

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

New York State Court Clerks Association, Monica Burns Shaw, on behalf of herself and all others similarly situated,

Plaintiffs,

- against -

Unified Court System of the State of New York, Office of Court Administration, Honorable Jonathan Lippman, as Chief Judge of the New York State Unified Court System, Honorable A. Gail Prudenti, as Chief Administrative Judge of the New York State Unified Court System and Honorable Lawrence K. Marks, as First Deputy Chief Administrative Judge of the New York State Unified Court System, and the Honorable Fern A. Fisher, as Deputy Chief Administrative Judge for the New York City Courts,

Defendants.

**COMPLAINT**

**JURY DEMAND**

**13 civ. \_\_\_\_\_ ( )**

**ECF CASE**

Plaintiffs, by their attorneys Pitta & Giblin, LLP, for their complaint in a FLSA collective action, allege as follows:

**PRELIMINARY STATEMENT**

1. This action is brought by Plaintiffs for a declaratory judgment under 28 U.S.C. §§2201 and 2202 and as a collective action pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201 *et seq.* (“FLSA”).

2. By this action Plaintiffs seek to recover unpaid wages and overtime compensation owed to the named Plaintiff Monica Burns Shaw (“Plaintiff Shaw”) and all others similarly situated who are employed as clerks of the courts of the State of New York located within the City of New York (“Clerks”). The Defendants willfully and systematically failed to pay its

Clerks wages for all hours worked and overtime compensation for work performed in excess of forty (40) hours per week as mandated by the FLSA.

3. Plaintiffs commenced this action seeking compensation, including compensation for unpaid time worked and overtime compensation for Plaintiff Shaw and all others similarly situated of which they were wrongfully deprived of, plus interest, liquidated damages, attorney's fees and costs.

### **JURISDICTION AND VENUE**

4. This Court has original jurisdiction under 29 U.S.C. §§ 201, *et. seq.* 28 U.S.C. §1331 and 28 U.S.C. §1337.

5. Pursuant to 28 U.S.C. §§ 1391(b) and (c), venue is appropriate within this District.

### **PARTIES**

6. Plaintiff New York State Court Clerks Association (hereinafter referred to as ("Union")), is a labor organization which is and has been at all relevant times the duly authorized collective bargaining representative of the Clerks. The Union has a collective bargaining agreement with the State of New York Unified Court System ("CBA") covering workers employed as court clerks in the five boroughs of the City of New York, and, as such, on behalf of its members brings this action in its representative capacity to obtain a declaratory judgment, injunctive relief and damages for its members who were wrongfully denied compensation for unpaid time worked and overtime compensation.

7. Plaintiff Monica Burns Shaw ("Plaintiff Shaw") is a New York resident and works as Senior Court Clerk in the Bronx Family Court; she is also an elected Union Delegate.

8. Defendant Unified Court System of the State of New York (UCS”) is the Judicial Branch of New York State Government established pursuant to Article VI of the New York State Constitution. USC is a public agency within the meaning of the FLSA, 29 U.S. C. 203(x).

9. Defendant Office of Court Administration (“OCA”) is the administrative office for UCS established pursuant to Judiciary Law § 212(1)(b), whose principal place of business is 25 Beaver Street, New York, New York 10004. OCA is a public agency within the meaning of the FLSA, 29 U.S. C. 203(x).

10. Defendant, the Honorable Jonathan Lippman (“Hon. Judge Lippman”), is the Chief Judge of the State of New York. The Chief Judge, with the approval of the Administrative Board of Courts, is charged with establishing statewide standards and administrative policies. The Hon. Judge Lippman is named herein as a Defendant solely in his official capacity.

11. Defendant, the Honorable A. Gail Prudenti (“Hon. Judge Prudenti”), is the Chief Administrative Judge of the State of New York, and is charged with supervising the administration and operation of the State’s trial courts. The Hon. Judge Prudenti is named herein as a Defendant solely in her official capacity.

12. Defendant, the Honorable Lawrence K. Marks (“Hon. Judge Marks”), is the First Deputy Chief Administrative Judge, is charged with assisting the Chief Administrative Judge in her functions, as well as coordinating the court system’s efforts at improving management of its caseloads and eliminating backlog. The Hon. Judge Marks is named herein as a Defendant solely in his official capacity.

