process Company, 180 Cherokee Street, N.E., Marietta, Georgia 30060.

9. Defendant is an employer within the meaning of the FLSA, 42 U.S.C. § 203(d) and is not exempt under the Act.

IV. FACTUAL ALLEGATIONS

10. Upon information and belief, Thompson employed over 100 employees who worked in various positions including, but not limited to, customer service

technicians, customers service representatives, assistant underwriters, underwriting technicians, underwriters, renewal underwriters, service team underwriters, and new business underwriters during the past three years in its Kennesaw, Georgia; Minneapolis, Minnesota; Kansas City, Kansas; and Denver, Colorado locations.

11. Plaintiffs and the members of the class they seek to represent (“the class”) were employees engaged in interstate commerce expressly covered by the protections of the FLSA, 29 U.S.C. § 207(a).

12. At various times, Plaintiffs and all other similarly situated current or former employees who are members of the class who hereafter consent to join this collective action were nonexempt employees within the meaning of the FLSA, and worked in the positions listed in paragraph 10, and in other positions.

13. Plaintiffs received weekly compensation based on thirty-seven and a half (37.5) hour work-week.

14. Thompson misclassified Plaintiffs as exempt employees for purposes of the FLSA. Defendant required Plaintiffs to work well in excess of forty hours per week every week.

15. During the relevant periods of their employment, the Plaintiffs’ primary duties involved order taking, customer service, and input into standardized

computer programs. Their duties conformed to a very specific standard of conduct that did not involve the exercise of discretion and independent judgment.

16. The Plaintiffs' primary duties did not involve professional, administrative or managerial duties.

17. Throughout the relevant period of this lawsuit, some employees who worked for Thompson were categorized as "managers or supervisors." The duties were not actually managerial or supervisory. Their primary duties conformed to a very specific standard of conduct that did not involve the exercise of discretion and independent judgment, or significant managerial or supervisor duties. The primary duties of such employees did not involve professional, administrative or managerial duties.

18. During the relevant period of this lawsuit, Plaintiffs were non-exempt employees and worked over forty (40) hours per week, working nights, weekends, and holidays. The overtime worked was often in excess of 25 hours a week.

19. Plaintiffs and other class members frequently inquired of Defendant whether they were entitled to overtime compensation. Plaintiffs were told that they were ineligible for overtime. Co-workers offered to forego compensation so that additional employees could be hired to relieve Plaintiffs and class members of the

burden of the great amount of overtime that they worked.

20. During periods of Plaintiffs' employment Thompson knowingly, intentionally and willfully violated the FLSA by failing to pay Plaintiffs the overtime compensation to which they were entitled.

21. For more than three years from the date of this lawsuit, Defendant knowingly, intentionally and willfully violated the FLSA by failing to pay persons similarly situated to Plaintiffs the overtime compensation to which they were entitled.

PLAINTIFF TIANNA WINGATE

22. Plaintiff Tianna Wingate during this period at issue worked approximately twenty-five (25) to thirty (30) per week of overtime, for which she was not compensated.

PLAINTIFF DELPHIA HUDSON

23. Plaintiff Delphia Hudson during the period worked approximately twenty-five (25) to thirty (30) hours per week of overtime, for which she was not compensated.

CLASS ALLEGATIONS

24. Plaintiffs reallege the preceding paragraphs above and incorporate them by

reference as if fully set forth herein.

25. Plaintiffs bring this action under 29 U.S.C. § 201 et seq., on their own behalf and on behalf a class of other employees similarly situated pursuant to 29 U.S.C. § 216(b).

26. Plaintiffs seek to represent a class including all current and former employees of Thompson who, during the last three years, worked in the positions listed in paragraph 11, other positions involving nonexempt work, or performed any other nonexempt functions similar to those that Plaintiffs performed, whose rights were violated because of Thompson's knowing, intentional and willful failure to pay them overtime compensation to which they were entitled, in violation of the FLSA.

27. Plaintiffs are appropriate representatives for current or former employees of Defendant who, for three years prior to the date of this lawsuit, worked as in the positions listed in paragraph 10 and/or any other nonexempt functions similar to those that Plaintiffs performed whose rights were violated because of Thompson's knowing, intentional and willful failure to pay them the regular and overtime compensation to which they were entitled, in violation of the FLSA.

28. The potential class of plaintiffs consists of all current and former employees

of Thompson in any location who were employed at any time during the applicable limitations period or during such period as the Court may designate pursuant to equitable tolling of the limitations period and who worked in the positions listed in paragraph 10 and/or any other nonexempt functions similar to those that Plaintiffs performed, whose rights were violated because of Defendant's knowing, intentional and willful failure to pay them the regular and overtime compensation to which they were entitled, in violation of the FLSA.

29. Plaintiffs and the above-described individuals of the class are "similarly-situated employees" within the meaning of 29 U.S.C. § 216(b) of the FLSA.

30. Thompson is in possession of the names, addresses, and employment records of those persons similarly situated to Plaintiffs whom Plaintiffs seek to represent.

31. Pursuant to 29 U.S.C. § 216(b) of the FLSA, those individuals are entitled to court-administered notice of this lawsuit in order that they may elect to join Plaintiffs in prosecution of this of this action.

32. The class of current and former employees of Thompson as described above is so numerous that joinder of all members is impracticable.

33. During the applicable periods of limitations prior to the commencement of

this action, Thompson has employed over one hundred employees who worked in its offices.

