

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

MARY ALISSA COOK, *Individually
and on behalf of all Others similarly
situated,*

Plaintiff,

Case No:
216(b) Collective Action

v.

ACCENTURE LLP and N3 LLC,
Defendants.

**COLLECTIVE ACTION COMPLAINT FOR VIOLATIONS OF THE
OVERTIME WAGE SECTION OF THE FAIR LABOR STANDARDS
ACT (FLSA) FAILURE TO PAY OVERTIME WAGES**

Plaintiff, MARY ALISSA COOK, individually and on behalf of all other similarly situated persons employed as an inside sales representatives (ISR) at any time during during the period of 3 years preceding the filing of this complaint sues Defendants, **ACCENTURE LLP and its subsidiary, N3 LLC**, (hereinafter collectively referred to “Accenture”, or Defendants), pursuant to 29 U.S.C. § 216(b), of the Fair Labor Standards Act (the "FLSA") for failure to pay overtime wages for all hours worked over 40 in each and every workweek.

RECITATION OF FACTS

1. Pursuant to a national, common policy and unlawful pay practice Accenture LLC (hereinafter Accenture) and its wholly owned subsidiary, N3 LLC (herein after N3) both pressured and permitted its inside sales representatives under various job titles to work off the clock and overtime hours without pay while simultaneously discouraging the accurate reporting of all hours worked in order to save millions of dollars in labor costs and increase profits.

2. These 2 Defendants have a history of being caught violating its overtime wage pay requirements under the FLSA for its inside sales representative employees (ISR). Following a nearly identical lawsuit filed in 2020, in the case of: **Kendon Austin v. N3 LLC d/b/a N3 Results and Accenture LLP**, Case No. 1:21-cv-01354-TWT; Case 1:21-cv-01354-TWT these same Defendants paid the sum of **\$1,750,000.00** to settle the overtime wage claims of ISR, which was approved by Court order on May 24, 2022. See DE 75.

3. However, as this lawsuit herein lays out, the Defendants' unlawful pay practices complained of by Plaintiff Austin in this prior lawsuit were not abated. Instead, it appears Defendants maintained misinformation and new job titles as some means to dissuade future ISR from complaining of not being paid for all their overtime hours worked.

4. Plaintiff Cook, and other situated ISR employees were unlawfully not compensated for all hours worked over 40 in each and every work week, and were permitted to suffer to work off the clock in violation of the FLSA.

5. Further, upon information and belief, even when Defendants did pay a premium for some overtime hours worked, upon information and belief, they willfully underpaid ISR by failing to include the value of earned bonuses in the regular rate of pay calculation as required by the FLSA and the related regulations, and thus the overtime premiums paid were willfully underpaid.

6. Accenture and its wholly owned subsidiary, N3 have improperly and willfully withheld and refused to pay Plaintiff and all inside sales representatives (ISR) overtime wages and a premium for overtime hours worked and at the correct lawful rates. Defendants' paycheck stubs and pay records will demonstrate that Plaintiff and all inside sales reps were actually hourly, non-exempt employees such that Defendants cannot now and should not be able to claim the application of any exemptions, and knew that their actions and conduct of not paying overtime wages to all ISR was unlawful and a willful violation of the FLSA.

7. At the very least, Defendants acted with reckless disregard for

their obligations to pay ISR overtime premiums for all hours worked, and to lawfully and accurately track and record their work hours as per the DOL regulations for the FLSA found at 29 CFR Part 516.

