

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

DANIYA GULLAGE , individually and)	
on behalf of all others similarly situated,)	
)	
Plaintiff,)	Civ. Case No.:
)	
v.)	COMPLAINT-- COLLECTIVE ACTION
)	
COGNOSANTE, LLC)	JURY TRIAL DEMANDED
)	
Defendant.)	

COLLECTIVE ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, DANIYA GULLAGE (“Plaintiff”), by and through the undersigned attorneys, brings this Complaint against Defendant, COGNOSANTE, LLC (“Defendant”), individually and on behalf of all similarly situated individuals and states as follows:

INTRODUCTION

1. This is a collective action brought by Plaintiff on her own behalf and on behalf of all similarly situated current and/or former employees of Defendant to recover for Defendant’s willful violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and other appropriate rules, regulations, statutes, and ordinances.

2. Defendant employs individuals to provide “healthcare consulting, technology solutions, and business process outsourcing services” to clients located throughout “48 states, the District of Columbia, and Puerto Rico”.¹ Defendant’s headquarters is located in Virginia, but it has offices in Tennessee, Maryland, North Dakota, and Arizona.²

¹ <http://www.cognosante.com/content/about> (last visited August 1, 2016).

² <http://www.cognosante.com/> (last visited August 1, 2016) (locations as shown on “Our Experience” map).

3. Defendant employed Plaintiff and other similarly situated current and/or former employees to work full-time, scheduling Plaintiff and other similarly situated for forty (40) hours per week. However, Plaintiff and those similarly situated were subject to Defendant's policy and practice of employing them to work pre-shift and post-shift off-the-clock time without compensation. This policy resulted in Plaintiff and other similarly situated former and/or current employees not being paid for all time worked and for all of their overtime in violation of the FLSA.

4. 29 C.F.R. § 553.221 provides that:

Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

5. 29 C.F.R. § 790.8 provides that "[a]mong activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance."

6. Defendant knew or could have easily determined its employees' pre-shift and post-shift work performed, and Defendant could have properly compensated Plaintiff and other similarly situated former and/or current employees, but did not.

7. The U.S. Department of Labor specifically condemns an employer's non-payment of an employee's necessary preliminary and postliminary 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." See DOL Fact Sheet #64, at 2, attached hereto as Exhibit A. 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.* at 2.

8. Plaintiff brings this action on behalf of herself, and all other similarly situated hourly employees of Defendants, to recover unpaid wages and overtime, liquidated damages, penalties, fees and costs, pre- and post-judgment interest, and any other remedies to which they may be entitled.

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331 because Plaintiff's claims raise a federal question under 29 U.S.C. §§ 201, *et seq.*

10. This Court also has subject-matter jurisdiction over Plaintiff's Collective Action 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."

11. Upon information and belief, Defendant's annual sales exceed \$500,000 and it has more than two employees, so the FLSA applies in this case on an enterprise basis. Defendant's employees engage in interstate commerce, and therefore, they are also covered by the FLSA on an individual basis.

12. This Court has personal jurisdiction over Defendant because it does business within the State of Tennessee and is registered with the Tennessee Secretary of State.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the actions and omissions giving rise to the claims pled in this Complaint substantially occurred in this District.

PARTIES

14. Plaintiff, DANIYA GULLAGE, is an individual who resides in the County of Davidson, City of Nashville, Tennessee. Plaintiff was employed by Defendant as an hourly

employee who worked for Defendant from August 2015 to June 2016 as a Sr. Clerk2/Case Analyst II. Plaintiff brings this action on behalf of herself and all other similarly situated individuals pursuant to 29 U.S.C. § 216(b), and her Consent to Sue is attached hereto as Exhibit B.

15. Plaintiff and the other similarly situated individuals were, or are, employed by Defendant as Case Analysts or other job titles performing similar job duties.

16. Defendant Cognosante, LLC is a limited liability company formed in Delaware which, through its employees, provides “healthcare consulting, technology solutions, and business process outsourcing services” to clients located throughout “48 states, the District of Columbia, and Puerto Rico”.³ Defendant’s headquarters is located in Virginia, but it has offices in Tennessee, Maryland, North Dakota, and Arizona.⁴

17. Defendant’s headquarters is in the State of Virginia, with its principal address at 8200 Greensboro Drive, Suite 1200, McLean, Virginia 22102-4923.

18. Defendant is registered to do business within the State of Tennessee and is registered with the Tennessee Secretary of State. Defendant can be served through its Registered Agent, Corporation Service Company, located at 2908 Poston Avenue, Nashville, Tennessee, 37203-1312.

