

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SCHULTZ, K.,
individually and on behalf
of all others similarly situated,

Plaintiff,

Case No. 16-cv-797

vs.

EPIC SYSTEMS CORPORATION

c/o Judith R. Faulkner
1979 Milky Way
Verona, Wisconsin 53593

Defendant.

COLLECTIVE AND CLASS ACTION COMPLAINT

INTRODUCTION

1. This is a collective and class action brought by Individual and Representative Plaintiff, Kate Schultz (“Named Plaintiff”), on her own behalf and on behalf of the members of the proposed classes identified below. Named Plaintiff and putative class members, during the three year period preceding this lawsuit, were employed as Quality Assurance employees (“QAs”) by Defendant, Epic Systems Corporation (“Epic”), and were denied overtime wages under an illegal pay policy whereby they were commonly misclassified as exempt from overtime wages under state and federal law. Under this policy, QAs were not paid at one and one-half times their regular rate for hours worked over 40 per workweek. Named Plaintiff and

putative class members are similarly-situated under Fed. R. Civ. P. 23 and 29 U.S.C. § 216(b) as they suffered identical wage losses under this illegal policy.

JURISDICTION AND VENUE

2. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* The Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the U.S. District Court for the Western District of Wisconsin pursuant to 28 U.S.C. § 1391 because Epic is headquartered in this district and because events giving rise to these claims occurred in this district.

PARTIES

4. Named Plaintiff, Kate Schultz, is an adult resident of Madison, Wisconsin. Named Plaintiff was, within the three years preceding the filing of this lawsuit, employed as a QA for Epic. Named Plaintiff’s consent form is attached as Exhibit A to this Complaint and is incorporated herein by reference.

5. Defendant, Epic Systems Corporation, is a domestic corporation with its principal office at 1979 Milky Way, Verona, Wisconsin 53593.

6. Epic’s registered agent for service of process is Judith R. Faulkner, 1979 Milky Way, Verona, Wisconsin 53593.

7. Epic is an “employer” within the meaning of 29 U.S.C. § 203(d).

8. Epic is an enterprise engaged in commerce within the meaning of 29

U.S.C. § 203(s)(1).

FACTUAL ALLEGATIONS

9. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members are or were employed by Epic as QAs.

10. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members were classified by Epic as exempt from overtime wages.

11. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members were paid a fixed salary without regard to the number of hours they worked.

12. Throughout the three year period preceding the filing of this Complaint, the job duties performed by Named Plaintiff and putative class members were those of FLSA non-exempt employees. Named Plaintiff and putative class members performed low level computer work which required little if any training or education in computer programming or engineering. Named Plaintiff and putative class members shared a primary duty of conducting quality assurance of Epic's software products by simulating the end-user's experience and documenting problems the user may encounter with the software.

13. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members were not computer systems analysts, computer programmers, software engineers, or similarly-skilled computer employees.

Epic recruits and hires individuals to work as QAs who have no technical or software background.

14. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members' primary duty was not related to the management of the business operations of Epic or its customers.

15. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff's and putative class members' primary duty did not require the use of discretion and independent judgment with respect to matters of significance.

16. Throughout the three year period preceding the filing of this Complaint, Named Plaintiff and putative class members were customarily and regularly suffered and permitted to work hours over 40 in a week without overtime compensation.

17. Epic knew or should have known that Named Plaintiff and putative class members performed over 40 hours of work per workweek because it directed them to perform said work and required them to record their hours worked.

18. Named Plaintiff brings this action on behalf of herself and on behalf of other similarly-situated employees, pursuant to 29 U.S.C. § 216(b). The **Collective Class** is defined as:

All persons formerly or currently employed by Epic as a QA who have not been compensated at a rate of one and one-half times their regular rate of pay for hours worked over 40 per week at any time from December 2, 2014 through the present and ongoing, excluding any time said persons were designated "Team Leads."

19. Named Plaintiff also brings this action on behalf of herself and on

behalf of all other similarly-situated employees, pursuant to Fed. R. Civ. P. 23. The

Wisconsin Overtime Class is defined as:

All persons formerly or currently employed by Epic as a QA who have not been compensated at a rate of one and one-half times their regular rate of pay for hours worked over 40 per week at any time from December 2, 2014 through the present and ongoing, excluding any time said persons were designated “Team Leads.”