34. There are questions of the law and fact common to the class.

35. The employment policies, practices, and agreements of Defendant raise questions of law and fact common to the class, including, but not limited to:

(A) whether Defendant engaged in a pattern or practice of failing to provide true and correct wage statements itemizing all wages earned and all deductions from wages for Plaintiffs and the class;

(B) whether Defendant engaged in a pattern or practice of permitting Plaintiffs and the class to work without payment for all time worked at the agreed rates or the applicable federal and state overtime rates; and

(C) whether Thompson knowingly, intentionally and willfully failed to pay Plaintiffs and the class at the agreed wage or the applicable overtime rates for the work Thompson permitted them to perform.

36. The claims of Plaintiffs as named representatives are typical to the claims of the class.

37. Plaintiffs' claims encompass the challenged practices and course of conduct of Thompson.

38. The legal issues raised in this action apply equally to Plaintiffs and the class members.

39. Plaintiffs as named representatives will fairly and adequately protect the interests of the class.

40. The prosecution of separate actions by individual members of the class would create a risk of inconsistencies or varying adjudication with respect to individual members of the class which would establish incompatible standards of conduct for Thompson.

41. The prosecution of separate actions by individual members of the class would create a risk of adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair their ability to protect their interests.

42. Defendant has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

43. Questions of law and fact common to the members of the class predominate over any questions affecting only individual members and a class action is superior

to other available methods for the fair and efficient adjudication of this controversy.

V. CLAIM.

Violation of Fair Labor Standards Act-Failure to Pay Overtime Compensation

44. Plaintiffs reallege the preceding paragraphs above and incorporate them by reference as if fully set forth herein.

45. Plaintiffs worked significantly more than forty hours in a week on a regular basis, and did not receive overtime compensation from Defendant in violation of the FLSA.

46. By engaging in the above-described conduct, Thompson knowingly, intentionally and willfully violated the FLSA with respect to Plaintiffs and those employees who are similarly situated to Plaintiffs. Defendant did not have a good faith basis for believing that its failure to pay overtime compensation to Plaintiffs was in compliance with the FLSA.

47. As a direct and proximate result of the above-described conduct, Plaintiffs and those employees who are similarly situated to Plaintiffs have lost wages.

48. Said violation gives rise to a claim for relief under the FLSA for Plaintiffs and those employees who are similarly situated for unpaid overtime compensation for three years prior to the filing of this Complaint, liquidated damages in an

amount equal to the unpaid compensation, declaratory and injunctive relief and reasonable attorneys fees and expenses of litigation, pursuant to 29 U.S.C. § 216.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court do the following:


- a. Certify the class as a collective action under 29 U.S.C. § 216 and direct notice to all eligible class members, including individual notice to all members who can be identified by reasonable effort on the part of Defendant;
- b. Require Defendant to pay Plaintiffs and all eligible members of the class, who elect to participate in this action by filing proper written notice with the Court, damages for lost overtime compensation calculated at one and one-half times the proper normal rate that Plaintiffs and such class members would have received but for unlawful conduct going back three (3) years from the date this Complaint was filed;
- c. Require Defendant to pay each of the Plaintiffs and all eligible members of the class who have elected to opt-in liquidated damages as provided for under the Fair Labor Standards Act;

- d. Issue a declaratory judgment that Thompson has engaged in unlawful employment practices in violation of the FLSA with respect to Plaintiffs and all similarly situated members of the class they seek to represent;
- e. Award Plaintiffs their reasonable attorneys' fees and costs and expenses of suit;
- f. Permit a trial by jury on all issues so triable; and
- g. Provide such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims for which they have a right to a jury.

This 21st day of December, 2009.


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COUNSEL FOR PLAINTIFFS
and all those similarly situated who consent
to representation

**IN THE UNITED STATES DISTRICT COURT
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DELPHIA HUDSON,)
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ENTERPRISES, LLC,)

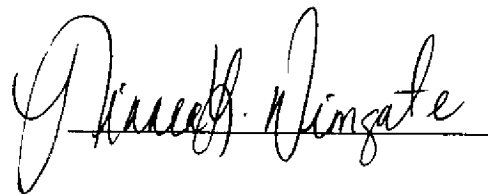
Defendant.)

CIVIL ACTION NO.

FAIR LABOR STANDARDS ACT
COLLECTIVE ACTION

**CONSENT TO SERVE AS A PLAINTIFF REPRESENTATIVE
UNDER THE FAIR LABOR STANDARDS ACT**

I, TIANNA WINGATE, a former employee of Thompson Insurance Enterprises, LLC, hereby consent pursuant to 29 U.S.C. § 216(b) to serve as Plaintiff and Class Representative in the above-referenced collective action and to represent the interests of the class members with respect to all cognizable claims for overtime compensation and any other benefit available under the Fair Labor Standards Act and other applicable laws.

 (Signature)

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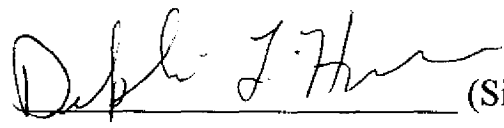
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**CONSENT TO SERVE AS A PLAINTIFF REPRESENTATIVE
UNDER THE FAIR LABOR STANDARDS ACT**

I, DELPHIA HUDSON, a former employee of Thompson Insurance Enterprises, LLC, hereby consent pursuant to 29 U.S.C. § 216(b) to serve as Plaintiff and Class Representative in the above-referenced collective action and to represent the interests of the class members with respect to all cognizable claims for overtime compensation and any other benefit available under the Fair Labor Standards Act and other applicable laws.

 (Signature)