8. In this pleading, the term “Inside Sales Representative” means any employee of Defendants working under the the following job titles or variations of the same including: Account Executive, Account Manager, Account Specialist, B2B Sales Consultant, Business Development Representative (I, II or III) (BDR), Business Development Analyst, Business Development Specialist, Business Development Manager, Customer Success Manager, Customer Success Management Analyst, Churn Prevention Specialist, Customer Solution Specialist, Inside Digital Sales Executive, Inside Sales Account Representative Analyst, Inside Digital Sales Manager, ISR Analyst, Inside Sales Operation Manager, Inside Digital Sales Account Executive Solutions Specialist, Solution Support Specialist, SDR Analyst, Sales Account Rep, Small Business Sales Operations Specialist, Sales Development Associate Sales Opportunity Manager (SOM), or any other title used by Defendants to describe workers who perform substantially the same work as an inside sales representative (discovery may reveal additional job titles and employees that should be included). Inside Sales representatives in this class make predominantly spend their days making

outbound (cold calls), and some inbound phone calls, email solicitations, researching the internet and either making internet presentations or demonstrations and consummate sales of new products or cloud applications, the sale of services for customers or clients of Defendants such as Microsoft, Iron Mountain, Equifax, Ubereats, or Toshiba, Cisco, Google.

9. In this pleading, “Defendants” means ACCENTURE LLP and includes its wholly owned subsidiary “N3 LLC” and any other subsidiary or affiliated and wholly owned corporation, organization or entity responsible for the employment practices complained of herein, (discovery may reveal additional Defendant that should be included).

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

Jurisdiction & Venue

11. 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)*.

12. This Court is empowered to issue a declaratory judgment under

28 U.S.C. §§ 2201 and 2202.

13. This Court has personal jurisdiction over the Defendant, because the Defendants operate substantial business in Atlanta, Fulton County, Georgia and the damages at issue occurred within this District, where Defendant maintains an office throughout the relevant time period.

14. Venue is proper to this Court pursuant to 28 U.S.C. Sec. 1391(b) because the Defendant resides in this district and because a substantial part of the events giving rise to the claims occurred in this District as Plaintiff was hired from, supervised from and his work was directed by officers and managers from the Atlanta office.

15. The overtime wage provisions set forth in FLSA §207 apply to Defendant, as it engages in interstate commerce under the definition of the FLSA. Indeed, at all relevant times, Defendant 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 2021 to 2023 and will earn this sum for its 2024 year end.

The Parties

Representative Plaintiff, MARY ALISSA COOK

16. Alissa Cook resides in Atlanta, Georgia. She was first hired to work for Defendant in December 2019 when hired by its subsidiary, N3 Results LLC. She was hired in a wave with numerous other ISR, all of who started out under the job title of Business Development Representative (BDR).

17. In 2022, Plaintiff then took on a new sales role working for Accenture's client (account) Microsoft, under the title of Microsoft Azure Solutions Specialist or Solutions Specialist. Cook's primary job duty again remained soliciting to make sales.

18. At first she worked solely remotely, but eventually split her time each workweek working both in the Atlanta office and from her home remotely, as did other ISR

19. At all times material, Plaintiff worked as an ISR from the Defendant's Atlanta, Georgia office. Plaintiff's work was highly supervised, micro-managed, and scrutinized on a daily basis by management in Atlanta, Georgia, from the Atlanta office.

20. Plaintiff last worked as a Microsoft Partner Channel Manager from September through November 2024 until formal separation of employment in December 2024.

21. Regardless of the job title, the primary duties and

responsibilities of Plaintiff were to generate leads or sales through telephone and email business to business solicitations (B2B).

22. Despite being given a title that included the words “specialist” Plaintiff had no role or responsibility in supervising or directing the work of any other employees, and at all times her primary job responsibility was generating sales through solicitations and communications.

23. Further, Plaintiff’s primary job duties involved making outbound telephone solicitation calls, or sending out solicitation emails, and to develop Microsoft customers who were receptive to appointments to discuss purchasing new or additional products and services of the client, such as Microsoft.

24. Plaintiff, like all other ISR, was required to meet certain performance metrics which gauged her performance and determined whether she would continue to even have a job. These metrics were part of assigned Key Performance Indicators (KPI) and included making x number of telephone calls, and setting x number of appointments for the client involved, such as Microsoft in attempts to finalize and close a sale of products or services.