13. Defendant, the Honorable Fern A. Fisher (“Hon. Judge Fisher”) is the Deputy Chief Administrative Judge for the New York City Courts, and is responsible for overseeing the day-to-day operations of the trial-level courts in New York City in order to allocate and assign

judicial and non-judicial personnel resources to meet the needs of those courts. The Hon. Judge Fisher is named herein as a Defendant solely in her official capacity.

### **JURISDICTION AND VENUE**

14. This Court has original jurisdiction under 29 U.S.C. §§ 201, *et. seq.* 28 U.S.C. §1331 and 28 U.S.C. §1337.

15. Pursuant to 28 U.S.C. §§ 1391(b) and (c), venue is appropriate within this District.

### **DEMAND FOR JURY TRIAL**

16. The Union and Plaintiff Shaw, on behalf of herself and on behalf of others similarly situated, hereby demand a jury trial on all causes of action.

### **BACKGROUND FACTS**

17. In or around November 2010, New York State was facing a budget crisis, which affected all of its State agencies, including UCS and OCA.

18. In response, amongst various other measures, New York State enacted a state retirement incentive law.

19. Approximately, 248 court clerks retired as a result of the State's retirement incentive law, and most of those vacant positions remained unfilled.

20. Prior to said retirements, there were 1,751 court clerks employed in the five boroughs.

21. In or around December 2010, OCA submitted its budget to State for the next fiscal year; however, the OCA's budget request was ultimately reduced by approximately \$170 million dollars.

22. Pursuant to these cutbacks, the OCA, in or around June 2, 2011, issued workforce reductions, and rolled back court employees, including court clerks.

23. As a result of the State's retirement incentive, workforce reduction, and normal attrition, the court clerk workforce decreased from 1,751 to 1,488.

24. Notwithstanding the reduction in the workforce, the actual caseload numbers continued to increase.

25. Additionally, the OCA instituted a hiring freeze, curtailed court hours, and completely restricted overtime hours.

26. Despite the foregoing, the court clerks were still expected to meet the increasing demands called upon them by their particular court parts.

27. Upon information and belief, OCA set a policy that expected Court Managers and Court Clerks to meet the increasing daily demands of their Court and do so without incurring overtime cost; this created a climate where Court Clerks felt compelled to work past normal hours in order to finish their work and Court Managers, under pressure to have the work done, allowed it to happen.

28. Upon information and belief, because of the short staffing, in order to meet such impossible demands, certain clerks began working overtime hours despite not receiving compensation.

29. At the Union's January 2012 delegates' meetings, members began to complain that they were working through lunch, working before and after they "swiped" into work because it was impossible to complete the work assigned to them.

30. Additionally, on or about February 26, 2013, Joseph Walsh, President of the Union and Pamela Browne, Second Vice President, received a call that Lawrence Barron ("Barron"), a clerk assigned to the Supreme Court, Kings County, was reporting to work on weekends to his complete work and was not compensated for the work he performed on those days; all with the knowledge and consent of his immediate supervisor.

31. Upon further investigation, the Union learned that Barron was in fact coming in on Saturdays and on numerous occasions worked through the night on a Friday and continued working all day Saturday and was not compensated for the work he performed on those days; all with the knowledge and consent of his immediate supervisor.

32. In response Union President Walsh met with Chief Clerk Charles Small (“Small”) and Deputy Chief Clerk Donna Farrell (“Farrell”) of the Brooklyn Supreme Court, and Small and Farrell agreed that they would no longer allow Barron to work on Saturdays.

33. On March 7, 2013, Union’s counsel wrote Lauren DeSole, OCA’s Director of Human Resources, wherein he advised that the Union had learned that UCS employees were, among other things, working without being paid and working overtime hours without being paid; a meeting was requested to discuss the Union’s concerns.

34. By letter, dated, March 19, 2013, Ms. DeSole responded to Union counsel’s March 7<sup>th</sup> letter wherein she stated that UCS overtime eligible employees are compensated for time worked, are not permitted to volunteer, and that she informed the court manager of the legal requirements for time worked.

35. Thereafter, in or around April 2013, the Union met with OCA to discuss whether Barron was the exception or whether other employees had also worked overtime hours and weekends for which they were not compensated.

36. During this April meeting, OCA acknowledged that its employees are not allowed to work off the clock, and if they are working they should and will be paid.

37. In response, the Union simply requested that the OCA prepare a letter to be distributed throughout the courts administered by OCA stating its policy with respect to overtime hours worked, that is, if an employee works overtime or on weekends that employee must be paid for such time worked in accordance with Federal and State laws.

