

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KELLY PRICE, for herself and on
behalf of those similarly situated,

Plaintiff,

CASE NO:

vs.

STATE INSURANCE U.S.A., LLC,
A Florida Limited Liability Corporation,
and BLAKE CHAPMAN, individually,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, KELLY PRICE (“Plaintiff”) for herself and on behalf of those similarly situated, through undersigned counsel, files this Complaint against Defendants, STATE INSURANCE U.S.A., LLC (“STATE”), a Florida Limited Liability Corporation, and BLAKE CHAPMAN, (“CHAPMAN”) individually, (collectively “Defendants”), and states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (“FLSA”), 29 U.S.C. §201, et seq., to recover unpaid back wages, an additional equal amount as liquidated damages, and reasonable attorneys’ fees and costs.

2. The jurisdiction of the Court over this controversy is proper pursuant to 28 U.S.C. §1331, as Plaintiff’s claims arise under 29 U.S.C. §216(b).

PARTIES

3. At all times material to this action, Plaintiff was a resident of Lee County, Florida.

4. At all times material to this action, Defendant STATE was, and continues to be, a Florida limited liability corporation. Further, at all times material to this action, STATE was, and continues to be, engaged in business in Florida, with a principal place of business in Lee County, Florida.

5. At all times material to this action, Defendant CHAPMAN was an individual resident of the State of Florida, who owned and operated Defendant STATE, and who regularly exercised the authority to (a) hire and fire employees of Defendant STATE; (b) discipline the employees of Defendant STATE; and (c) control the finances and operations of Defendant CBHC. Defendant CHAPMAN further had involvement in determining employee schedules.

6. Defendant CHAPMAN was responsible for the day to day operations of Defendant CBHC.

7. As a result of his authority to hire and fire, discipline and control the finances and operations, and his involvement in determining employees' schedules, owner/operator CHAPMAN is an individual employer under the FLSA.

8. At all times material to this action, Plaintiff was "engaged in commerce" within the meaning of §6 and §7 of the FLSA.

9. At all times material to this action, Plaintiff was an "employee" of Defendants within the meaning of the FLSA.

10. At all times material to this action, Defendants were Plaintiff's "employers" within the meaning of the FLSA.

11. Based upon information and belief, the annual gross revenue of Defendant STATE was in excess of \$500,000.00 per annum during the relevant time periods.

12. At all times material to this action, Defendants had two (2) or more employees

handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce, including, but not limited to, computers and telephones necessary to sell insurance.

13. Plaintiff is also subject to individual coverage under the FLSA, as she regularly placed calls to carriers outside of Florida, on a daily basis, in furtherance of Defendants' insurance business.

14. At all times material hereto, the work performed by the Plaintiff was directly essential to Defendants' business.

STATEMENT OF FACTS

15. On or about February 2015, Defendants hired Plaintiff to work as a non-exempt, salaried "agent."

16. Plaintiff understood that her salary was to cover a forty (40) hour workweek.

17. Defendants communicated to Plaintiff that commissions would be paid to cover hours over forty, but Defendants never paid Plaintiff any commissions.

18. In her work for Defendants, Plaintiff's job duties included making calls on employer accounts to cross sell insurance to businesses or homes.

19. At various times material hereto, Plaintiff worked for Defendants in excess of forty (40) hours within a workweek.

20. Defendants failed to compensate Plaintiff, and other similarly situated agents, at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty (40) hours in a single workweek.

21. The policies, practices, and plans that led to this failure to pay proper overtime included, but were not limited to: a) deducting time for meal periods, even when agents did not

have the opportunity to take a properly excludable meal-break; b) failure to record time and compensate for hours worked after the end of the scheduled workday, even though the employer had actual or constructive knowledge of this work; and c) failure to record time and compensate for events outside of regularly scheduled work hours.

22. Plaintiff, and other similarly situated agents, should be compensated at the rate of one and one-half times their regular rate for all hours that they worked in excess of forty (40) hours per workweek, as required by the FLSA.

23. Upon information and belief, the majority of Plaintiffs, and other agents', pay and time records are in the possession of Defendants.

24. Defendants failed to keep accurate records of Plaintiff's and other agents' time, in contravention of the mandates of the FLSA.