25. Plaintiff further engaged in basic customer service, again typical non-exempt work duties, all of which were conducted from a

call-center, with ISR lined up desk by desk.

26. When hired, Plaintiff was led to believe the position was a 40 hour per week job, and that she was being paid on a “salary basis”, plus the eligibility to earn a monthly or quarterly bonus based upon hitting KPI or other threshold sales goals.

27. Plaintiff earned a bonus, which was always for her and all other ISR, a very small percentage of their overall income.

28. Defendant also led Plaintiff to believe that she was exempt from overtime as a salaried/bonus employee, telling her that no matter how many overtime hours she worked she would not be paid a premium for these hours, and to otherwise not worry about the extra overtime hours worked or the lack of premium pay.

29. Defendants also discouraged Plaintiff and all other ISR from complaining about not being paid for overtime hours worked and for not being able to report and clock in all hours worked by telling them to focus on earning their bonuses, hitting their KPI and to be thankful they had jobs.

30. Plaintiff, like all ISR, including BDR, SOM, CSM etc., was assigned to work on a designed N3 client account called a “campaign”. The campaign meant there was some contractual arrangement between N3 and a business or corporation which hired N3 to engage in sales solicitations of

existing or potential new customers.

31. Each campaign was assigned a team of ISR to commence with calling and emailing of businesses (also referred to as “accounts” or “opportunities” and their employees from a source or pool of leads and to commensurate sales thereby turning the opportunity into an account.

32. For some ISR, the work involved setting up demonstrations or setting up appointments for other persons to attempt to negotiate and close deals, and also included aspects of customer service.

33. Plaintiff’s primary job duty was not the closing of a sale, but the act of telephoning and emailing the potential customers and developing warm leads for the client’s own sales employees to attempt to close sales or upsell, as N3’s business focus and the manner in which it was paid was strictly dependent upon the number of phone calls made, not the dollar value or revenue generated by the ISR.

34. Upon information and belief, all ISR were compensated on a base hourly rate plus a monthly bonus payment, either based upon hitting a percentage of goal of reaching key performance indicators (KPI) such as number of dials, number of emails, and number of appointments; or a monthly sales bonus based upon the revenue generated.

35. Plaintiff was paid a base hourly rate of pay, with some

percentage to goal incentive compensation (bonus) plan based upon opportunities created and/or revenues met, and and was classified by N3 as “NON-EXEMPT” under the FLSA.

36. Later, Plaintiff took on the role of Solutions Specialist, (aka Microsoft Solutions Specialist).

37. During this period of time, treated her, and other ISR, like salaried employees wherein defendants did not comply with record keeping requirements of the FLSA and CRF and did not pay her overtime premiums.

38. Plaintiff was never instructed, expected or required to input the exact time she started and ended her meal break, and instead, just before submitting her time for the biweekly pay period, just reported 1 hour for meal breaks for each day, again whether some, or none of it was taken on an uninterrupted, non-working basis.

39. Plaintiff, like all ISR in the Atlanta office, was given a set weekly corporate schedule of 45 hours per week, 9-hour days with opportunity to take up to a 1 hour meal break.

40. Plaintiff routinely worked through much of this 1 hour meal break, including working while eating at his desk, or taking a short break to eat and continuing back to work.

41. At no time did Defendant explain that working through this 1

hour provided meal break was compensable overtime work hours and which could be claimed and paid.

42. Plaintiff also found it necessary to stay after the ending shift time and put in additional work hours to complete his job duties, attend appointments and make phone calls.

43. Plaintiff similarly performed work on weekends using her laptop, and answering emails, and such work was not foreclosed, prohibited or discouraged, and moreover, management knew ISR were accessing programs and performing work outside the office.

44. Plaintiff, and all other similarly situated employees are currently now or have previously been covered under FLSA §207 as employees.

