IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN SMITH,
Individually and on behalf of all others
Similarly situated
Plaintiff,

Case No:

v.

NINJAONE LLC, d/b/a NINJAONE,
Defendant.
________________________________.

COLLECTIVE ACTION COMPLAINT FOR VIOLATIONS OF THE OVERTIME WAGE SECTION OF THE FAIR LABOR STANDARDS ACT (FLSA)

Plaintiff, JOHN SMITH, individually and on behalf of all others similarly situated, sues Defendant **NINJARMM LLC**, d/b/a NINJAONE (hereinafter referred to as "Ninja", or Defendant), pursuant to 29 U.S.C. § 216(b), of the Fair Labor Standards Act (the "FLSA") for failure to pay overtime wages in violation of FLSA Section 207(a), and states as follows:

1. Plaintiff Smith and the collective of similarly situated current and former insides sales employees (ISR) all worked for Defendant under job titles including: Sales Development Representative (SDR), Account Manager, or Account Executive and other various job titles used to describe persons who performed substantially the same requirements of an inside sales representative ("ISR"), and all worked at Defendant's physical offices or worked remotely and

their work was directed from Defendant's multiple offices located in Oldsmar, Florida; Austin, Texas; or San Francisco, California.

2. Plaintiff's primary function was to use telecommunications such as telephones, email, and technology to solicit businesses to purchase Ninja's IT tool and software on a subscription basis (SAAS). Plaintiff thus worked as in inside sales representative (ISR) under the title of Sales Development Representative or Elite Sales Development Representative (SDR).

3. Through a long-standing scheme to avoid and evade its overtime pay obligations under the FLSA, for the purposes of increasing profits for itself, Ninja has improperly and willfully withheld and refused to pay Plaintiff and its ISR overtime wages and premiums for overtime hours worked in violation of the nation's federal wage law, the FLSA. This scheme was the subject of a prior FLSA collective action lawsuit in this Court, by ISR in the case of *Van Vlack v. NinjaRmm, LLC d/b/a Ninjaone*; *case no 8:22-cv-00539-SDM-AEP.*

4. Sometime around the time of the settlement of *Van Vlack v. NinjaRmm LLC d/b/a Ninjaone,* in 2022, Defendant instituted a time keeping system.

5. However, Defendant continued to maintain and instituted schemes to avoid paying overtime premiums to Plaintiff and all other ISR such that Plaintiff and other ISR suffered to work overtime hours without being paid premiums for all hours worked.

6. At minimum, Defendant acted with reckless disregard for its obligations to pay ISR overtime premiums for all hours worked, but worse, willfully stole the hard earned and owed wages of Plaintiff and its employees working as ISR in the name of profits and minimizing labor costs.

7. Ninja also concurrently and simultaneously willfully failed to accurately track and record Plaintiff's work hours as mandated pursuant to federal regulation 29 C.F.R. § 516.

8. Defendant knows that ISR fail the short test for the executive exemption since they do not supervise two or more full time employees, their primary job duties are non-exempt sales duties, and not management of the business or enterprise nor any department of Defendant; as well as being part of production.

9. Defendant knew or should have known that ISRs do not meet the administrative exemption, as their primary job duty does not in involve the use of discretion and independent judgment in matters of significance affecting the company and its management; and that their primary job duty is production and sales, typically non-exempt under the FLSA and as concluded by the DOL regulations and the DOL field operations handbook.

10. Defendant has a comprehensive lead generation system such that inside sales representatives do not have to solely rely upon their own contacts and sources to generate sales.

11. Plaintiff predominantly spend their days making outbound (cold calls), sending email solicitations, researching the internet and either making internet presentations or demonstrations and consummate to set appointments for Account Executives to attempt to sell their IT tool (SAAS) subscription service to businesses (B2B).

12. The allegations in this pleading are made without any admission that, as to any allegation, Plaintiff bears the burden of pleading, proof, or persuasion. Plaintiff reserves all rights to plead in the alternative.