38. Although initially agreeing to provide the Union with such a letter, sometime thereafter, OCA notified the Union that it would not prepare and distribute the letter that it originally had agreed to prepare and distribute.

39. Sometime thereafter, the Union sent OCA requests for information concerning twenty-two court clerks it believed had worked without being compensated, including Barron as well as plaintiff Shaw.

40. Pursuant to such requests, the Union uncovered far reaching and systemic violations throughout the courts located in the City of New York.

41. In this regard, the Union determined that there were two ways in which the FLSA violations occurred: (i) the supervisors were manually editing the Kronos system, and (ii) an employee would clock out but his computer activity log would still show that clerk working until the late hours of the evening.

42. Out of the twenty-two clerks whose records were requested, the Union uncovered that 18 of those clerks had worked hours of which they were not compensated.

### **Kronos**

43. Inside each respective courthouse, the clerks are required to clock in and out using a Kronos swipe card (hereinafter "Swipe In" and "Swipe Out", respectively), such time is then registered on the Kronos system, the current version of a time clock.

44. Under the Kronos system, for example, a clerk whose regular scheduled work shift is from 9:00 a.m. to 5:00 p.m., can Swipe In at 8:45 a.m. without a supervisor having to adjust the Kronos, and likewise can Swipe Out at 5:15 p.m. without having the Kronos adjusted by a supervisor; however, if a clerk Swipes In before 8:45a.m. or swipes out after 5:15 p.m., the Kronos would have to be edited, or overtime payments would be required.

45. If there is an edit on the Kronos, that edit will be reflected on the Kronos system itself.

46. Therefore, if a clerk swipes out of the Kronos system for instance at 7:00 p.m., that clerk's swipe out time can be adjusted by his or her supervisor back to 5:00 p.m., in order to prevent that clerk from receiving overtime compensation.

### **Computer Activity Log**

47. The second way the Union uncovered FLSA violations was by reviewing the courts computer data base, known as the Universal Case Management System ("UCMS").

48. UCMS is the database used by the clerks in each particular court.<sup>1</sup>

49. Generally, when an action is commenced, a clerk must prepare an intake, create an index number and input such information into the UCMS; each case's calendar is then inputted into the UCMS by the clerk, and any adjournments, motions, orders, or any other filings must also likewise be noted in the UCMS, as a result, any clerk or judge who accesses the UCMS can tell what the status is on a particular case.

50. Each clerk must input a unique identifier in order to gain access into UCMS.

51. Upon information and belief, there is no internet access in or out of the UCMS system.

52. Pursuant to its requests for information, the Union learned that, according to official OCA records, some clerks were clocking out at 5:00p.m., but continued to work past that time as evidenced by the time stamped UCMS data entries.

53. For example, on August 5, 2011, plaintiff Shaw Swiped In at 8:57 a.m. and Swiped Out at 5:15 p.m.; however, Shaw's UCMS activity entries showed that she worked until 7:55 p.m., entitling her to 175 minutes of overtime that she was not paid.

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<sup>1</sup> Some Court's use CCIS database system or CRIMS, which is a variation of UCMS.



54. Below is a chart detailing the aforementioned example.

Day	Date	Kronos In	Kronos Out	Add/Edit	UCMS Out	Unpaid Time (in minutes)
Friday	8/5/2011	8:57 AM	5:15 PM		7:55 PM	175

### Wage Calculation

55. Under the FLSA, employers must pay employees minimum wages for all compensable hours worked and overtime of at least one and one-half times their regular rate of pay for any hours over forty worked in a week. 29 U.S.C §§ 206, 207(a)(1).

56. An employer may only pay comp time in lieu of wages where the employee has agreed to such a system of compensation, either individually or via a collective bargaining agreement, 29 U.S.C. § 207(o)(2)(A), and “if the employee has not accrued compensatory time in excess of the limit applicable to the employees prescribed by 29 U.S.C. § 207 (o)(3),” 29 U.S.C. § 207(o)(2)(B).

57. Overtime compensation “may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after such computation can be made.” 29 C.F.R. § 778.106.

58. Under the applicable CBA between the Union and UCS, each clerk is entitled to work a thirty-five (35) hour work week, Thursday to Wednesday.

59. A clerk has the option of receiving either straight time or comp time for the first five (5) hours worked in excess of thirty-five (35), and any hours worked in excess of forty (40) are computed as time and a half.

60. In the instant matter, based on the documents provided by OCA, plaintiff Shaw worked in excess of 8,000 minutes for which she was not compensated.

