

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LISA KNISPEL and KAREN BRANDELIK,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

CHRYSLER GROUP LLC,

Defendant.

Case No. 11-cv-11886
Hon. Sean F. Cox
Magistrate R. Steven Whalen

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**FIRST AMENDED COLLECTIVE ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

NOW COME Plaintiffs LISA KNISPEL and KAREN BRANDELIK (collectively
“Plaintiffs”), by and through their attorneys, Hertz Schram PC, on behalf of themselves and on
behalf of all others similarly situated, bring this Complaint against Defendant as follows:

PRELIMINARY STATEMENT

1. Plaintiff KAREN BRANDELIK was for all times relevant to this Complaint the Senior Buyer for Defendant CHRYSLER GROUP LLC (“CHRYSLER”) and Bartech Enterprises, a position for which she was paid hourly and that is not exempt from the overtime provisions of the Fair Labor Standards Act (“FLSA”).

2. Plaintiff LISA KNISPEL was for all times relevant to this Complaint the Customer Satisfaction Audit Engineer for Defendant CHRYSLER a position for which she was paid hourly and that is not exempt from the overtime provisions of the Fair Labor Standards Act (“FLSA”).

3. Plaintiffs allege on behalf of themselves and all similarly-situated non-union contract employees hired from various contract houses (“Class”) that the Defendant CHRYSLER unlawfully failed and refused to pay Plaintiffs and members of the Plaintiff Class overtime pay for overtime worked, notwithstanding that Plaintiffs and members of the Plaintiff Class were and are paid hourly and are not and have not been exempt from overtime pay.

4. Plaintiffs allege on behalf of themselves and the proposed Plaintiff Class that they are and have been entitled to overtime pay for overtime worked.

5. Plaintiffs allege on behalf of themselves and the prospective Plaintiff Class that Defendant CHRYSLER failed to keep accurate time records as required by law.

6. Defendant’s practices as alleged herein violated and continue to violate the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 et seq.

7. Plaintiffs on behalf of themselves and the prospective Class seek injunctive and declaratory relief, compensation and credit for all uncompensated work required, suffered or

permitted by Defendant CHRYSLER, liquidated and/or other damages, penalties and interest as permitted by the applicable law, and attorneys' fees and costs.

8. At all times relevant to this Complaint, Defendant CHRYSLER has engaged in and continues to engage in a practice and policy of willfully failing and refusing to pay Plaintiffs and the class they seek to represent overtime compensation due and owing to Plaintiffs and members of the prospective Class in violation of federal law.

9. Defendant CHRYSLER implemented and enforced unlawful policies and practices in violation of the federal law, as detailed infra, by failing and refusing to pay Plaintiffs and the members of the Class overtime pay for overtime worked, notwithstanding that Plaintiffs and the members of Plaintiff Class were and are paid hourly, are not and have not been exempt and are and have been entitled to payment for overtime pay.

10. Defendant CHRYSLER maintained policies and practices where it failed to keep accurate time records and whereby its contracted non-union hourly employees worked overtime but were not paid overtime pay. Instead, Defendant CHRYSLER refused to pay Plaintiffs and the class members overtime and, at times, required Plaintiffs and the members of the Class to take compensatory time off in lieu of overtime payments as detailed infra, in violation of federal law.

JURISDICTION AND VENUE

11. Jurisdiction and venue are proper in the Eastern District of Michigan, Southern Division, as Defendant is licensed to do business and is doing business in Michigan and conducts business in the Eastern District, Southern Division of Michigan. In addition, jurisdiction is proper pursuant to 29 U.S.C. §201 *et seq.* and 28 U.S.C. §1331.

PARTIES

12. Plaintiff KAREN BRANDELIK, is a resident of Clarkston, Oakland County, Michigan, and was employed with Defendant CHRYSLER from on or about March 23, 2010, until on or about October 22, 2010. During the course of her employment, she served as a non-union contract employee in the position of Senior Buyer for Defendant CHRYSLER.

13. Plaintiff LISA KNISPEL, is a resident of Auburn Hills, Oakland County, Michigan, and was employed with Defendant CHRYSLER from on or about November 15, 2009, to on or about March 15, 2010. During the course of her employment, she has served as a non-union contract employee in the position of Customer Satisfaction Audit Engineer for Defendant CHRYSLER.

14. Defendant CHRYSLER is a foreign limited liability company who is doing business in the State of Michigan and its resident agent is located in Bingham Farms, Oakland County, Michigan.

