

In the United States District Court  
Northern District of Texas  
Dallas Division

|                              |   |                              |
|------------------------------|---|------------------------------|
| Eleanor Armstrong-Head,      | § |                              |
| individually and on behalf   | § |                              |
| of others similarly situated | § |                              |
|                              | § |                              |
| <i>Plaintiff,</i>            | § |                              |
|                              | § |                              |
| v.                           | § | Civil Action No. 3:17-cv-207 |
|                              | § |                              |
| ProActive Partners Inc.,     | § |                              |
| Maxine Vigil Russell, and    | § |                              |
| Lawrence Edward Russell      | § |                              |
|                              | § |                              |
| <i>Defendants.</i>           | § |                              |

**Plaintiff's Original Complaint**

Plaintiff Eleanor Armstrong-Head, individually and on behalf of others similarly situated, brings this action against Defendants ProActive Partners Inc., Maxine Vigil Russell, and Lawrence Edward Russell as follows:

**Introduction**

1. This is a collective action under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 201 *et seq.* Plaintiff and other employees similarly situated worked for Defendants as Nurse Case Managers or in similarly titled positions, providing field and telephonic case management for work-related injuries. Plaintiff and other employees similarly situated regularly worked more than 40 hours per workweek, but were not paid for all hours

worked as required by the FLSA, including overtime pay for hours worked in excess of 40 hours per workweek.

### **Parties**

2. Plaintiff Eleanor Armstrong-Head is an individual who is a citizen of the State of Texas and who resides in Collin County, Texas. Plaintiff's written consent to be a party-plaintiff in this action is attached hereto as Exhibit A.

3. Defendant ProActive Partners Inc. ("ProActive") is a corporation that is incorporated under the laws of the State of Texas. ProActive has its principal place of business in the State of Texas at 13901 Midway Road, Ste. 102-282, Dallas, Dallas County, Texas 75244. ProActive may be served with process by serving its registered agent, Maxine E. Vigil a/k/a Maxine Vigil Russell, at 1714 Green Oaks Dr., Irving, Dallas County, Texas 75061, or at her usual place of business at 3618 Vineyard Way, Farmers Branch, Dallas County, Texas 75234, or wherever she may be found.

4. Defendant Maxine Vigil Russell is an individual who is a citizen of the State of Texas. She may be served with process at her usual place of business, 3618 Vineyard Way, Farmers Branch, Dallas County, Texas 75234, or wherever she may be found.

5. Defendant Lawrence Edward Russell is an individual who is a citizen of the State of Texas. He may be served with process at his usual

place of business, 3618 Vineyard Way, Farmers Branch, Dallas County, Texas 75234, or wherever he may be found.

### **Jurisdiction**

6. This Court has jurisdiction over this lawsuit under 29 U.S.C. § 216(b), because this is an action to recover for violations of 29 U.S.C. §§ 206 and/or 207, and under 28 U.S.C. § 1331, because this action arises under the laws of the United States, specifically, the FLSA, 29 U.S.C. § 201 *et seq.*

### **Venue**

7. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

8. Venue is also proper in the Northern District of Texas under 28 U.S.C. § 1391(b)(1) because at least one Defendant resides in this district, and all Defendants are residents of the state in which this district is located.

### **Fair Labor Standards Act Coverage**

9. At all relevant times, Plaintiff and others similarly situated were “employees” within the meaning of the FLSA, 29 U.S.C. § 203(e)(1), in that they were individuals employed by an employer.

10. At all relevant times, Defendant ProActive was an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d), in that ProActive acted

directly or indirectly in the interest of an employer in relation to Plaintiff and others similarly situated.

11. At all relevant times, Defendant Maxine Vigil Russell was an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d), in that she acted directly or indirectly in the interest of ProActive, an employer, in relation to Plaintiff and others similarly situated.

12. At all relevant times, Defendant Lawrence Edward Russell was an “employer” within the meaning of the FLSA, 29 U.S.C. § 203(d), in that he acted directly or indirectly in the interest of ProActive, an employer, in relation to Plaintiff and others similarly situated.

13. At all relevant times, Defendants constituted an “enterprise” within the meaning of the FLSA, 29 U.S.C. § 203(r)(1), in that Defendants performed (either through unified operation or common control) related activities for a common business purpose.

14. At all relevant times, Defendants constituted an “enterprise engaged in commerce or in the production of goods for commerce” within the meaning of the FLSA, 29 U.S.C. § 203(s)(1), in that Defendants:

- a. constituted an enterprise that had employees engaged in commerce or in the production of goods for commerce, or that had employees handling, selling, or otherwise working

on goods or materials that have been moved in or produced for commerce by any person; and

- b. constituted an enterprise whose annual gross volume of sales made or business done was not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated).

15. At all relevant times, Plaintiff and other employees similarly situated were “engaged in commerce or in the production of goods for commerce” within the meaning of the FLSA, 29 U.S.C. §§ 206, 207.

16. At all relevant times, Plaintiff and other employees similarly situated were “employed in an enterprise engaged in commerce or in the production of goods for commerce” within the meaning of the FLSA, 29 U.S.C. §§ 206, 207.

### **Facts**

17. Defendant ProActive is a nurse case management company based in Dallas, Texas. ProActive specializes in providing nurse case management services for work-related injuries.

18. Through its Nurse Case Managers, ProActive provides field case management throughout Texas, and telephonic case management throughout the continental United States. ProActive also provides bilingual case management services.