GENERAL ALLEGATIONS

19. Plaintiff was employed by Defendant as an hourly employee who worked for Defendant from August 2015 to June 2016 as a Sr. Clerk2/Case Analyst II. Plaintiff’s initial hourly rate was \$16.40 and Plaintiff’s rate remained the same throughout her employment with Defendant.

³ <http://www.cognosante.com/content/about> (last visited August 1, 2016).

⁴ <http://www.cognosante.com/> (last visited August 1, 2016) (locations as shown on “Our Experience” map).

20. Plaintiff's primary job duties as a Case Analyst included, but was not limited to, identifying and solving consumer information and processing problems, reviewing documents, and applying triage to help resolve transactions.

21. Throughout Plaintiff's employment with Defendant, Plaintiff regularly worked in excess of worked forty (40) hours per week, however, Plaintiff's paystubs only showed record of Plaintiff working forty (40) hours. *See, e.g.*, Plaintiff's paystub for the pay periods 09/12/2015 through 09/25/2015, 12/05/2015 through 12/18/2015, and 05/07/2016 through 05/20/2016, attached hereto as Exhibit C. Additionally, on occasion throughout Plaintiff's employment with Defendant, Plaintiff was scheduled and approved for hours in excess of forty (40) hours per week – only on these weeks would the Plaintiff be paid for hours in excess of forty (40). *See, e.g.*, Plaintiff's paystub for the pay periods 02/13/2016 through 02/26/2016 and 02/27/2016 through 03/11/2016, attached hereto as Exhibit C.

22. Whether Plaintiff's scheduled and recognized hours were forty (40), or the occasional week when Plaintiff's scheduled and recognized hours were in excess of forty (40), Plaintiff was regularly required to work a substantial amount of time off-the-clock as part of her job as a Case Analyst. The off-the-clock tasks varied, and Plaintiff was never compensated for this time.

23. 29 C.F.R. § 553.221 provides that:

Compensable hours of work generally include all of the time during which an employee is on duty on the employer's premises or at a prescribed workplace, as well as all other time during which the employee is suffered or permitted to work for the employer. Such time includes all pre-shift and post-shift activities which are an integral part of the employee's principal activity or which are closely related to the performance of the principal activity, such as attending roll call, writing up and completing tickets or reports, and washing and re-racking fire hoses.

24. 29 C.F.R. § 790.8 provides that “[a]mong activities included as an integral part of a principal activity are those closely related activities which are indispensable to its performance.”

A. *Pre-Shift Work*

25. Plaintiff was tasked with providing Defendant’s various clients with healthcare consulting, technology solutions, and business process outsourcing services by use of Defendant’s computers and the programs accessible from Defendant’s computers.

26. Plaintiff’s primary job duties as a Case Analyst included, but was not limited to, identifying and solving consumer information and processing problems, reviewing documents, and applying triage to help resolve transactions.

27. Approximately on and following February 1, 2016, Defendant implemented a new clock-in/clock-out program called Pipkins. With the implementation of Pipkins, Defendant also began requiring all employees to allot time to come into the office before their scheduled shifts in order to get through a mandatory security checkpoint, lock their personal belongings away in lockers because they were no longer allowed to have any non-work related items at their desks, boot up their computers, launch and log into all necessary programs, and clock-in to Pipkins on, or before, their scheduled shifts. This pre-shift procedure would take approximately ten (10) minutes per day.

28. In order for Plaintiff to perform her job, the pre-shift procedure of arriving to Defendant’s facility, getting through security, booting up Defendant’s computer, launching and logging into all of Defendant’s necessary programs, and clocking-in to Defendant’s Pipkins program on, or before, the start time of Plaintiff’s scheduled shift was integral and indispensable to Defendant’s business and integral and indispensable to the performance of Case Analysts’ principal job duties.

29. At all times relevant to this Complaint, approximately on and following February 1, 2016, Defendant suffered or permitted Plaintiff and other similarly situated former and/or current employees to routinely perform off-the-clock pre-shift work by not recognizing its employees as “clocked-in” until *after* the pre-shift procedure was complete. Defendant refused to recognize pre-shift time as compensable and required the Plaintiff and other similarly situated former and/or current employees to begin calculating their compensable daily hours (to be inputted by Plaintiff into Defendant’s Deltek timekeeping system) at the scheduled start-time of each respective employee’s shift.