25. Defendants have violated Title 29 U.S.C. §207 from at least February 2015 through June 2015, in that:

- a. Plaintiff, and those similarly situated, worked in excess of forty (40) hours in one or more work weeks during their period of employment with Defendants in the three (3) years preceding the date the Complaint was filed;
- b. No payments or provisions for payment have been made by Defendants to properly compensate Plaintiff, and those similarly situated, at the applicable overtime wage for each hour over forty worked in a workweek as provided by the FLSA; and
- c. Defendants have failed to maintain proper time records as mandated by the FLSA.

26. Others who may opt-in to this action are similarly situated agents employed by Defendants in the three years preceding this action, who were not properly compensated for overtime hours worked, due to the same policies, practices and plans applicable to Plaintiff, and described in Paragraph 21, above. Upon information and belief, these practices, policies and plans, were equally applicable to all other agents working in Plaintiff's office.

27. Defendants' failure and/or refusal to properly compensate Plaintiff, and those similarly situated, at the rates and amounts required by the FLSA was willful, as Defendants knew or acted with reckless disregard as to whether their conduct violated the FLSA.

28. Defendants failed and/or refused to properly disclose or apprise Plaintiff of her rights under the FLSA.

29. Plaintiff has retained the law firm of MORGAN & MORGAN, P.A. to represent Plaintiff in the litigation and has agreed to pay the firm a reasonable fee for its services.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

30. Plaintiff re-alleges paragraphs 1 through 29 of the Complaint, as if fully set forth herein.

31. From at least February 2015 through June 2015, Plaintiff worked in excess of forty (40) hours in one or more workweeks, for which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

32. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours in a workweek.

33. Other similarly situated agents were, and are, entitled to be paid at the statutory rate of one and one-half times their regular rate of pay for those hours worked in excess of forty

(40) hours in a workweek.

34. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by their failure to compensate Plaintiff, and those similarly situated, at the statutory rate of one and one-half times those agents' regular rate of pay for the hours worked in excess of forty (40) hours in one or more workweeks when they knew, or should have known, such was, and is, due.

35. Defendants failed to properly disclose or apprise Plaintiff of Plaintiff's rights under the FLSA.

36. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff, and those similarly situated, suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours in one or more workweeks, plus liquidated damages.

37. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

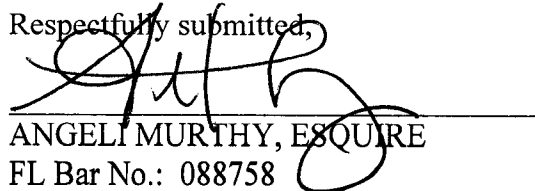
WHEREFORE, Plaintiff, for herself and on behalf of others similarly situated, requests conditional certification pursuant to Section 216(b) of the FLSA, of a class of agents who were subject to the unlawful practices described herein; an order permitting Notice to all potential class members; a Declaration that Defendants' policy violates the FLSA; entry of judgment in Plaintiff's favor and against Defendants for actual and liquidated damages, as well as costs, expenses and attorneys' fees and such other relief deemed proper by this Court..

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right.

Dated this 15th day of February, 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AM', is written over a horizontal line.

ANGELI MURTHY, ESQUIRE

FL Bar No.: 088758

MORGAN & MORGAN, P.A.

600 N. Pine Island Road, Suite 400

Plantation, FL 33324

Telephone: 954-318-0268

Facsimile: 954-327-3016

E-mail: Amurthy@forthepeople.com

Trial Counsel for Plaintiff

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

KELLY PRICE, for herself and others similarly situated,

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

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

Morgan & Morgan
600 N. Pine Island Road, Suite 400
Plantation, FL 33322

DEFENDANTS

STATE INSURANCE USA, LLC. A Florida Limited Liability Corporation, and BLAKE CHAPMAN, individually,

County of Residence of First Listed Defendant Lee County
(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	<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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <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"/> 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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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

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 USC Section § 201, 28 U.S.C. §1331 29 U.S.C. § 216(b)
Brief description of cause:

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 2/15/17 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Filed Against State Insurance U.S.A. Seeks Unpaid Back Wages](#)