Jurisdiction & Venue

13. This Court has subject matter jurisdiction over this action pursuant to *28 U.S.C. §1331*, because this action involves a federal question pursuant to the Fair Labor Standards Act ("FLSA"), *29 U.S.C. § 216 (b).*

14. This Court is empowered to issue a declaratory judgment under 28 U.S.C.§§ 2201 and 2202.

15. This Court has personal jurisdiction over the Defendant, because the Defendant operates substantial business in Pinellas County, Florida and the damages at issue occurred within this District, where Defendant maintains an office throughout the relevant 3-year time period.

16. Venue is proper to this Court pursuant to 28 U.S.C. Sec. 1391(b) because the Defendant resides in this district and because the unlawful pay

practices complained of and Plaintiff's damages occurred in this District as Plaintiff was hired from, worked at Defendant's fixed office location at 3671 Tampa, Road, Oldsmar, Fl 34677.

17. The overtime wage provisions set forth in FLSA §207 apply to Defendant, as Ninja engaged in interstate commerce under the definition of the FLSA. Indeed, at all relevant times, Defendants engaged in interstate commerce and/or in the production of goods for commerce within the meaning of FLSA Sec. 203 as a common business enterprise. Additionally, Defendant earned more than $500,000 in revenue during the years 2019 to 2021 as well.

The Parties

Named Plaintiff, John Smith

18. Plaintiff Smith was first hired to work for Defendant as an Inside Sales Representative under the title of Sales Development Representative in January 2022.

19. Plaintiff worked from and reported to office located at 3671 Tampa, Road, Oldsmar Florida, where he was one of a large group of inside sales employees (ISR).

20. Plaintiff's work was highly supervised, micro-managed, and scrutinized daily by management.

21. Plaintiff was required to meet certain metrics which gauged his

performance and determined whether he would continue to have a job. These key performance metrics primarily included setting a minimum number of appointments with representatives of businesses he solicited for the company Account Executives/Account Managers, who then would attempt to close a deal and make the sale.

22. Plaintiff also had sales quotas, and it was expected that his warm leads and appointments for the Account Executives would lead to subscription sales revenues of set monthly sums.

23. Plaintiff was paid on a salary basis, provided a percentage to goal bonus plan stated as an On Target Earnings (OTE), which combined with the salary would provide an opportunity for Plaintiff to earn a total of $75,000 in compensation.

24. The bonus component was non-discretionary under the compensation plan.

25. However, since SDR did not consummate the sales, all this bonus money was entirely contingent upon the actions of others.

26. SDR were also paid a bonus of $100, (later increased to $250 for Plaintiff when he was designated as an "elite SDR") per appointment set for the account executives or account managers, thus, clearly not a commission and not tied to the value of any sales.

The Defendant

27. NINJAONE LLC, (hereinafter Ninja) is a for profit Delaware company with world headquarters located at 3687 Tampa Road, Oldsmar, Florida 34677. Defendant can be served through its Florida registered agent: CT Corporation System, 1200 South Pine Island Road, Plantation FL, 33324.

28. Defendant Ninja is an employer within the definition of the FLSA, as it has revenues exceeding $500,000 annually in all applicable time periods, is involved in interstate commerce, and employs upwards of 300 or more employees.

29. Ninja was Plaintiff's employer within the meaning of 29 U.S.C. § 203(d).

30. The FLSA does not require employees to have to "claim" or submit a claim for overtime hours as a condition for being paid for these hours, especially where the Defendant knows, or should know, that employees are working overtime hours.

31. Here, Defendant has maintained for many years the application of unlawful pay practices and a history of either disinformation or intentionally silence about the FLSA overtime pay requirements.

32. Defendant is no stranger to claims by it inside sales representatives, having faced an identical FLSA section 216b overtime wage collective action in the case of *Van Vlack v. NINJARMM LLC, in this district, in*

case no 8:22-cv-00539-SDM-AEP. Defendant settled with the Plaintiffs in that case. See Document 37, filed 09/21/22.

33. Defendant, throughout the preceding 3 years of the filing of this Complaint and currently as well, has been aware of their inside sales representatives, including Plaintiff, routinely working overtime hours without being paid for all hours worked.