GENERAL ALLEGATIONS

15. From at least November 15, 2009, to the present, Defendant CHRYSLER contracted with several “contract houses,” including but not limited to Bartech Enterprises, G-Tech, Aerotek, Advantage Technical Resources, Computer Engineering Services, Altair Engineering, Kelly Services and RGSBI, for contract employees to provide hourly labor, paid hourly, in a variety of Defendant CHRYSLER’s offices and manufacturing plants nationwide, including Michigan and Ohio, and in foreign countries, including Canada and Mexico.

16. From at least March 23, 2010 to the present, Defendant CHRYSLER employed approximately 1400 non-union contract positions hired from several contract houses.

17. On or about March 23, 2010, Defendant CHRYSLER contracted with Bartech Enterprises to employ Plaintiff KAREN BRANDELIK to serve as Defendant CHRYSLER's Senior Buyer for supplemental labor.

18. Plaintiff KAREN BRANDELIK's job as Defendant CHRYSLER's Senior Buyer required her to contract with various contract houses on behalf of Defendant CHRYSLER for non-union supplemental labor.

19. During Plaintiff KAREN BRANDELIK's tenure with Defendant CHRYSLER, she had the responsibility for the contracts for the purchase of non-union contract employees for all of Defendant CHRYSLER's locations, including non-union contract employees in nationwide manufacturing plants, Canada, Mexico and its Auburn Hills headquarters.

20. During Plaintiff KAREN BRANDELIK's tenure with Defendant CHRYSLER, the vast majority of the non-union contract employees hired through the various contract houses were placed at Defendant CHRYSLER's Auburn Hills location.

21. Plaintiff KAREN BRANDELIK personally reviewed all contracts between Defendant CHRYSLER and the contract house employers.

22. Plaintiffs' contracts and the contracts in place for the other non-union contract employees set forth specific terms and conditions of employment, including that Plaintiffs and the class they seek to represent are paid hourly, the hourly pay rate for each employee and the requirement that each employee was paid his or her wages on a weekly basis.

23. During Plaintiff KAREN BRANDELIK's tenure with Defendant CHRYSLER, she was required to work overtime on a weekly basis, on average at least five hours per week.

24. During Plaintiff KAREN BRANDELIK's tenure with Defendant CHRYSLER, she was initially required to manually fill out time cards for the work performed.

25. Plaintiff KAREN BRANDELIK submitted her handwritten time card to her former supervisor at Defendant CHRYSLER, Shellie Medici, reflecting the hours that she actually worked.

26. Ms. Medici altered Plaintiff KAREN BRANDELIK's time card, changing Plaintiff's actual hours worked, omitting the overtime worked and falsely reflecting that she had worked less hours than she had actually worked.

27. Shortly after Plaintiff KAREN BRANDELIK commenced her employment with Defendant CHRYSLER, Plaintiff KAREN BRANDELIK was required to use a timekeeping system for Defendant CHRYSLER's contract employees entitled "S.T.E.P."

28. Defendant CHRYSLER required Plaintiff KAREN BRANDELIK and all of its contract employees to input their hours worked into the computer S.T.E.P. program.

29. On several occasions, Plaintiff KAREN BRANDELIK sought to enter into the S.T.E.P. program her regular hours worked and the overtime hours worked.

30. On each occasion, Plaintiff KAREN BRANDELIK sought to enter her overtime into the S.T.E.P. computer program the program would not allow the overtime hours to be entered.

31. The S.T.E.P. program prevented Plaintiff KAREN BRANDELIK from entering her overtime hours worked.

32. Defendant was and is aware that its S.T.E.P. program prevented Plaintiffs and the class they seek to represent from entering records of overtime hours worked.

33. Defendant CHRYSLER maintains separate records regarding its employees' ingress and egress to their various worksites, including its badge swiping system and/or its security records.

34. When Plaintiff LISA KNISPEL commenced her employment with Defendant CHRYSLER, she was initially required to maintain a written timesheet of hours worked.

35. Plaintiff LISA KNISPEL submitted her written timesheets to her supervisor Charlene Haynes.

36. Plaintiff LISA KNISPEL's written timesheets contained record of regular hours and her overtime hours worked.

37. Plaintiff's supervisor Charlene Haynes rejected Plaintiff LISA KNISPEL's written timesheets because they contained record of overtime hours worked.

