

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

CHRISTINE WATERS)
3311 N. 55th Street)
Kansas City, KS 66104)

JURY TRIAL DEMANDED

JESSICA KIRK)
8524 Troup Avenue)
Kansas City, KS 66112)

On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiffs,)

Case No.: 4:09-CV-1003

vs.)

KRYGER GLASS CO.)
Please Serve Registered Agent:)
William Maurice Kryger)
1221 Harrison)
Kansas City, MO 64106)

Defendant.)

FIRST AMENDED COMPLAINT
Collective Action Under the FLSA
Rule 23 Class Action Claim – Missouri Wage Laws

COME NOW the Plaintiffs Christine Waters and Jessica Kirk and hereby set forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. § 216(b) and the Missouri wage laws, RSMo. § 290.500, *et seq.*, as follows:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action against Defendant Kryger Glass Company (“Kryger”) for unpaid compensation and overtime compensation and related penalties and damages. Defendant’s practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiffs, and all other similarly situated employees, who work as

nonexempt hourly employees. In particular, Defendant requires such persons to be present at work and perform work, including both before and after their scheduled shifts but fails to pay them overtime accordingly. Defendant also requires such persons to perform work tasks during meal break time that is deducted from their pay. Defendant “shaves” off overtime hours that are worked and recorded by such persons. All of these practices and policies are in direct violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA) and for those employed in Missouri, the Missouri wage laws, RSMo. § 290.500 *et seq.*

2. Plaintiffs seek injunctive and declaratory relief; overtime premiums for all overtime work required, suffered, or permitted by Defendant; liquidated and/or other damages as permitted by applicable law; and attorney’s fees, costs, and expenses incurred in this action.

PARTIES

3. Plaintiff Christine Waters currently resides at 3311 N. 55th Street, Kansas City, Kansas 66104. Plaintiff was employed as a Customer Service Representative, a nonexempt hourly employee, at Defendant’s facility located in Kansas City, Jackson County, Missouri.
4. Plaintiff Jessica Kirk currently resides at 8524 Troup Avenue, Kansas City, Wyandotte County, Kansas. Plaintiff was employed as a Customer Service Representative, a nonexempt hourly employee, at Defendant’s facilities located in Overland Park, Johnson County, Kansas and Kansas City, Jackson County, Missouri.
5. Defendant Kryger Glass Company (“Kryger”) is a Missouri corporation registered to do business and in good standing in the state of Missouri. Kryger’s principal place of

business is at 1221 Harrison Street, Kansas City, Missouri 64106. Kryger operates other business locations in the states of Missouri, Kansas, Nebraska, and Iowa.

JURISDICTION AND VENUE

6. This Court has original federal question jurisdiction under 28 U.S.C. §1311 for the claims brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
7. This Court has supplemental jurisdiction for all claims asserted under the Missouri wage laws in that the claims under this law is part of the same case and controversy as the FLSA claims, the state and federal claims derive from a common nucleus of operative fact, the state claim would not substantially dominate over the FLSA claims, and exercising supplemental jurisdiction would be in the interests of judicial economy, convenience, fairness, and comity.
8. The United States District Court for the Western District of Missouri at Kansas City has personal jurisdiction because Defendant conducts business within this District and division.
9. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendant has offices, conducts business and can be found in the Western District of Missouri, and the cause of action set forth herein has arisen and occurred in part in the Western District of Missouri at Kansas City. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendant has substantial business contacts within the state of Missouri.
10. At all relevant times, Defendant has been, and continues to be, an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant has employed, and/or continues to employ, “employee[s],” including each of the putative representative

action plaintiffs. At all times relevant herein, Defendant has had operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

11. At all relevant times, Defendant has been, and continues to be, an “employer” within the meaning of the Missouri wage laws, RSMo. §290.500(4). At all relevant times, Defendant has employed, and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs within the meaning of the Missouri wage laws, RSMo. § 290.500(3).