34. Plaintiff did not participate in that FLSA action, and at no time did Defendant ever offer to pay Plaintiff his owed overtime wages.

35. Moreover, thereafter, Defendant failed to change it's unlawful pay practices and schemes applicable to its ISR, as Plaintiff continued to work as a salaried, exempt employee who was not paid overtime premiums; or alternatively he and all other ISR sometime in 2022, were reclassified to non-exempt and but all suffered to work off the clock overtime hours.

36. Additional, from the *Van Vlack* case, Defendant was on notice that ISR, like Plaintiff here, routinely worked more than 40 hours per week to meets sales goals and production requirements, maintain metrics and to maximize their opportunities to earn the bonuses.

37. Plaintiff's primary job duties as an SDR are well recognized as typical non-exempt work duties, that of an inside sales employee.

38. When hired, Plaintiff was led to believe by Defendant that his position was an exempt salaried position, and that if he had to work overtime

hours to hit quotas, the time would not be compensated, and he would not be entitled to overtime premiums.

39. Plaintiff assumed his employer was complying with the FLSA and federal or state wage laws and did not seek to challenge their classification as exempt from overtime.

40. Plaintiff was assigned a standardized, corporate work schedule of Monday to Friday from 8:00 am until 4:30 pm, but he found it necessary to routinely work after the ending time of his shift of 4:30 pm, as well as sometimes working prior to the official start time of 8:00 am.

41. Plaintiff worked initially in the corporate office when hired, but at some point, approximately over the past 2 years through the date of separation of employment in May 2025, he was permitted to work remotely from his home.

42. Plaintiff's workweek was 42.5 hours, with 8.5 hours per workday, with a presumption that each ISR, including plaintiff would take a 30 minute meal break.

43. Plaintiff often did not take a full 30 minute meal, uninterrupted, non-working meal break, making these meal breaks not bona fide and thus must be counted as time worked for Plaintiff; sometimes Plaintiff did not take any uninterrupted meal break at all other than a few minutes it took to obtain some food or ready his meal.

44. Plaintiff rarely if ever could afford to take a 1 hour non-working

uninterrupted meal break but was pressured to report the same on the time sheets.

45. Plaintiff did not punch any time clock physically or electronically login in or record his work times and hours worked on any time tracking systems or software or programs as used by companies across the US; nor did Defendant utilize any paper timesheets or timecards.

46. The company policy was to strongly encourage ISR to work overtime hours, much of the time Plaintiff was involved in communications with businesses, searching for leads, attending appointments or “Scrubbing” leads.

47. Plaintiff spent many hours during evenings from his home searching the provided leads for the names and contact information of the persons in the business businesses to solicit, such as looking on LinkedIn, and doing research, as well as putting information into salesforce.com, a process known as “Scrubbing the leads”.

48. Plaintiff attended sales demonstrations and appointments set for hours beyond 4:30 pm, but was not paid for this time and discouraged by management from reporting these hours.

49. It is also well known to Ninja that only those sales representatives who were working more than 40 hours, and many hours off the clock were the ones who reached the sales goals, the maximum target cash, and who were the

most productive sales employees.

50. Plaintiff routinely worked more than 40 hours in his workweeks, with the knowledge, encouragement and behest of Defendant, but was never paid a premium for all such overtime hours worked.

General Collective Action Allegations

51. This collective action arises from an ongoing, longstanding, wrongful scheme by Defendant to willfully underpay and refuse to pay overtime wages to a large class of workers, the inside sales representatives (ISR), who Defendant knew, and knows still up through the filing of this complaint, routinely worked overtime hours without being paid for all hours worked.

52. Defendant's unlawful pay practice applicable to all inside sales representatives consisted of willfully misclassifying them as exempt employees and then making them suffer to work overtime hours without being paid a premium for all overtime hours worked.

53. Upon information and belief, even after the settlement in Van Vlack in September 2022, (or prior to then) Defendant continued to classify and pay its ISR on a salary basis and willfully refuse to pay overtime premiums.