38. Plaintiff LISA KNISPEL was required to re-write her timesheets to remove her overtime hours worked.

39. During her tenure with Defendant CHRYSLER, Plaintiff LISA KNISPEL was required to submit her hours worked into Defendant's S.T.E.P. computer program.

40. Plaintiff LISA KNISPEL, on several occasions, attempted to enter her regular hours and overtime hours worked into the S.T.E.P. program and, on each occasion, the S.T.E.P. program would not permit the entry of overtime hours.

41. Plaintiffs KAREN BRANDELIK, LISA KNISPEL and the class that they seek to represent were required to keep track of their overtime hours in separate documents and not to input them into the S.T.E.P. program.

42. Plaintiffs KAREN BRANDELIK, LISA KNISPEL and the class that they seek to represent were promised compensatory time (a/k/a “comp time”) in lieu of being paid 1½ their hourly wages for the overtime they worked.

43. Plaintiffs KAREN BRANDELIK, LISA KNISPEL and the class that they seek to represent were routinely required to work without breaks or lunch.

44. Plaintiff LISA KNISPEL, during the course of her employment, was required to work off-site from Auburn Hills, whereby she traveled to Defendant CHRYSLER’s plants in various locations in Michigan, Ohio, Canada and Mexico.

45. Defendant CHRYSLER did not pay Plaintiff LISA KNISPEL for the overtime worked, including travel time, when she was required to work away from Defendant CHRYSLER’s Auburn Hills’ headquarters.

46. Plaintiff KAREN BRANDELIK learned, during the course of her employment with Defendant CHRYSLER, that at any given point in time, at least 500 non-union contract employees worked overtime for Defendant CHRYSLER and were not compensated for their overtime worked.

FLSA CLAIM-COLLECTIVE ACTION ALLEGATIONS

47. Plaintiffs and the class they seek to represent allege violations of the FLSA on behalf of all persons who were, are, or will be employed by Defendant throughout the country during applicable statutes of limitations, who have not been compensated at 1½ times the regular rate of pay for all work performed in excess of forty (40) hours per work week and the failure to maintain and preserve payroll records or other records, containing, without limitation, the total

hours worked by each class member each workday and total hours worked by each class member each workweek.

48. Questions of law and fact common to the class as a whole include, but are not limited to, the following:

- a. Whether Defendant CHRYSLER failed and continues to fail to pay overtime compensation in violation of the FLSA, 29 U.S.C. §201 et seq.;
- b. Whether Defendant CHRYSLER's policies and practices of its failure to pay overtime to Plaintiffs and the class they seek to represent violate the applicable provisions of the FLSA;
- c. Whether Defendant CHRYSLER's policies and practices which required and continues to require Plaintiffs and the class they seek to represent to submit time records reflecting only their non-overtime hours violate the applicable provisions of the FLSA;
- d. Whether Defendant CHRYSLER's policy and practice of maintaining a timekeeping system which prevented and prevents Plaintiffs and the class they seek to represent from documenting their overtime hours worked violates the applicable provisions of the FLSA;
- e. Whether Defendant CHRYSLER's policy and practice of requiring Plaintiffs and the class they seek to represent to take compensatory time off in lieu of paying overtime to Plaintiffs and the class they seek to represent violates the applicable provisions of the FLSA;
- f. Whether Defendant CHRYSLER's failure to pay overtime to Plaintiffs and the class they seek to represent was willful within the meaning of the FLSA;
- g. Whether Defendant CHRYSLER failed and continues to fail to make accurate records of actual time work by Plaintiffs and the class they seek to represent;
- h. Whether Defendant CHRYSLER failed and continues to fail to maintain accurate records of actual time worked by Plaintiffs and the class they seek to represent;
- i. Whether Defendant CHRYSLER failed and continues to fail to report all actual time worked by Plaintiffs and the class they seek to represent; and

- j. Whether Defendant CHRYSLER failed and continues to fail to preserve accurate records of actual time worked by Plaintiffs and the class they seek to represent.

49. The claim for violation of the FLSA is brought pursuant to 29 U.S.C. §216(b) for all claims asserted by Plaintiffs on behalf of themselves and the class they seek to represent, because Plaintiffs' claims are similar to the claims of the members of the prospective class.

50. Plaintiffs and the class they seek to represent are similarly situated, have substantially similar contract agreements and pay provisions and are subject to Defendant CHRYSLER's common practice, policy or plan of failing to keep accurate records and failing to pay overtime in violation of the FLSA.