COUNT I
Collective Class Action Claim under the FLSA

12. Plaintiffs hereby incorporate paragraphs 1 through 11 of this First Amended Complaint into this count.
13. Plaintiff Christine Waters was employed by the Defendant as a Customer Service Representative, a nonexempt hourly employee, from approximately May 2007 to September 2009. Plaintiff, along with other nonexempt hourly employees worked at Defendant’s facility located in Kansas City, Jackson County, Missouri.
14. Plaintiff Jessica Kirk was employed by the Defendant as a Customer Service Representative, a nonexempt hourly employee, from approximately February 2008 to May 2009. Plaintiff, along with other nonexempt employees worked at Defendant’s facilities located in Overland Park, Johnson County, Kansas and Kansas City, Jackson County, Missouri.
15. Like the Plaintiffs, the Defendant employs numerous other nonexempt hourly employees at all its locations in Missouri, Kansas, Nebraska, and Iowa.
16. All of Defendant’s nonexempt employees are similarly situated in that they are all subject to Defendant’s same compensation policy and plan that requires them to perform work

and/or requires them to be present at work while not compensating them for their services (herein referred to as the “putative representative action plaintiffs”). In particular, the Defendant’s policies that applies to its nonexempt employees are as follows: (a) Defendant utilized the same centralized time keeping system that allows Defendant to erase or “shave” these employees recorded hours to eliminate or reduce hours worked in excess of forty per week, and/or (b) Defendant requires these employees to perform work before clocking in, after clocking out, and during unpaid meal breaks which in turn lowers or reduces hours worked in excess of forty per week. These policies deny overtime compensation and are in violation of the FLSA.

17. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
18. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as nonexempt hourly employees within three years from the commencement of this action who have not been correctly compensated for overtime under the FLSA.
19. This Complaint is being brought and maintained as an “opt-in” collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Representative Plaintiffs because their claims are similar to the claims of the putative representative action plaintiffs.
20. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said

individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

21. The Defendant failed to compensate Plaintiffs and the putative representative action plaintiffs at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
22. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
23. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
24. The Plaintiffs, on behalf of themselves and all similarly situated employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

WHEREFORE, Plaintiffs, on behalf of themselves and all proposed putative representative action plaintiffs, prays for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C.

- §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiffs Christine Waters and Jessica Kirk as Representative Plaintiffs of the putative representative action plaintiffs of nonexempt hourly employees;
 - c. Designation of Donelon, P.C. as the attorneys representing the putative representative action plaintiffs;
 - d. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, *et seq.*;
 - e. An injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
 - f. An award of damages for overtime compensation due for the Plaintiffs and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendant;
 - g. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
 - h. Pre-Judgment and Post-Judgment interest, as provided by law; and
 - i. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

COUNT II

FED.R.CIV.P. 23 Class Action under Missouri Wage Laws

25. The Plaintiffs hereby incorporate by reference paragraphs 1 through 24 of this First Amended Complaint into this count.

26. Plaintiff Christine Waters was employed by the Defendant as a Customer Service Representative, a nonexempt hourly employee, from approximately May 2007 to September 2009. Plaintiff, along with other nonexempt hourly employees worked at Defendant's facility located in Kansas City, Jackson County, Missouri.
27. Plaintiff Jessica Kirk was employed by the Defendant as a Customer Service Representative, a nonexempt hourly employee, from approximately February 2008 to May 2009. Plaintiff, along with other nonexempt employees worked at Defendant's facilities located in Overland Park, Johnson County, Kansas and Kansas City, Jackson County, Missouri.
28. The Missouri Named Plaintiffs Waters and Kirk bring this Court as a class action pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of themselves and the following class of persons:

All current and former non-exempt employees of Defendant who have worked locations in Missouri at any time during the last two years, who were subject to Defendant's unlawful compensation policies of failing to pay overtime compensation for all hours worked in excess of forty per work week.
29. The state law claims, if certified for class wide treatment, may be pursued by all similarly situated persons who do not opt-out of the class.
30. The Missouri Named Plaintiffs Waters and Kirk, individually and on behalf of the above Missouri Class Members, bring a class action based on the Missouri wage laws, RSMO. § 290.500 *et seq.*, in particular, § 290.505.1 and § 290.527.
31. The Missouri Named Plaintiffs Waters and Kirk and the Missouri Class Members are all similarly situated in that they were all subject to Defendant's policy of (a) utilizing the same centralized time keeping system that allows Defendant to erases or "shave" these employees recorded hours to eliminate or reduce hours worked in excess of forty per

week, and/or (b) requiring these employees to perform work before clocking in, after clocking out, and during unpaid meal breaks, which in turn lowers or reduces hours worked in excess of forty per week. These policies deny overtime compensation and are in violation of the Missouri wage laws, in particular RSMo. § 290.505.