54. Alternatively, Defendant reclassified its ISR hourly paid, non-exempt, but knowingly and willfully instituted and maintained unlawful pay practices, polices, procedures, and protocols including the following: a) direct discouragement and pressure from HR and management to ISR against reporting overtime hours or accurately reporting hours; b) continued to actions to mislead or misrepresent to ISR their entitlement to overtime premiums or what the FLSA provides; c) pressured to work off the clock to hit sales goals and metrics; d) instructing ISR to edit off overtime hours; d) turning a blind eye to the off the clock work and thus permitting ISR to suffer to work off the clock.

55. Despite knowledge that ISR had to work more than 40 hours, and work beyond the ending shift times of 4:30 pm or 5pm, Management “turned a blind eye” to the overtime hours worked by the inside sales reps, but specifically encouraged Plaintiff and all others ISR that they were to work as many overtime hours as necessary to hit the quotas, sales goals and metrics and not to complaint of the unpaid overtime hours.

56. Here, Plaintiff and all other similarly situated ISR were not being paid a fair wage for a fair day’s work as the FLSA mandates and for which it was created.

57. Plaintiff and other ISR were instructed to make sure that they

recorded a meal break for 1 hour whether they took the meal break or not.

58. As Plaintiff was led to believe he was not going to be paid overtime hours, he did what he was instructed and input the meal break times to avoid this time sheets from going over 40 hours.

59. No policy or procedure was in place for ISR to claim the times worked when they took less than the full meal breaks allotted time.

60. Defendant continued in 2022 to 2025 to maintain a code of silence about the FLSA and its meal break requirements or bona fide meal break regulations, and about overtime wages for ISR under the FLSA.

61. The work environment was plagued with pressure to work and not complaint of the unpaid overtime hours and instead to focus in hitting numbers and key performance metrics in order to both earn and maximize their bonus but to also keep their jobs.

62. ISR were pressured daily and weekly to hit numbers or find themselves on a PIP or fired for lack of production.

63. Thus, Plaintiff and other ISR kept their mouths shut as to the unpaid overtime hours, as defendant's actions, statements and conduct made it clear that complaining or demanding overtime pay would result in loss of employment.

64. The FLSA does not require employees to have to "claim" or

submit a claim for overtime hours as a condition for being paid for these hours, especially where the Defendant knows, or should know, that employees are working overtime hours.

65. Here, Defendant has maintained for many years the application of unlawful pay practices and a history of either disinformation or intentionally silence about the FLSA overtime pay requirements.

66. Defendant, throughout the preceding 3 years of the filing of this Complaint and currently as well, has been well aware of their inside sales representatives, including Plaintiff, routinely working overtime hours without being paid for all hours worked.

67. Moreover, defendant knew from the prior lawsuit and claims of ISR that to be successful and keep their jobs, to hit production goals and performance metrics, ISR had to work more than 40 hours routinely during the workweeks from 2022 to the present.

68. Upon information and belief, all ISR during the relevant 3 year claim period at issue here worked on similar compensation plans of a base pay and some percentage to goal incentive bonus paid on a monthly basis, and all were treated as exempt from overtime pay.

69. Alternatively, during this same period of time, Defendant actually reclassified Plaintiff and all others similarly situated to hourly non-

exempt employees but maintained a scheme of willfully refusing to pay overtime hours through the actions as stated in paragraph 52, and thus permitted them to suffer to work off the clock.

70. As the end of the month approached, on some occasions, management would encourage ISR to work later hours and off the clock by offering other non-wage incentives.

71. Plaintiff primary job duties are well recognized as typical non-exempt work duties as an inside sales representative.

THE COLLECTIVE OF SIMILARLY SITUATED ISR

72. Plaintiff bring this suit individually, and on behalf of all similarly situated persons composed of the following collective group (aka class) of similarly situated members

All person working as inside sales representatives (ISR) under the titles of: Sales Development Representative (SDR), Account Manager, Account Executive, or any other job title used to describe persons whose primary job duty was inside sales, who are currently employed or were previously employed by NINJAONE LLC working from or reporting to offices in Clearwater or Oldsmar, Florida, Austin, Texas, and Glendale, California within the past three years preceding the filing of this lawsuit through to the date of trial.