30. Defendant willfully engaged in the policy and practice of calculating Plaintiff and other similarly situated former and/or current employees’ compensable hours beginning at the technical start time of their scheduled shifts despite having record of its employees *actual* start times via Defendant’s front door badge swipes and Defendant’s security checkpoint badge swipes within the building.

31. Defendant knew or should have known that their employees are required to be paid for all compensable time throughout the workweek. Further, Defendant knew or should have known that its employee do, in fact, perform compensable pre-shift work as 29 C.F.R. § 553.221 and C.F.R. § 790.8 provides.

32. Despite this, Defendant does not compensate its employees for their pre-shift compensable time in any amount.

33. Defendant knew or should have known that, under the FLSA, Plaintiff should have been paid overtime “at a rate not less than one and one-half times the regular rate” at which she was employed for all compensable pre-shift time for workweeks in excess of forty (40) hours. 29 U.S.C. § 207(a)(1).

34. Despite this, Defendant did not pay overtime at one and one-half times the regular rate for Plaintiff's pre-shift compensable time.

35. In reckless disregard of the FLSA, on and following approximately February 1, 2016, Defendant adopted and then adhered to its policy and plan of employing Plaintiff to perform pre-shift work without compensation. This policy resulted in Plaintiff and other similarly situated former and/or current employees not being paid for all time worked and for all of their overtime in violation of the FLSA.

B. Post-Shift Work

36. Plaintiff and other similarly situated former and/or current employees employed by Defendant would be assigned healthcare consulting, technology solutions, and business process outsourcing service projects to provide service for Defendant's various clients. These projects included, but were not limited to, being assigned a list of cases that the Case Analysts would have to work through and complete by the end of their shifts. Each Case Analyst had his or her own list assigned per shift. On occasion, Plaintiff was assigned more than one list per shift.

37. Plaintiff and other similarly situated former and/or current employees were required by Defendant's to work through their list(s) during their shifts. This expectation was the same even when it was clear that the amount of work assigned was not feasible to complete within the shift.

38. Plaintiff and other similarly situated former and/or current employees regularly worked at least ten to fifteen (10-15) minutes past their scheduled end time of their shifts to complete the case list(s) assigned. This would regularly happen one or two days per week.

39. In order for Plaintiff to perform her job, working through and completing Plaintiff's case list(s) assigned to her per shift was integral and indispensable to Defendant's business and

integral and indispensable to the performance of Case Analysts' principal job duties.

40. At all times relevant to this Complaint, Defendant suffered or permitted Plaintiff and other similarly situated former and/or current employees to routinely perform off-the-clock post-shift work by recognizing its employees as "clocked-out" at the technical end time of their scheduled shifts, even if the employees continued to work past their scheduled clock-out time. Defendant refused to recognize post-shift time as compensable and required the Plaintiff and other similarly situated former and/or current employees stop calculating their compensable daily hours (to be inputted by Plaintiff into Defendant's Deltek timekeeping system) at the scheduled end time of each respective employee's shift. If Plaintiff and other similarly situated current and/or former employees would list the post-shift work time in the Deltek system, Defendant would send Plaintiff and other similarly situated current and/or former employees an email warning them not to do so and would instruct them to change their time in Deltek or Defendant would alter the time.

41. Defendant knew or should have known that their employees are required to be paid for all compensable time throughout the workweek. Further, Defendant knew or should have known that its employee do, in fact, perform compensable post-shift work as 29 C.F.R. § 553.221 and C.F.R. § 790.8 provides.

42. Despite this, Defendant does not compensate its employees for their post-shift compensable time in any amount.

43. Defendant knew or should have known that, under the FLSA, Plaintiff should have been paid overtime "at a rate not less than one and one-half times the regular rate" at which she was employed for all compensable pre-shift time for workweeks in excess of forty (40) hours. 29 U.S.C. § 207(a)(1).

44. Despite this, Defendant did not pay overtime at one and one-half times the regular rate for Plaintiff's post-shift compensable time.

45. In reckless disregard of the FLSA, Defendant adopted and then adhered to its policy and plan of employing Plaintiff to perform post-shift work without compensation. This policy resulted in Plaintiff and other similarly situated former and/or current employees not being paid for all time worked and for all of their overtime in violation of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

46. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA individually and on behalf of:

All current and former Case Analysts or other job titles performing similar job duties employed by Cognosante, LLC at any time during the last three years, who were not paid at the proper rate of pay for off-the-clock work during their preliminary 'boot up' time and postliminary 'case list completion' time.