20. In April 2014, during litigation of a similar wage and hour case brought by a QA against Epic, Nordgren v. Epic Systems Corp., Case No. 13-cv-840 (W.D. Wis.), Epic subjected Named Plaintiff and members of the Collective and Wisconsin Overtime Classes to an arbitration agreement which would prohibit Named Plaintiff from bringing wage and hour claims against Epic in court and on a class or collective basis. As of the filing of this Complaint, the District Court for the Western District of Wisconsin and the Seventh Circuit Court of Appeals have ruled that this arbitration agreement is illegal and unenforceable. See Lewis v. Epic Systems Corp., Case No. 15-cv-082-bbc (W.D. Wis. Sept. 11, 2015); Lewis v. Epic Systems Corp., No. 15-2997 (7th Cir. May 26, 2016) *petition for cert. filed* (U.S. Sept. 2, 2016) (No. 16-285).

CLASS ALLEGATIONS

21. Named Plaintiff brings the Second Claim for Relief on her own behalf and on behalf of the Wisconsin Overtime Class, as defined in paragraph 19, supra, pursuant to Fed. R. Civ. P. 23(a) and (b).

22. The persons in the class identified above are so numerous that joinder of

all members is impracticable. Although the precise number of such persons is as yet unknown, upon information and belief, Epic has employed more than 1,000 people who satisfy the definition of the Class.

23. There are questions of law and fact common to the Wisconsin Overtime Class that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether Epic maintained a common practice of unlawfully failing to pay overtime compensation to Named Plaintiff and members of the Wisconsin Overtime Class in violation of and within the meaning of Wis. Stat. § 103.03 and Wis. Admin. Code § DWD 274.03;
- (b) Whether Named Plaintiff and members of the Wisconsin Overtime Class are exempt from overtime compensation under Wisconsin Law;
- (c) The nature and amount of compensable work performed by Named Plaintiff and members of the of the Wisconsin Overtime Class;
- (d) Whether Epic employed Named Plaintiff and members of the Wisconsin Overtime Class within the meaning of Wisconsin law; and
- (e) The proper measure of damages sustained by Named Plaintiff and members of the Wisconsin Overtime Class.

24. Named Plaintiff's claims are typical of those of the Wisconsin Overtime Class. Named Plaintiff, like other members of the Wisconsin Overtime Class, was subjected to Epic's illegal pay policy of refusing to pay overtime wages in violation of Wisconsin law.

25. Named Plaintiff will fairly and adequately protect the interests of the Wisconsin Overtime Class and has retained counsel experienced in complex wage and hour litigation.

26. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against a large and wealthy corporate defendant, especially those plaintiffs with relatively small claims.

27. Class certification of the Second Claim for Relief is appropriate under Fed. R. Civ. P. 23(b)(3), because questions of law and fact common to the Wisconsin Overtime Class predominate over any questions affecting only individual members of the Wisconsin Overtime Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Epic's common and uniform policies and practices denied members of the Wisconsin Overtime Class the wages to which they are entitled for work they performed. The damages suffered by the individual Wisconsin Overtime Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Epic's pay practices.

28. Named Plaintiff intends to send notice to all members of the Wisconsin Overtime Class to the extent required by Fed. R. Civ. P. 23.

FIRST CLAIM FOR RELIEF
FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF THE FLSA

29. Named Plaintiff, individually and on behalf of the Collective Class, re-alleges and incorporates by reference the allegations in the preceding paragraphs.

30. Epic is an “employer” within the meaning of 29 U.S.C. § 203(d).

31. Named Plaintiff and the members of the Collective Class are or were employees of Epic within the meaning of 29 U.S.C. § 203(e).

32. The FLSA requires each covered employer to compensate all non-exempt employees at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of 40 hours per workweek.

33. Named Plaintiff and members of the Collective Class are not and were not exempt from overtime pay requirements under the FLSA.

34. During the applicable statute of limitations, Named Plaintiff and members of the Collective Class performed work in excess of 40 hours per week without receiving overtime compensation.

35. These practices violate the FLSA, including, but not limited to, 29 U.S.C. § 207. Because of these violations, Named Plaintiff and members of the Collective Class have suffered a wage loss.

