

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

JOEL HUGHES, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

NVR, INC. and NVR MORTGAGE FINANCE,
INC.,

Defendants.

COLLECTIVE ACTION
COMPLAINT

Case No. _____

COLLECTIVE ACTION COMPLAINT

Plaintiff Joel Hughes (“Plaintiff”), along with other similarly situated employees who may join this action, by their attorneys, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

INTRODUCTION

1. Plaintiff brings this lawsuit as a collective action pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), on behalf of himself and all other persons similarly situated against NVR, Inc. and NVR Mortgage Finance, Inc., (collectively “Defendants”) for violations of the FLSA.

2. As more fully described below, during the relevant time periods, Defendants willfully violated the FLSA by failing to pay loan processors, and employees in similar positions (collectively, “LPs”), including Plaintiff, for all of their overtime hours worked.

THE PARTIES

Plaintiff

3. Plaintiff is a resident of Greenville, South Carolina.

4. Plaintiff worked for Defendants as an LP from approximately May 2019 to August 2020 in Greenville, SC.

5. At all times relevant, Plaintiff was an “employee” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

6. Plaintiff’s written consent to join this action is attached as Exhibit A.

Defendants

7. NVR, Inc. is a Virginia corporation with its principal place of business at 11700 Plaza America Dr. Ste. 500, Reston, VA, 20190. NVR Mortgage Finance, Inc. shares the same corporate headquarters as NVR. Inc.

8. According to its website, “NVR, Inc. is one of America’s leading homebuilders. It serves homebuyers in 33 metropolitan areas in fourteen states, including, Maryland, New York, North Carolina, Virginia, Ohio, Indiana, Illinois, South Carolina, Pennsylvania, Tennessee, Florida, Delaware, West Virginia and New Jersey, as well as Washington, D.C.” <http://www.nvrinc.com/> (last visited Sept. 2, 2021)

9. “NVR, Inc. operates in two business segments: homebuilding and mortgage banking.” <http://www.nvrinc.com/> (last visited Sept. 2, 2021).

10. NVR Mortgage Finance, Inc. “operates branches in the metropolitan areas in which NVR has homebuilding operations. NVR Mortgage’s primary focus is to serve the needs of NVR homebuyers.” *Id.*

11. Throughout the relevant period, Defendants employed Plaintiff and the proposed FLSA Collective within the meaning of the FLSA. Defendants have substantial control over Plaintiff and the proposed FLSA Collective's working conditions and the unlawful policies and practices alleged herein.

12. NVR, Inc.'s website reflects that "[a]s a corporate entity, NVR, Inc. provides various support functions for each of its sub-entities. These include sales and marketing support, vital human resource specialists, and an advanced information technology department, which provide a network of resources utilized by NVR, Inc. holdings." <http://www.nvrinc.com/> (last visited Sept. 2, 2021)

13. NVR, Inc.'s role is more than that of simply a corporate parent company. It plays an active role in the employment and working conditions of LPs.

14. For example, NVR, Inc. issues LPs their offer letters of employment, describing the terms and conditions under which they are employed. Those letters provide how they will be compensated and classified for overtime eligibility purposes, describe the benefits they will receive, explain confidentiality and background check requirements, and mandate they will be bound by all company policies and procedures. The offer letters also state that their "employment with NVR, Inc." is at-will.

15. NVR, Inc.'s human resources department originates and distributes overtime and wage payment policies and procedures applicable to LPs and was responsible for answering questions about those policies and procedures.

16. NVR, Inc.'s policies give directives to LPs on reporting hours worked, and required that employees report time worked to NVR, Inc.'s payroll department.

17. NVR, Inc.'s policies mandate that all non-exempt employees, such as LPs, obtain preapproval from their NVR Mortgage Finance Inc. manager for overtime hours and warn that failure to secure approval can result in disciplinary action.

18. NVR, Inc. held meetings with LPs where it discussed expectations for production goals. Defendants' management team at NVR Mortgage Finance Inc. was also responsible for ensuring LPs were meeting or exceeding performance expectations.

19. Defendants both maintain LPs' employment records.

20. NVR, Inc. and NVR Mortgage Finance Inc., jointly employ LPs in each of the states in which Defendants operate.

21. At all times relevant, Defendants were and still are "employers" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

22. Upon information and belief, these Defendants operate in concert and together in a common enterprise and through related activities so that the actions of one may be imputed to the other and/or so that they operate as joint employers within the meaning of the FLSA and are jointly and severally liable for the claims asserted herein.