47. Plaintiff does not bring this action on behalf of any employees exempt from coverage under the FLSA pursuant to the executive, administrative, or professional exemptions, or for those employees who were paid at the proper legal rate for each hour worked for off-the-clock work during their preliminary 'boot up' time and postliminary 'case list completion' time.

48. *29 U.S.C. § 216(b) Conditional Certification "Similarly Situated" Standard:* With respect to the claims set forth in the FLSA action, conditional certification under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings 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 subject to the same or similar unlawful practices, policy, or plan (namely, Defendant's policy of not paying their employees overtime at a rate of one-and-one-half times their regular rate for all compensable time worked); (c) their claims are based upon the same factual

and legal theories; and (d) the employment relationship between Defendant and every putative Class member is exactly the same and differs only by name, location, and rate of pay.

49. Upon information and belief, there are numerous other similarly situated current and former Case Analysts or other job titles performing similar job duties who performed uncompensated overtime hours in violation of FLSA and would benefit from the issuance of a court-supervised notice of this action and the opportunity to join it. The precise number of collective Class members should be readily available from a review of Defendant's personnel, scheduling, time and payroll records, and from input received from the collective class members as part of the notice and "opt-in" process provided by 29 U.S.C. § 216(b).

50. Plaintiffs share the same interests as the putative conditional class and will be entitled to unpaid overtime compensation, interest, attorneys' fees and costs owed under the FLSA.

COUNT I

VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. §§ 201, et seq., FAILURE TO PAY OVERTIME WAGES

51. Plaintiff re-alleges and incorporates all previous paragraphs herein.

52. At all times relevant to this action, Defendant was an "employer" under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

53. Defendant is engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

54. At all times relevant to this action, Plaintiff was an "employee" of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

55. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce.

56. The position of Case Analyst is not exempt from the FLSA.

57. Defendant's other job titles performing similar job duties are not exempt from the FLSA.

58. At all times relevant to this action, Defendant "suffered or permitted" Plaintiff to work and thus "employed" her within the meaning of the FLSA, 29 U.S.C. § 203(g).

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

60. Defendant violated the FLSA by failing to pay Plaintiff the federally mandated overtime premium for all hours worked in excess of forty (40) hours per workweek. *See, e.g.*, Plaintiff's paystub for the pay periods 09/12/2015 through 09/25/2015, 12/05/2015 through 12/18/2015, and 05/07/2016 through 05/20/2016, attached hereto as Exhibit C (showing that Plaintiff's paystubs only showed record of Plaintiff working forty (40) hours, despite working pre- and post-shift compensable time which would be owed at the premium overtime rate).

61. Upon information and belief, Defendant has corporate policies and practices of evading overtime pay for its hourly workers for all compensable time worked.

62. Defendant's violations of the FLSA were knowing and willful.

63. By failing to compensate its hourly workers at a rate not less than one and one-half times their regular rate of pay for off-the-clock work performed in excess of forty hours in a workweek, Defendant has violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a). All similarly situated employees are victims of a uniform and company-wide policy which operates to compensate employees at a rate less than the federally mandated overtime wage rate. This uniform policy, in violation of the FLSA, has been, and continues to be,

applied to all employees who have worked or are working for Defendant in the same or similar position as Plaintiff.

64. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

COUNT II

VIOLATION OF 29 C.F.R § 516, et seq., FAILURE TO KEEP RECORDS

62. Plaintiff re-alleges and incorporates all previous paragraphs herein and further alleges as follows.

63. 29 C.F.R § 516.1 subjects “every employer subject to any provisions of the Fair Labor Standards Act” to maintain employee records.

64. At all times relevant to this action, Defendant was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. §§ 201, *et seq.*

65. At all times relevant to this action, Plaintiff was an “employee” of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

66. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) employed in an enterprise engaged in commerce or in the production of goods for commerce.

67. The position of Case Analyst is not exempt from the FLSA.

68. Defendant's other job titles performing similar job duties are not exempt from the FLSA.

69. Thus, Defendant is subject to 29 C.F.R § 516, *et seq.*

70. The employer is mandated to maintain and preserve payroll or other records containing, without limitation, the total hours worked by each employee each workday and total

hours worked by each employee each workweek. 29 C.F.R § 516.2.

71. Upon information and belief, Defendant has corporate policies and practices of evading overtime pay for its hourly workers by not compensating hourly workers for all compensable hours worked over forty (40) even though said employees were required to work during that time.