Defendant ACCENTURE LLP

45. ACCENTURE LLP is a wholly owned subsidiary of ACCENTURE PLC, a publicly traded (ACN) foreign (UK) international corporation, and Fortune 500 company selling consulting and processing services and conducting business in the U.S. through its North America Corporate office and principal office located at 500 W. Madison Street, Chicago, Illinois 60661. At all times material hereto, Accenture operated

jointly with Defendant N3 LLC from its fixed offices in Atlanta, Georgia located at 3565 Piedmont Rd NE building 3 suite 650, Atlanta, GA 30305, and may be served through its registered agent for service of process, at CORPORATE CREATIONS NETWORK INC.; 2985 GORDY PARKWAY, 1ST FLOOR, Marietta, GA, 30006, USA.

46. Defendant N3 LLC (N3) is a Delaware Corporation, and wholly owned subsidiary of Defendant Accenture LLP or Accenture PLC with principal place of business office it shares and jointly operates with ACCENTURE, listed as: 500 W. Madison St., 20th floor, Chicago, IL, 60661. N3 jointly employed Cook with Accenture, and it operates from the Accenture office located at 3565 Piedmont Rd, NE bldg 3, suite 650, Atlanta, GA 30305. N3 may be served at the same agent as Accenture.

47. As stated by Defendants on their 2024 10k, Annual Report, “*Accenture is a leading global professional services company that helps the world’s leading organizations build their digital core, optimize their operations, accelerate revenue growth and enhance services—creating tangible value at speed and scale. We are a talent- and innovation-led company with approximately 774,000 people serving clients in more than 120 countries. Technology is at the core of change today, and we are one of the world’s leaders in helping drive that change, with strong ecosystem*

relationships. We combine our strength in technology and leadership in cloud, data and AI with unmatched industry experience, functional expertise and global delivery capability. Our broad range of services, solutions and assets across Strategy & Consulting, Technology, Operations, Industry X and Song, together with our culture of shared success and commitment to creating 360° value, enable us to help our clients reinvent and build trusted, lasting relationships. We measure our success by the 360° value we create for our clients, each other, our shareholders, partners and communities”.

48. Upon information and belief, at peak times within the preceding 3 years of the filing of this complaint, Defendant employed 500 or more ISR working at or reporting remotely to its Atlanta office and from its Charleston, WV office.

49. Given turnover, Plaintiff estimates that the putative class of similarly situated inside sales representatives to be in the range of 900 persons who worked as ISR within the preceding 3 years from the filing of this complaint. Defendants also employed a large number of similarly situated remote working ISR employees reporting to other offices in the U.S.

50. Accenture and N3 are both Plaintiff's Plaintiff's employers within the meaning of 29 U.S.C. § 203(d), and joint employers under the law.

51. At all times within the preceding 3 years, ISR were jointly employed by Accenture and N3, meaning they were the joint employers of Cook and all others similarly situated ISR who performed work for Defendants concurrently and simultaneously, and for the benefit of both Defendants.

52. Cook and the similarly situated ISR followed and were governed by Accenture company policies and procedures, and thus Accenture directed their work, regardless of whether they in fact hired to work for N3 or were paid by N3 LLC.

THE LEGAL CLAIMS FOR UNPAID OVERTIME HOURS WORKED AND DEFENDANT’S UNLAWFUL PAY PRACTICES

53. This FLSA Section 216b “collective action” lawsuit arises from an ongoing, longstanding, wrongful scheme by Defendants to willfully underpay and refuse to pay overtime wages to a large class of Defendants’ workers and employees, the inside sales representatives, who Defendants knew, and knows still up through the filing of this complaint, routinely suffered to work overtime hours without being paid for all these hours in order to meet performance metrics, called KPI, and hit sales goals or production requirements.