23. At all times relevant, each Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA. 29 U.S.C. § 203(r).

24. At all times relevant, each Defendant has been an enterprise engaged in commerce or the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA because each Defendant has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have moved in or were produced for commerce by any person, 29 U.S.C. § 203(s)(1).

25. Each Defendant has had and has a gross volume of sales made or business done of not less than \$500,000.00.

26. At all times relevant, Plaintiff and the proposed FLSA Collective were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–207.

27. Defendants have issued paychecks to Plaintiff and the proposed FLSA Collective during their employment.

28. Defendants have directed the work of Plaintiff and the proposed FLSA Collective and benefited from work performed that they suffered or permitted from them.

29. Throughout the relevant period, Defendants employed Plaintiff and the proposed FLSA Collective within the meaning of the FLSA. Defendants have substantial control over Plaintiff and the proposed FLSA Collective’s working conditions, and the unlawful policies and practices alleged herein.

30. Defendants directly or indirectly acted in the interest of an employer towards Plaintiff and the proposed FLSA Collective at all material times, including without limitation directly or indirectly controlling their terms of employment.

JURISDICTION AND VENUE

31. This Court has general personal jurisdiction over Defendants because they are headquartered in this District.

32. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332, and 1367, and 29 U.S.C. § 201, *et. seq.*

33. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

34. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. § 1391(b)(2) because both Defendants are headquartered in this District, and a substantial part of the events or omissions giving rise to the claims occurred in this District.

PROPOSED FLSA COLLECTIVE

35. The proposed FLSA Collective is defined as follows:

All LPs and employees in similar positions who are or were employed by NVR, Inc. and/or NVR Mortgage Finance, Inc. anywhere in the United States (other than Florida) at any time three years prior to the filing of this Complaint through the present and beyond.

COMMON FACTUAL ALLEGATIONS

36. Plaintiff and the proposed FLSA Collective primarily performed their work from inside Defendants' locations, as well as remotely from home.

37. Plaintiff and the proposed FLSA Collective supported the sale of home financing to Defendants' customers.

38. In doing so, Plaintiff and the proposed FLSA Collective spoke with customers to collect information required by Defendants for a loan, collected required documents, and then submitted the loan paperwork to Defendants' underwriting department for approval.

39. This work of selling loans, and the support of same, was integral to Defendants' business of providing financing in order to sell homes.

40. Defendants subjected Plaintiff and the proposed FLSA Collective to performance metrics they required them to meet.

41. Upon information and belief, during the relevant three-year statutory period, Defendants classified Plaintiff and the proposed FLSA Collective as non-exempt overtime eligible.

42. Defendants required Plaintiff and the proposed FLSA Collective to work overtime hours (hours over 40 in a workweek) but did not pay them for all hours worked.

43. Defendants' management team instructed Plaintiff and the proposed FLSA Collective to record only 40 hours per week on their timesheets, even when they worked more.

44. Defendants engaged in a willful, knowing, and/or reckless disregard of the FLSA's requirements.

45. Defendants instructed Plaintiff and the proposed FLSA Collective that they must seek pre-approval to work overtime hours. This instruction is given not only verbally by Defendants' management team, but also by NVR, Inc.'s human resources department in emails and policies it issued to Plaintiff and the proposed FLSA Collective.

46. Pre-approval was not granted freely; Defendants' management team discouraged Plaintiff and the proposed FLSA Collective from asking for pre-approval for overtime work.

47. Even so, Defendants subjected Plaintiff and the proposed FLSA Collective to performance demands and metrics that routinely required overtime hours to meet. These demands were conveyed to Plaintiff and the proposed FLSA Collective by Defendants' management team, and by NVR, Inc. officials.

48. These performance demands resulted in Plaintiff and the proposed FLSA Collective regularly working off-the-clock overtime hours, without compensation, to timely and adequately complete their job duties and meet Defendants' expectations.

49. Even in the limited weeks in which Defendants' management team pre-approved recording overtime hours worked, the number of overtime hours approved was often inadequate to cover all the overtime hours that Defendants required Plaintiff and the proposed FLSA

Collective to work. Thus, even during those limited weeks in which Defendants granted the recording of pre-approved overtime hours worked, Plaintiff and the proposed FLSA Collective routinely worked additional uncompensated overtime hours.

50. Plaintiff and the proposed FLSA Collective also worked through uncompensated meal breaks to meet the demands of the job.

51. By way of example, during the week September 16, 2019, Plaintiff worked approximately 45 hours, but was not paid an overtime rate for all those hours they worked over 40.