65. Defendant failed to maintain and preserve accurate timesheet and payroll records as required by 29 C.F.R § 516.2. *See, e.g.*, Plaintiff's paystub for the pay periods 09/12/2015 through 09/25/2015, 12/05/2015 through 12/18/2015, and 05/07/2016 through 05/20/2016, attached hereto as Exhibit C (showing that Plaintiff's paystubs only showed record of Plaintiff working forty (40) hours, despite working pre-and post-shift compensable time which would be owed at the premium overtime rate).

72. When the employer fails to keep accurate records of the hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-88, 66 S. Ct. 1187, 1192 (1946) is controlling. That rule states:

[w]here the employer's records are inaccurate or inadequate . . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

73. The Supreme Court set forth this test to avoid placing a premium on an employer's failure to keep proper records in conformity with its statutory duty, thereby allowing the employer to reap the benefits of the employees' labors without proper compensation as required by the FLSA. Where damages are awarded pursuant to this test, "[t]he employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible

had he kept records in accordance with . . . the Act.” *Id.*

74. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys’ fees.

WHEREFORE, Plaintiff requests the following relief:

- a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- b. Ordering Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all FLSA Collective Class members, and permitting Plaintiff to send notice of this action to all similarly situated employees, including the publishing of notice in a manner that is reasonably calculated to apprise said employees of their rights by law to join and participate in this lawsuit;
- c. Designating Named Plaintiff as the FLSA Collective Class Representative;
- d. Appointing undersigned counsel as FLSA Collective Class counsel with respect to Plaintiff’s FLSA claims;
- e. Declaring that Defendant willfully violated the Fair Labor Standards Act and its attendant regulations as set forth above;
- f. Declaring that Defendant violated its obligations under the FLSA;
- g. Granting judgment in favor of Plaintiff and against Defendant and awarding the amount of unpaid off-the-clock overtime wages calculated at the rate of one and one-half (1.5) times the Plaintiff’s regular rate multiplied by all hours that Plaintiff worked in excess of the prescribed number of hours per week for the past three years for the FLSA Class;
- h. Awarding liquidated damages to Plaintiff, in an amount equal to the amount of unpaid wages found owing to Plaintiff and awarding Plaintiff and the class members all other available compensatory damages available by law;
- i. Awarding reasonable attorneys’ fees and costs incurred by Plaintiff in filing this action as provided by statute;
- j. Awarding pre- and post-judgment interest to Plaintiff on these damages; and
- k. Such further relief as this court deems appropriate.

JURY DEMAND

Plaintiff demands a trial by jury of all claims asserted in this Complaint.

Dated October 31, 2016

/s/Gregory F. Coleman

Gregory F. Coleman (BPR No. 014092)

Mark E. Silvey (BPR No.13415)

Lisa A. White (BPR No. 26658)

GREG COLEMAN LAW PC

First Tennessee Plaza

800 S. Gay Street, Suite 1100

Knoxville, TN 37929

Telephone: (865) 247-0080

Fax: (865) 522-0049

greg@gregcolemanlaw.com

mark@gregcolemanlaw.com

lisa@gregcolemanlaw.com

Local Counsel for Plaintiff

Jacob R. Rusch

MN Bar No. 391892 (*Pro Hoc Anticipated*)

David H. Grounds

MN Bar No. 0285742 (*Pro Hoc Anticipated*)

Molly E. Nephew

MN Bar No. 0397607 (*Pro Hoc Anticipated*)

JOHNSON BECKER, PLLC

444 Cedar Street, Suite 1800

Saint Paul, Minnesota 55101

Telephone: (612) 436-1800

Fax: (612) 436-1801

jrusch@johnsonbecker.com

dgrounds@johnsonbecker.com

mnephew@johnsonbecker.com

Jason J. Thompson, Esq.

MI Bar No. P47184 (*Pro Hoc Anticipated*)

Jesse Young, Esq.

MI Bar No. P72614 (*Pro Hoc Anticipated*)

SOMMERS SCHWARTZ, P.C.

One Towne Square, Suite 1700

Southfield, Michigan 48076

jthompson@sommerspc.com

jyoung@sommerspc.com

Trial Counsel for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DANIYA GULLAGE, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Davidson
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Greg Coleman Law PC, First Tennessee Plaza, 800 S. Gay Street, Suite 1100, Knoxville, TN 37929, (865) 247-0080

DEFENDANTS

COGNOSANTE, LLC

County of Residence of First Listed Defendant Fairfax
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. § 201, et seq.
Brief description of cause:
Violation of FLSA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 10/31/2016 SIGNATURE OF ATTORNEY OF RECORD s/Gregory F. Coleman

FOR OFFICE USE ONLY

EXHIBIT A

Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the FLSA to employees working in call centers.