51. Plaintiffs will fairly and adequately represent and protect the interests of the members of the class and subclasses. Plaintiffs have retained counsel competent and experienced in complex class actions, FLSA, labor law and employment law litigation.

52. The names and addresses of the Plaintiff putative class members are available from Defendant CHRYSLER. To the extent required by law, notice will be provided to the prospective class members via first class mail and/or by use of techniques in a form of notice that has been used customarily in class actions, subject to court approval.

COUNT I
FLSA CLAIMS AGAINST DEFENDANT CHRYSLER

53. Plaintiffs on behalf of themselves and the class they seek to represent allege and incorporate by reference paragraphs 1 through 55.

54. At all times relevant to this Complaint, the Defendant CHRYSLER has been and continues to be an "employer" engaged in interstate "commerce" and/or in the production of "goods" for "commerce" within the meaning of the FLSA 29 U.S.C. §203(d).

55. At all times relevant to this Complaint, Defendant CHRYSLER employed Plaintiffs and continues to employ putative class members, within the definition of the FLSA 29 U.S.C. §203(e)(1).

56. At all times relevant to this Complaint, Defendant CHRYSLER has had gross operating revenues in excess of \$500,000.00, 29 U.S.C. 203(s)(1)(A)(i) and (ii).

57. Each of the named Plaintiffs consents to sue in this action pursuant to Fair Labor Standards Act.

58. The FLSA requires each covered employer such as Defendant CHRYSLER to compensate all non-exempt employees at a rate of not less than 1½ the regular rate of pay for work performed in excess of forty (40) hours in a work week.

59. Plaintiffs and the class they seek to represent were and are paid hourly and are not exempt from the right to receive overtime pay under the FLSA.

60. Plaintiffs and the class they seek to represent are entitled to be paid overtime compensation for all overtime hours worked.

61. At all times relevant to this Complaint, Defendant CHRYSLER had a policy and practice of failing and refusing to pay overtime to its contract employees for their hours worked in excess of forty (40) hours per week.

62. As a result of Defendant CHRYSLER's failure to compensate its non-union contract employees, including Plaintiffs and the class they seek to represent, at a rate not less than 1½ times the regular rate of pay for work performed in excess of forty (40) hours in a work week, Defendant CHRYSLER has violated and continues to violate the FLSA, 29 U.S.C. §§201 et. seq., including 29 U.S.C. §207(a)(1) and §215(a).

63. Defendant CHRYSLER has failed to make, keep and preserve records with respect to each of the Plaintiffs and the class they seek to represent, sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§201 et. seq., including 29 U.S.C. §211(c) and §215(a).

64. Defendant CHRYSLER's conduct as alleged herein constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).

65. Plaintiffs on behalf of themselves and the class that they seek to represent are entitled to damages in the amount of their respective unpaid overtime compensation, plus liquidated damages as provided by the FLSA, 29 U.S.C. §216(b) and other such legal and equitable relief as the Court deems just and proper.

66. Plaintiffs on behalf of themselves and the class that they seek to represent request recovery of their attorney's fees and costs associated with this cause as provided by 29 U.S.C. §216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and the class that they seek to represent pray for the following relief:

- A. Designation of this action as a collective action on behalf of the Plaintiffs and the class they seek to represent pursuant to the Fair Labor Standards Act claims and a prompt issuance of notice pursuant to 29 U.S.C. §216(b), to all similarly situated members of the FLSA opt-in class apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. §216(b) and equitable tolling of the statute of limitations from the date of filing this Complaint until the expiration of the deadline for filing consent to sue forms pursuant to 29 U.S.C. §216(b);
- B. A declaratory judgment that the practices complained of herein are unlawful under the FLSA 29 U.S.C. §201 et seq.;

- C. An injunction against Defendant CHRYSLER and its officers, agents, successors, employees, representatives and any and all persons acting in concert with as provided by law from engaging in each of the unlawful practices, policies and patterns set forth herein;
- D. An award of damages including liquidated and exemplary damages and waiting time penalties to be paid by Defendant CHRYSLER;
- E. Designation of Plaintiffs KAREN BRANDELIK and LISA KNISPEL as the class representatives;
- F. Attorneys' fees and costs; and
- G. Any other relief that this Court deems just.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial by jury.

Respectfully submitted,
HERTZ SCHRAM PC

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