32. Class certification of this Count for violations of Missouri wage laws is appropriate pursuant to Fed. R. Civ. P. 23(a) in that:

- a. The members of the Missouri Class are so numerous that joinder of all members is impracticable. The exact number of class members is unknown to the Missouri Named Plaintiffs at the present time but the estimate would place in excess of one hundred;
- b. There are questions of law and fact arising in this action which are common to the Missouri Named Plaintiffs and the Missouri Class Members, including:
 - (i) Whether Defendant's policies and practices described within this Complaint were illegal;
 - (ii) Whether Missouri Class Members are paid for all of the overtime they work;
 - (iii) Whether Defendant maintains accurate records of the time the Missouri Class Members work;
 - (iv) Whether Defendant's policies and practices regarding the recording and modifying of time is lawful; and
 - (v) Whether Defendant failed to pay appropriate overtime premiums to the Missouri Class Members in violation of the Missouri wage laws, RSMo. §290.505.

33. Missouri Named Plaintiffs' claims are typical of the claims of the Missouri Class Members. The Missouri Named Plaintiffs were paid under the same policy and procedure as all members of the class. The Missouri Named Plaintiffs and all members of the class were victims of the same wrongful conduct engaged by Defendants in violation of the Missouri wage laws.
34. The Missouri Named Plaintiffs will fairly and adequately protect the interests of the members of the class.
35. The Missouri Named Plaintiffs have retained counsel who is competent and experienced in class action and complex litigation involving compensation claims.
36. The Missouri Named Plaintiffs have no interests which are adverse to or in conflict with other Missouri Class Members.
37. Class certification of the respective class is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to class members predominate over any questions affecting only individual members and a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that: (a) there is minimal interest of members of this class in individually controlling their prosecution of claims under the Missouri wage laws; (b) it is desirable to concentrate all the litigation of these claims in this forum; and, (c) there are no unusual difficulties likely to be encountered in the management of this case as a class action.
38. In the absence of a class action, Defendant would be unjustly enriched because it would be able to retain the benefits and fruits of the wrongful violation of the Missouri wage laws.

39. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of this cause of action. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which plaintiffs can effectively litigate against large, well-represented corporate defendants. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and over again.
40. Defendant failed to pay the Missouri Named Plaintiffs and the Missouri Class Members the overtime required by Missouri law.
41. Defendant's failure to pay the correct amount of overtime violates the Missouri wage law, RSMo. §290.505.
42. Because Defendants failed to properly pay overtime as required by law, the Missouri Named Plaintiffs and the Missouri Class Members are entitled under the Missouri wage laws to bring this civil action under RSMo. § 290.527, are entitled to all overtime compensation due to them at a rate of 1 and ½ times the regular rate of pay for all overtime hours worked in the past two years under RSMo. § 290.505 and § 290.527, and under RSMo. § 290.527 to recover additional liquidated damages in the same amount, costs, and reasonable attorneys' fees.

WHEREFORE, the Missouri Named Plaintiffs Waters and Kirk, on behalf of themselves and the Missouri Class Members, pray for relief as follows for Count II of this First Amended Complaint:

- a. Designation of this action as a class action under FED.R.CIV.P. 23 on behalf of the Missouri Class Members and issuance of notice pursuant to all Missouri Class Members, apprising them of the pendency of this action;
- b. Designation of Missouri Named Plaintiffs Christine Waters and Jessica E. Kirk as Representative Plaintiffs of the Missouri Class Members;
- c. Designation of Donelon, P.C. as the attorneys representing the Missouri Class Members;
- d. A declaratory judgment that the practices complained of herein are unlawful under the Missouri wage laws;
- e. An award of damages for overtime compensation due for the Plaintiffs and the putative representative action plaintiffs, including liquidated damages allowed under Missouri law, to be paid by Defendant;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Demand for Jury Trial

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury trial.

Respectfully submitted,

the law office of **DONELON, P.C.** www.donelonpc.com

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/s/ Brendan J. Donelon

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ATTORNEYS FOR PLAINTIFF

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing was sent via the requirements set forth under the CM/ECF for the Western District of Missouri, and all related standing orders, to the registered email addresses of the following counsel for the Defendant on July 12, 2010:

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