COLLECTIVE FACT ALLEGATIONS

73. At the time of this filing, numerous other members of the putative

class seek to join this action and demonstrate that there are others similarly situated who seek to join and claim their overtime wages.

74. Plaintiff is able to protect and represent the Collective or class, and are willing and able, and consents to doing so.

75. Plaintiff is similarly situated to the collective members he seeks to join in this action, as he was employed by Defendant under the title of Sales Development Representative (SDR), and Elite SDR and because: a) he solicited to sell Ninja's products, software, and services and including subscription services and thus his primary job duty was sales; b) he was paid under the same common pay structure/plan applicable to all other inside sales representatives: a base salary with monthly percentage to goal bonus plan and treated as an exempt employee under the FLSA; c) he routinely worked overtime without being paid a premium for the hours worked; and d) is familiar with Defendant's policies, procedures and unlawful pay practices.

76. Upon information and belief, Defendant employed 300 to 450 or more ISR at any given time working remotely from their homes working at one of defendant's offices in the United States, and whose work was controlled from these 3 offices and ultimately from the corporate office.

77. With turnover over the past 3 years, the collective of similarly situated ISR may be upwards of 600 or more members.

78. Upon information and belief, during the preceding 3 years all ISR were subject to a common unlawful pay practice and scheme of being willfully misclassified as exempt employees and not paid premiums for all overtime hours worked.

79. Alternatively, all the ISR were reclassified to hourly nonexempt, but subjected to the same shce3med and unlawful pay practices as Plaintiff suffered, including suffering to work off the clock.

80. At no time during the relevant 3-year time period did Defendant formally discipline inside sales representatives, including Plaintiff Smith for working off the clock overtime hours.

81. Account Managers or Account Executives were ISR whose primary duty was sales, including the responsibility to close or make the sale from the appointment set by the SDR.

82. Account Managers (AM) or Account Executives (AE) primary job duty was, just like SDR, was inside sales, and just like SDR is thus a non-exempt role under the FLSA.

83. Additionally, upon information and belief, AE and AM were also paid on the same common pay plan as SDR, and thus properly similarly situated to Plaintiff in this action.

84. Upon information and belief, and from communications and

training and other meetings with ISR from across the US, all ISR were subject to single corporate and common employment policies and procedure, including standard and uniform overtime pay practices and time keeping procedures.

COUNT I
FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF FLSA SECTION §207A

85. Plaintiff alleges and incorporates by reference all preceding paragraphs as if restated herein.

86. Plaintiff routinely worked more than 40 hours during his workweeks over the term of his employment, up through the date of separation from employment on or about May 28, 2025.

87. Defendant does not, and cannot have a good faith basis for failing to pay Plaintiff overtime premiums, as Defendant was throughout the preceding 3 years, well aware that the persons working as inside sales reps work in a position that generally is well known to be a non-exempt position and one that does not meet the elements of any exemption under the FLSA.

88. Even assuming Defendant claims the application of the 207(i), Retail Sales Exemption, such an exemption cannot apply to all pay cycles in the preceding 3 years unless the ISR's commissions for the month or other look back period, exceeded 50% of the total wages.

89. Here, Plaintiff's bonuses are not commissions and did not exceed

the amount Plaintiff was paid for his salary, if he was paid on a salary basis.

90. Further, the bonus paid of $100 to $250 per appointment set for others cannot be classified as a commission under the FLSA, as it was not tied to the value of a sale or the price of the subscription services sold, and thus not properly included in the 207i exemption calculations as "commissions".

91. Ninja also knew inside sales representatives were working overtime without paying a premium for these hours, both encouraging it with blatant disregard for the FLSA, but also it chose not to pay them any premiums for the overtime hours worked.

92. Defendant knowingly and willfully failed to accurately and fully track the hours worked by Plaintiff in violation of the FLSA and 29 CFR Part 576.