36. Epic knew or showed reckless disregard for the fact that it failed to pay Named Plaintiff and members of the Collective Class overtime compensation in violation of the FLSA.

SECOND CLAIM FOR RELIEF
FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF WISCONSIN LAW

37. Named Plaintiff, individually and on behalf of the Wisconsin Overtime Class, re-alleges and incorporates by reference the allegations in the preceding paragraphs.

38. The foregoing conduct, as alleged, violates Wis. Stats. §§ 103.03 and 109.03, and Wis. Admin. Code § DWD 274.03.

39. At all relevant times, Epic has been and continues to be an “employer” within the meaning of Wis. Stats. §§ 103.001 and 109.01(2).

40. At all relevant times, Named Plaintiff and the putative Wisconsin Overtime Class members were “employees” of Epic within the meaning of Wis. Stats. §§ 103.001(5) and 109.01(1r).

41. Wis. Stat. § 103.02 and Wis. Admin. Code § DWD 274.03 require an employer to pay overtime compensation to all non-exempt employees.

42. Wis. Stat. § 109.03 requires payment of all wages earned by the employee to a day not more than 31 days prior to the date of payment.

43. Named Plaintiff and members of the Wisconsin Overtime Class are not and were not exempt from overtime pay requirements under Wisconsin law.

44. During the applicable statute of limitations, Epic had a policy and practice of failing and refusing to pay overtime wages to Named Plaintiff and members of the putative Wisconsin Overtime Class for their hours worked in excess of 40 hours per workweek.

45. As a result of Epic's willful failure to pay overtime wages earned and due to Named Plaintiff and members of the putative Wisconsin Overtime Class, Epic has violated and continues to violate Wis. Stats. §§ 103.03 and 109.03 and Wis. Admin. Code § DWD 274.03. Named Plaintiff and members of the Wisconsin Overtime Class have suffered a wage loss as a result of these practices.

REQUEST FOR RELIEF

WHEREFORE, Named Plaintiff, on her behalf and on behalf of all members of the Collective Class and the Wisconsin Overtime Class, requests the following relief:

A. An order designating this action as a collective action on behalf of the proposed Collective Class and issuance of notices pursuant to 29 U.S.C. § 216(b) to all similarly-situated individuals;

B. An order certifying this action as a class action on behalf of the proposed Wisconsin Overtime Class pursuant to Fed. R. Civ. P. 23;

C. An order designating Kate Schultz as Named Plaintiff and as representative of the Wisconsin Overtime Class set forth herein;

D. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;

E. An order finding that Epic violated the FLSA and Wisconsin wage and hour law;

F. An order finding that these violations were willful;

G. Judgment against Epic in the amount equal to Named Plaintiff's, the

Collective Class's, and the Wisconsin Overtime Class's unpaid back wages at the applicable overtime rate;

H. An award in the amount of all liquidated damages and penalties as provided under Wis. Stat. § 109.11 and 29 U.S.C. § 216(b);

I. An award in the amount of all costs and attorneys' fees incurred in prosecuting these claims pursuant to Wis. Stat. § 109.03(6) and 29 U.S.C. § 216(b);

J. Such further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff and the putative class members demand a trial by jury.

Respectfully submitted this 2nd day of December, 2016.

Attorneys for the Plaintiff

By: /s/ David C. Zoeller

HAWKS QUINDEL, S.C.

David C. Zoeller, State Bar No. 1052017

Email: dzoeller@hq-law.com

William E. Parsons, State Bar No. 1048594

Email: wparsons@hq-law.com

Caitlin M. Madden, State Bar No. 108928

Email: cmadden@hq-law.com

Katelynn M. Williams, State Bar No. 1090438

Email: kwilliams@hq-law.com

Post Office Box 2155

Madison, Wisconsin 53701-2155

Telephone: 608-257-0040

Facsimile: 608-256-0236

HABUSH HABUSH & ROTTIER, S.C.

Daniel A. Rottier, State Bar No. 1016998

Email: rottier@habush.com

Jason Knutson, State Bar No. 1035801

Email: jknutson@habush.com

Breanne L. Snapp, State Bar No. 1091474

Email: bsnapp@habush.com

150 East Gilman St., Suite 2000

Madison, Wisconsin 53703

Telephone: 608-255-6663

Facsimile: 608-255-0745