52. Defendants maintain time and pay records for Plaintiff and the proposed FLSA Collective.

53. However, those records do not accurately reflect all hours worked by Plaintiff and the proposed FLSA Collective, due to Defendants' policy and practice of suffering and/or permitting Plaintiff and the proposed FLSA Collective to underreport the actual hours they worked, resulting in unpaid overtime.

54. While Defendants may have occasionally paid Plaintiff and the proposed FLSA Collective for *some* overtime hours worked, Defendants failed to pay them for *all* of their overtime hours worked.

55. Upon information and belief, Defendants did not pay Plaintiff and the proposed FLSA Collective for certain overtime hours worked because of, for instance, a corporate policy to limit expenditures and preserve profits.

56. Defendants are aware or should have been aware that Plaintiff and the proposed FLSA Collective worked overtime hours for which they were not paid. Regardless, Defendants failed and continue to fail to pay them all of their overtime compensation owed.

57. For instance, Plaintiff frequently corresponded with Plaintiff's supervisors, including Matthew Placito and Alexis Williams, on work related matters via phone, text, ad email outside of "regular" business hours, while off-the-clock and without compensation.

58. Other LPs complained to Defendants about unpaid overtime hours worked as well.

59. In addition, NVR, Inc.'s CEO, Paul Saville, received at least one complaint about employees not being allowed to record the overtime hours worked.

60. NVR, Inc.'s human resources department had a responsibility for addressing overtime complaints.

61. NVR, Inc. manages the IT systems and records, which will be important in determining off-the-clock work hours by Plaintiff and the proposed FLSA Collective.

FLSA COLLECTIVE ACTION ALLEGATIONS

62. Plaintiff incorporates by reference all preceding allegations.

63. Plaintiff brings this action pursuant to FLSA, 29 U.S.C. § 216(b), on behalf of himself and the proposed FLSA Collective.

64. Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the proposed FLSA Collective.

65. Defendants are aware or should have been aware that federal law required them to pay Plaintiff and the proposed FLSA Collective overtime pay for all hours worked in excess of 40 per workweek.

66. Plaintiff and the FLSA Collective all were subject to the same employment policies, procedures, and practices of Defendants' failure to pay overtime compensation for overtime hours worked.

67. Defendants failed to make an adequate inquiry into whether Plaintiff and the proposed FLSA Collective were being paid for all hours worked.

68. Upon information and belief, Defendants did not conduct any audit, analysis, or study to ensure that they compensated Plaintiff and the FLSA Collective for all of their hours worked.

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

COUNT 1
FLSA– Unpaid Overtime Wages
(Brought on Behalf of Plaintiff and the Proposed FLSA Collective)

70. Plaintiff incorporates by reference all preceding allegations.

71. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as described in this Collective Action Complaint.

72. Plaintiff consented in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b). Other opt-in Plaintiffs have also consented in writing to join this action, and their consent forms are attached as Exhibit B. As this case proceeds, it is likely that other individuals will file consent forms and join as “opt-in” plaintiffs.

73. At all relevant times, Plaintiff and the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

74. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

75. Defendants are employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

76. At all times relevant, Plaintiff and the proposed FLSA Collective were employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

77. Defendants have failed to pay Plaintiff and the proposed FLSA Collective overtime wages to which they were entitled under the FLSA.

78. Defendants' violations of the FLSA, as described in this Collective Action Complaint, have been willful and intentional.

79. Defendants failed to make a good faith effort to comply with the FLSA with respect to their compensation of Plaintiff and the proposed FLSA Collective.

80. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

81. As a result of Defendants' willful violations of the FLSA, Plaintiff and the proposed FLSA Collective have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201, *et seq.*

82. As a result of Defendants' unlawful acts, Plaintiff and the proposed FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

DEMAND FOR TRIAL BY JURY

Plaintiff and the proposed FLSA Collective demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the proposed FLSA Collective seek the following relief:

- A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all members of the proposed FLSA Collective. Such notice should inform them that this civil action has been filed, the nature of the action, and of their right to join this lawsuit, among other things;
- B. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;
- C. Pre-judgment interest and post-judgment interest as provided by law;
- D. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;
- E. Attorneys' fees and costs of the action;
- F. An appropriate service award for Plaintiff's efforts and service to the proposed FLSA Collective; and
- G. Such other injunctive and equitable relief as this Court shall deem just and proper.

Dated: September 3, 2021

Respectfully submitted,

By: /s/ Zev H. Antell
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