## FLSA COLLECTIVE ACTION ALLEGATIONS

61. Plaintiffs bring this claim for relief as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of themselves and on behalf of all individuals employed as court clerks by Defendant UCS within the statute of limitations who have not been paid for straight time or overtime hours worked (the “Collective Plaintiffs”).

62. At all relevant times the Union, Plaintiff Shaw and the Collective Plaintiffs are and have been similarly situated, have had substantially similar job requirements and pay provisions, have been subject to the same collective bargaining agreement(s), and have been subject to Defendant’s decisions, plans, policies, programs, practices, procedures, protocols, routines, and rules willfully failing and refusing to pay them at the legally required rate for their time worked, and time and a half rates for work in excess of forty (40) hours per workweek.

63. This suit is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. § 216(b). The Collective Plaintiffs are readily ascertainable. For purpose of notice and other purpose related to this action, their names and addresses are readily available from the Defendant. Notice can be provided to the Collective Plaintiffs via first class mail to the last known address known to Defendant.

64. The precise number of Collective Plaintiffs is not known at this time, as it is solely within the Defendants’ knowledge and control. As of October 1, 2013, there were 1488 court clerks employed by Defendant UCS servicing the Courts located in the City of New York.

65. On information and belief, Defendants have for three years violated, and continue to willfully and intentionally, violate the provisions of the FLSA.

66. Plaintiffs seek damages in the amount of their respective unpaid and/or untimely overtime compensation, liquidated (double) damages as provided by the FLSA for overtime

violations, attorneys' fees and costs, pre and post-judgment interest, and such other legal and equitable relief as this Court deems just and proper.

### **FIRST CLAIM FOR RELIEF**

67. Plaintiffs repeat and reallege each and every allegation as previously set forth in paragraphs numbered 1 through 66 herein above.

68. Pursuant to the FLSA employees are required to be paid for all hours worked.

69. Defendants violated the FLSA by failing to pay Plaintiff Shaw and the Collective Plaintiffs for all hours worked.

70. The failure of Defendants to pay Plaintiff Shaw and the Collective Plaintiffs their wages for all hours worked was willful.

71. By reason of the aforementioned premises, Defendants are liable to Plaintiff Shaw and the Collective Plaintiffs in an amount to be determined at trial, plus liquidated damages in an amount equal to the amount of unpaid wages, reasonable attorney's fees, and costs and disbursements of his action, pursuant to 29 U.S.C. §216(b)

### **SECOND CLAIM FOR RELIEF**

72. Plaintiffs repeat and reallege each and every allegation as previously set forth in paragraphs numbered 1 through 71 herein above.

73. Pursuant to 29 U.S.C. §207, employers are required to pay employees who work in excess of forty (40) hours at a rate of not less than one and one-half times the regular rate at which the employee is employed.

74. Earned overtime wages, at the rate of one and one-half of timed the regular rate of pay, for all times in which they worked in excess of forty (40) hours in any given week.

75. The failure of Defendants to pay Plaintiff Shaw and the Collective Plaintiffs their wages for overtime wages, at the rate of one and one-half of timed the regular rate of pay, was willful.

76. By reason of the aforementioned premises, Defendants are liable to Plaintiff Shaw and the Collective Plaintiffs in an amount to be determined at trial, plus liquidated damages in an amount equal to the amount of unpaid wages, reasonable attorney's fees, and costs of this action.

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Union and Plaintiff Shaw, on behalf of herself and others similarly situated, pray for relief as follows:

- a. Designation of this action as a collective action pursuant to 29 U.S.C. §216(b) on behalf of all Collective Plaintiffs;
- b. Declaratory judgment declaring that Defendants have willfully and wrongfully violated statutory obligations under the FLSA, and deprived Plaintiff Shaw and others similarly situated of their rights protections and entitlements under the law, as alleged herein;
- c. Permanent injunction restraining and preventing Defendants from withholding the compensation that is due Plaintiff Shaw, and all others similarly situated, from further violating their rights under the law;
- d. An Order that the Defendants engage in a complete and accurate accounting of all compensation to which the Plaintiff Shaw, and all others similarly situated, are entitled;
- e. An award of damages, according to proof, including unpaid wages and overtime compensation and liquidated damages, to be paid by Defendants;
- f. Costs of the action incurred herein;

- g. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;
- h. Pre-judgment and post-judgment interest, as provided by law; and
- i. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: New York, New York  
October 30, 2013

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