19. Maxine Vigil Russell is an owner and director of ProActive. She is also the President of ProActive. Lawrence Edward Russell is the husband of Maxine Vigil Russell and is actively involved in the business operations of ProActive. Maxine Vigil Russell and Lawrence Edward Russell have operating control over ProActive's employees, including Plaintiff and others similarly situated. They have the power to hire and fire employees, supervise and control employee work schedules or conditions of employment, determine the rate and method payment, and maintain employment records.

20. Plaintiff is a Registered Nurse and a Certified Case Manager. Plaintiff worked for Defendants as a bilingual Nurse Case Manager. Plaintiff was employed by Defendants beginning November 1, 2012.

21. As a Nurse Case Manager for Defendants, Plaintiff provided field and telephonic case management for work-related injuries. Plaintiff also served as the Bilingual Services Manager for ProActive.

22. Plaintiff was paid at an hourly rate of \$45.5 for her work as a Nurse Case Manager.

23. Defendants employed Plaintiff for workweeks longer than 40 hours. Plaintiff regularly worked approximately 50, 60, 70, and even 80+ hours per workweek on her job as a Nurse Case Manager.

24. Despite working more than 40 hours in a workweek, Plaintiff did not receive overtime pay for the hours she worked in excess of 40 hours per workweek, as required by the FLSA.

25. Instead, Plaintiff was paid only straight-time at her regular hourly rate, but was not paid any overtime compensation.

26. Defendants knew or showed reckless disregard as to whether their failure to pay Plaintiff overtime for hours worked in excess of 40 hours per workweek was prohibited by the FLSA.

27. Plaintiff was not exempt from the overtime requirements of the FLSA.

### **Count One – Fair Labor Standards Act**

28. Defendants violated the overtime provisions of the FLSA, 29 U.S.C. § 207, by employing Plaintiff and others similarly situated, who were engaged in commerce or in the production of goods for commerce, or were employed in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than 40 hours without compensating them for their employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which they were employed.

29. Under 29 U.S.C. § 216(b), as a result of the foregoing violations, Defendants are liable to Plaintiff and other employees similarly situated in

the amount of their unpaid overtime compensation and in an additional equal amount as liquidated damages.

30. Defendants' violations of the FLSA were willful.

### **Collective Action Allegations**

31. Plaintiff brings this action for and in behalf of herself and other employees similarly situated, pursuant to the collective action provisions of 29 U.S.C. § 216(b). In addition to Plaintiff, Defendants employed others as Nurse Case Managers or in similarly titled positions, with similar job requirements and under similar pay provisions.

32. Like Plaintiff, these other similarly situated employees were employed by Defendants for workweeks longer than 40 hours, but did not receive compensation for their employment in excess of 40 hours per workweek at a rate not less than one and one-half times the regular rate at which they were employed, as required by the FLSA.

33. Plaintiff and the other similarly situated employees were together the victims of a single decision, policy, or plan by Defendants not to pay employees for all hours worked as required by the FLSA, including overtime pay for all hours worked in excess of 40 hours per workweek.

### **Conditions Precedent**

34. All conditions precedent have occurred or been performed.



**Attorney's Fees and Costs**

35. Plaintiff and the other employees similarly situated are entitled to recover their reasonable attorney's fees and costs of this action under 29 U.S.C. § 216(b).

**Jury Demand**

36. Plaintiff, individually and on behalf other employees similarly situated, demands a trial by jury.

**Prayer for Relief**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the Court enter judgment against Defendants that Plaintiff, and all employees similarly situated who consent to be party plaintiffs to this action, have and recover as follows:

1. All unpaid wages, including all unpaid minimum wages and overtime compensation;
2. An additional equal amount as liquidated damages;
3. An award of reasonable attorneys' fees and costs;
4. Pre-judgment and post-judgment interest; and
5. Such other and further relief to which they may entitled, at law or in equity.

Respectfully submitted,

s/ Jason E. Winford

Jason E. Winford

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(214) 378-6675 - Office


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**ATTORNEYS FOR PLAINTIFF**

CONSENT

I hereby consent to become a Party Plaintiff in this lawsuit brought under the Fair Labor Standards Act to recover unpaid wages, including overtime compensation, from my employer, Pro Active Partners, Inc.

Dated: January 16, 2017.

  
Eleanor Head

The JS 44 civil coversheet 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

Eleanor Armstrong-Head

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

(c) Attorneys (Firm Name, Address, and Telephone Number) David Watkins, Jason E. Winford, Jenkins & Watkins, P.C. 4300 MacArthur Ave., Suite 165 Dallas, TX 75209 (214) 378-6675

DEFENDANTS

ProActive Partners Inc., Maxine Vigil Russell, and Lawrence Edward Russell

County of Residence of First Listed Defendant (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. s 201 et seq.

Brief description of cause:

Claim for unpaid overtime compensation under Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [ ] No

VIII. RELATED CASE(S) PENDING OR CLOSED:

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

01/23/2017 s/ Jason E. Winford

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**  
Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference cases that are related to this filing, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is "related" to this filing if the case: (1) involves some or all of the same parties and is based on the same or similar claim; (2) involves the same property, transaction, or event; (3) involves substantially similar issues of law and fact; and/or (4) involves the same estate in a bankruptcy appeal.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [ProActive Partners Inc., Two Individuals Hit with FLSA Class Action](#)

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