Characteristics

A call center is a central customer service operation where agents (often called customer care specialists or customer service representatives) handle telephone calls for their company or on behalf of a client. Clients may include mail-order catalog houses, telemarketing companies, computer product help desks, banks, financial services and insurance groups, transportation and freight handling firms, hotels, and information technology (IT) companies.

Coverage

If the annual dollar volume of a call center's sales or business is \$500,000 or more, and the enterprise has at least two employees, all employees of the enterprise are covered by the FLSA on an "enterprise" basis. An enterprise may consist of one establishment, or it may be made up of multiple establishments.

Additionally, the FLSA also provides an "individual employee" basis of coverage. If the gross sales or volume of business done does not meet the requisite dollar volume of \$500,000 annually, employees may still be covered if they individually engage in interstate commerce, the production of goods for interstate commerce, or in an occupation closely related and directly essential to such production. Interstate commerce includes such activities as transacting business via interstate telephone calls, the Internet or the U.S. Mail (such as handling insurance claims), ordering or receiving goods from an out-of-state supplier, or handling the accounting or bookkeeping for such activities.

Requirements

Covered nonexempt employees are entitled to be paid at least the federal minimum wage as well as [overtime](#) at time and one-half their regular rate of pay for all hours worked over 40 in a workweek. (This may not apply to certain executive, administrative, and professional employees, including computer professionals and outside sales, as provided in Regulations [29 CFR 541](#)).

The FLSA requires employers to keep records of wages, hours, and other items, as specified in the recordkeeping regulations. With respect to an employee subject to both [minimum wage](#) and [overtime](#) provisions, records must be kept as prescribed by Regulations [29 CFR 516](#). Records required for exempt employees differ from those for non-exempt workers.

The FLSA also contains youth employment provisions regulating the employment of minors under the age of 18 in covered work, as well as recordkeeping requirements. Additional information on the youth employment provisions is available at www.youthrules.dol.gov.

Typical Problems

Hours Worked: Covered employees must be paid for all hours worked in a workweek. In general, “hours worked” includes all time an employee must be on duty, or on the employer’s premises or at any other prescribed place of work, from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday. Also included is any additional time the employee is allowed (i.e., suffered or permitted) to work. 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.

Rest and Meal Periods: Rest periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. *Bona fide* meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal.

Recordkeeping: A daily and weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept.

Overtime: Earnings may be determined on an hourly, salary, commission, or some other basis, but in all such cases the overtime pay due must be computed on the basis of the regular hourly rate derived from all such earnings. This is calculated by dividing the total pay (except for certain statutory exclusions) in any workweek by the total number of hours actually worked. See Regulations [29 CFR 778](#).

Salaried Employees: A salary, by itself, does not exempt employees from the [minimum wage](#) or from [overtime](#). Whether employees are exempt from [minimum wage](#) and/or [overtime](#) depends on their job duties and responsibilities as well as the salary paid. Sometimes, in call centers, salaried employees do not meet all the requirements specified by the regulations to be considered as exempt. Regulations [29 CFR 541](#) contain a discussion of the requirements for several exemptions under the FLSA (i.e., executive, administrative, and professional employees – including computer professionals, and outside sales persons).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

EXHIBIT B

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

DANIYA GULLAGE , individually and on behalf of all others similarly situated,)	
)	
Plaintiff,)	Civ. Case No.:
)	
v.)	CONSENT TO SUE
)	
COGNOSANTE, LLC)	
)	
Defendant.)	

CONSENT TO SUE

1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b), I hereby consent to join and act as a plaintiff in the above-captioned lawsuit.

2. I agree to be bound by any adjudication or court rulings in the lawsuit, whether favorable or unfavorable.

3. I hereby designate Johnson Becker, PLLC and Levin Papantonio Thomas Mitchell Rafferty Proctor, P.A. to represent me in the lawsuit under the terms and conditions set forth on the following page.