93. Defendants time records, if any, are thus inaccurate and unreliable, and pursuant to Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946), Defendant has the burden to prove Plaintiff's work hours. Plaintiff may establish the hours he worked solely by his testimony and the burden of overcoming such testimony shifts to the employer as per Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

94. Again, despite the *Van Vlack* FLSA collective action case and its settlement with this group of former ISR in September 2022, Defendant never instituted a time tracking system and never reclassified plaintiff to non-exempt.

95. Defendant has thus willfully misclassified Plaintiff as exempt from overtime pay, when it knew his position would not meet the elements of any exemption under the FLSA.

96. Defendant as well maintained a scheme during Plaintiff's term of employment to avoid its overtime pay obligations.

97. Defendant knew Plaintiff worked more than 40 hours in his workweeks but would not pay plaintiff a premium for these hours.

98. The FLSA required Defendant to pay the overtime wages when it knew employees "worked" over 40 hours in any work week and does not permit an employer to escape or nullify its overtime pay obligations by placing the duty on the employee to formally submit the hours and make a claim for overtime pay.

99. Regardless, the Defendant's company policies and procedures related to work hours are oppressive, misleading and intended to discourage and prevent inside sales representatives from ever making a request or claim for overtime pay due to fear and intimidation of being terminated from employment.

100. Defendant made clear to the Plaintiff and other inside sales representatives that they were not going to be paid overtime wages and that requesting such was going to subject them to heightened scrutiny, discipline and potentially termination of employment.

101. Defendant has failed to make, keep, and preserve accurate time records with respect to each of its employees sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA 29 USC 201 *et. seq*., including 29 USC Sec. 211(c) and 215 (a).

102. Defendant understood that in order to meet quotas and goals, inside sales representatives would have to routinely work overtime hours, and that the inside sales rep position was simply not a 40 hour per week job.

103. To summarize, Ninja has willfully and lacking in good faith, violated the FLSA by failing to pay overtime premiums to Plaintiff and all others similarly situated.

104. As a result of Ninja's willful violations of the FLSA, Plaintiff and all other ISR who worked for Defendant during the same period of time, have suffered damages which amount to wage theft by Defendant, for its willful failure and refusal to pay him overtime compensation in accordance with FLSA §207a.

105. Defendant maintained a scheme to avoid is overtime pay obligations to ISR under the FLSA, through misleading statements, false statements of being exempt from overtime pay, and discouraging complaining of unpaid overtime hours.

106. Due to Ninja' willful violations of the FLSA, a three-year statute of limitations applies to the FLSA violations pursuant to *29 U.S.C. §255(a)*.

107. As a result of Ninja's unlawful acts and pay practices, complained of herein, Plaintiff and those similarly situated ISR have been deprived of due and owing overtime compensation in amounts to be determined at trial.

108. Plaintiff and all other ISR who elect to join this action, are entitled to be paid an equal sum of all back wages awarded in amount sum as liquidated damages, as defendant does not and cannot prove it had a good faith basis for the unlawful pay practices complained of herein.

WHEREFORE, Plaintiff, demands the following relief:

a) the payment of all past due wages for overtime hours worked within the preceding 3 years for himself and all other ISR who elect to join or participate in this collective action;

b) the payment of an equal sum of awarded overtime wages as liquidated damages;

c) Certifying this as a collective action and permitting Plaintiff and his counsel to send notice of this action to all others similarly situated;

d) prejudgment interest and an award of his attorney's fees, costs and expense of this litigation pursuant to FLSA § 216.

e) Plaintiff further seeks a determination or finding by the Court that defendant willfully violated the time keeping requirements of the FLSA and as codified in 29 CFR part 516, and hold place the burden of proof of the hours worked of Plaintiff on Defenadnt.

f) Plaintiff further requests the Court award any other equitable or legal relief as this Court may deem appropriate, including the value of underpaid matching funds in company pension or 401k plans.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury.

Filed and dated this 19th day of November, 2025.

/s/.
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