Signature: *Daniya Gullage*
Daniya Gullage (Aug 26, 2016)

Print Name: Daniya Gullage

Date Signed: Aug 26, 2016

EXHIBIT C

Cognosante, LLC 8200 Greensboro Drive 12th Floor McLean, VA 22102

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Daniya Gullage	Cognosante, LLC	DANGUL04	09/12/2015	09/25/2015	10/02/2015	

	Gross Pay	Pre-Tax Deductions	Employee Taxes	Deductions	Net Pay
Current	1,312.00	0.00	240.02	0.00	1,071.98
YTD	2,624.01	0.00	470.02	0.00	2,153.99

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Bonus					0.01	OASDI	81.35	162.69
Holiday	09/12/2015-09/25/2015	0	16.4	0.00	131.20	Medicare	19.03	38.05
Hourly	09/12/2015-09/25/2015	80	16.4	1,312.00	2,492.80	Federal Withholding	139.64	269.28
Earnings							240.02	470.02

Employer Paid Benefits				Federal Taxable Wages			
Description	Amount	YTD		Description	Amount	YTD	
SCA HWP Memo	321.60	643.20		Federal Withholding - Taxable Wages	1,312.00	2,624.01	
Employer Paid Benefits					321.60	643.20	

		Federal	State	Time Off Balance			
Description	Accrued	Reduced	Available	Description	Accrued	Reduced	Available
Marital Status	Single			Sick Leave	0	0	0
Allowances	2		0	Vacation	0	0	0
Additional Withholding	20						

Payment Information					
Bank	Account Name	Account Number	USD Amount	Payment Amount	
Wells Fargo	Wells Fargo *****1831	*****1831		1,071.98	USD

Cognosante, LLC 8200 Greensboro Drive 12th Floor McLean, VA 22102

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Daniya Gullage	Cognosante, LLC	DANGUL04	12/05/2015	12/18/2015	12/24/2015	

	Gross Pay	Pre Tax Deductions	Employee Taxes	Deductions	Net Pay
Current	1,312.00	67.21	227.80	4.72	1,012.27
YTD	10,496.01	178.61	1,872.61	23.60	8,421.19

Earnings						Employee Taxes			
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD	
Bonus					0.01	OASDI	79.62	642.12	
Holiday					524.80	Medicare	18.62	150.17	
Hourly	12/05/2015-12/18/2015	80	16.4	1,312.00	9,971.20	Federal Withholding	129.56	1,080.32	
Earnings					1,312.00	10,496.01	Employee Taxes	227.80	1,872.61

Pre Tax Deductions			
Description	Amount	YTD	
401(k) Pretax	39.36	39.36	
Health and Welfare Benefit Deduction	27.85	139.25	
Pre Tax Deductions		67.21	178.61

Deductions			
Description	Amount	YTD	
Supplemental Life	4.72	23.60	
Deductions		4.72	23.60

Employer Paid Benefits			
Description	Amount	YTD	
SCA HWP Memo	0.00	1,004.80	
Employer Paid Benefits		0.00	1,004.80

Federal Taxable Wages			
Description	Amount	YTD	
Federal Withholding - Taxable Wages	1,244.79	10,317.40	

	Federal	State
Marital Status	Single	
Allowances	2	0
Additional Withholding	20	

Time Off Balance			
Description	Accrued	Reduced	Available
Sick Leave	0	0	6
Vacation	0	0	0

Payment Information				
Bank	Account Name	Account Number	USD Amount	Payment Amount
Wells Fargo	Wells Fargo *****1831	*****1831		1,012.27 USD

Cognosante, LLC 8200 Greensboro Drive 12th Floor McLean, VA 22102

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Daniya Gullage	Cognosante, LLC	DANGUL04	02/13/2016	02/26/2016	03/04/2016	

	Gross Pay	Pre Tax Deductions	Employee Taxes	Deductions	Net Pay
Current	2,211.95	160.57	437.76	4.72	1,608.90
YTD	7,353.35	529.49	1,306.11	23.60	5,494.15

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Holiday	02/13/2016-02/26/2016	8	16.4	131.20	524.80	OASDI	135.41	445.55
Overtime	02/13/2016-02/26/2016	31.25	24.6	768.75	768.75	Medicare	31.67	104.20
Hourly	02/13/2016-02/26/2016	80	16.4	1,312.00	6,059.80	Federal Withholding	270.68	756.36
Earnings						Employee Taxes		
				2,211.95	7,353.35			437.76 1,306.11

Pre Tax Deductions				Deductions			
Description	Amount	YTD		Description	Amount	YTD	
401(k) Pretax	132.72	362.49		Supplemental Life	4.72	23.60	
Health and Welfare Benefit Deduction	27.85	167.00					
Pre Tax Deductions				Deductions			
		160.57	529.49			4.72	23.60

Federal Taxable Wages		
Description	Amount	YTD
Federal Withholding - Taxable Wages	2,051.38	6,823.86

Marital Status	Federal	State	Time Off Balance			
	Single		Description	Accrued	Reduced	Available
Allowances	2	0	Sick Leave	0	0	12
Additional Withholding	20		Vacation	0	0	0

Payment Information				
Bank	Account Name	Account Number	USD Amount	Payment Amount
Wells Fargo	Wells Fargo *****1831	*****1831		1,608.90 USD

Cognosante, LLC 8200 Greensboro Drive 12th Floor McLean, VA 22102

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Daniya Gullage	Cognosante, LLC	DANGUL04	02/27/2016	03/11/2016	03/18/2016	

	Gross Pay	Pre Tax Deductions	Employee Taxes	Deductions	Net Pay
Current	2,578.90	182.59	552.07	4.72	1,839.52
YTD	9,932.25	712.08	1,858.18	28.32	7,333.67

Earnings						Employee Taxes		
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD
Holiday					524.80	OASDI	158.17	603.72
Overtime	02/27/2016-03/11/2016	51.5	24.6	1,266.90	2,035.65	Medicare	36.99	141.19
Hourly	02/27/2016-03/11/2016	80	16.4	1,312.00	7,371.80	Federal Withholding	356.91	1,113.27
Earnings								
				2,578.90	9,932.25	Employee Taxes	552.07	1,858.18

Pre Tax Deductions			Deductions		
Description	Amount	YTD	Description	Amount	YTD
401(k) Pretax	154.74	517.23	Supplemental Life	4.72	28.32
Health and Welfare Benefit Deduction	27.85	194.85			
Pre Tax Deductions			Deductions		
		182.59	712.08	4.72	
				28.32	

Federal Taxable Wages		
Description	Amount	YTD
Federal Withholding - Taxable Wages	2,396.31	9,220.17

Federal		State		Time Off Balance		
Description	Accrued	Reduced	Available	Description	Accrued	Reduced
Marital Status	Single			Sick Leave	0	0
Allowances	2	0	12	Vacation	0	0
Additional Withholding	20					

Payment Information				
Bank	Account Name	Account Number	USD Amount	Payment Amount
Wells Fargo	Wells Fargo *****1831	*****1831		1,839.52 USD

Cognosante, LLC 8200 Greensboro Drive 12th Floor McLean, VA 22102

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Daniya Gullage	Cognosante, LLC	DANGUL04	05/07/2016	05/20/2016	05/27/2016	

	Gross Pay	Pre-Tax Deductions	Employee Taxes	Deductions	Net Pay
Current	1,312.00	106.57	201.51	4.72	999.20
YTD	20,308.45	1,434.07	3,886.88	47.20	14,940.30

Earnings						Employee Taxes			
Description	Dates	Hours	Rate	Amount	YTD	Description	Amount	YTD	
Bonus					200.00	OASDI	79.62	1,240.14	
Holiday					524.80	Medicare	18.62	290.03	
Overtime	05/07/2016-05/20/2016	0	24.6	0.00	5,651.85	Federal Withholding	103.27	2,356.71	
Hourly	05/07/2016-05/20/2016	80	16.4	1,312.00	13,931.80				
Earnings					1,312.00	20,308.45	Employee Taxes	201.51	3,886.88

Pre Tax Deductions		
Description	Amount	YTD
401(k) Pretax	78.72	1,127.82
Health and Welfare Benefit Deduction	27.85	306.25
Pre Tax Deductions		106.57 1,434.07

Deductions		
Description	Amount	YTD
Supplemental Life	4.72	47.20
Deductions		4.72 47.20

Employer Paid Benefits		
Description	Amount	YTD
SCA HWP Memo	0.00	341.60
Employer Paid Benefits		0.00 341.60

Federal Taxable Wages		
Description	Amount	YTD
Federal Withholding - Taxable Wages	1,205.43	18,874.38

	Federal	State
Marital Status	Single	
Allowances	2	0
Additional Withholding	0	

Time Off Balance			
Description	Accrued	Reduced	Available
Sick Leave	0	0	18
Vacation	0	0	0

Payment Information				
Bank	Account Name	Account Number	USD Amount	Payment Amount
Wells Fargo	Wells Fargo *****1831	*****1831	999.20	USD

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [FLSA Class Action Filed Against Cognosante, LLC Over Off-The-Clock Work](#)