54. Defendants uniquely know the ISR positions both required

these employees to routinely work more than 40 hours to keep up with their key performance metrics and to hit incentive compensation bonuses going back to the prior ISR overtime wage lawsuit, styled *Austin v. Accenture and N3* settled in 2022.

55. As the Austin case, and Cook's claim herein confirms, ISR routinely took less than the full **meal break** times provided and built into their work days and shift schedule, which should have been paid to ISR as overtime wages, but Defendants did not provide a means to claim back this time through misinformation and a lack of any means, policy or procedure for ISR to claim this time.

56. Defendants' unlawful pay practices applicable to all inside sales representatives was designed to save many millions of dollars in labor costs and increase profits.

57. Despite being an international, publicly traded corporation, with employees throughout the United States of America, including numerous attorneys and general counsel relationships, and having operated in the US and subject to the requirements of the FLSA for perhaps decades, Defendants have blatantly, and willfully violated the FLSA by: a) willfully refusing to pay overtime wages when they knew and were aware of employees working overtime hours; b) wilfully permitting ISR, who

Defendants knew or should have known were non-exempt employees, permitted them to suffer to work off the clock without being paid the proper and lawful premium for all hours worked over 40 in each and every work week; c) willfully underpaid ISR even when paying overtime wages by failing to include bonuses in the regular rate and premium rates of payment of overtime wages; d) forcibly and deceptively mandated each ISR deduct 1 hour from their day for meal breaks even when ISR were working through some or all meal breaks and regardless of this fact; and d) misleading ISR for falsely claiming and representing that they were exempt from overtime or alternatively by deterring and discouraging reporting of overtime hours on time records..

58. 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 Defendants know, or should know, that employees are working overtime hours.

59. Here, Defendants have maintained for many years as far back to the 3-year period preceding the **Austin v. Accenture and N3 lawsuit** the application of a blind indifference policy wherein they knew ISR were working off the clock and chose to permit it and let those ISR suffer to work those hours without pay.

60. Further, the Defendant discouraged ISR from claiming overtime using a De Facto policy which included telling ISR the company does not pay overtime and that ISR should not report overtime hours worked.

61. Upon information and belief, when an SDR dared to claim overtime not “pre-approved” some ISR were told they had to edit or remove the time themselves, or the manager/supervisor would do it. In either case, these ISR were warning against claiming such time under threats of consequences.

62. Upon information and belief, sometimes Defendants did permit, offer, and authorize ISR to work overtime during certain periods of time, and to which they paid the ISR a premium for overtime at time and ½ their regular rates of pay, thus demonstrating and confirming they were in fact non-exempt, hourly paid employees.

63. Alternatively, Plaintiff, like all other ISR were in fact actually classified by Defendants as either “salaried non-exempt employees” who were misled to believe they were not entitled to be paid a premium for all overtime hours worked unless pre-authorized or specifically directed.

64. All inside sales representatives were paid pursuant to the same common pay plan: a base hourly rate quoted in annual sums to the employees, and eligibility for monthly bonuses or commissions on a sliding

scale depending upon reaching the maximum target goal of 100%, and decreasing as the producing met less than 100% of the goals, or alternative with some multiplier based upon the production.

THE COLLECTIVE: CLASS OF INSIDES SALES REPS

65. Plaintiff brings this suit individually, and on behalf of all similarly situated persons composed of the following Class members:

PROPOSED CLASS OF SIMILARLY SITUATED:

All employees working as inside sales representatives (ISR) under the titles of: Account Executive, Account Manager, Account Specialist, B2B Sales Consultant, Business Development Representative (I, II or III) (BDR), Business Development Analyst, Business Development Specialist, Business Development Manager, Customer Success Manager, Customer Success Management Analyst, Churn Prevention Specialist, Customer Solution Specialist, Inside Digital Sales Executive, Inside Sales Account Representative Analyst, Inside Digital Sales Manager, ISR Analyst, Inside Sales Operation Manager, Inside Digital Sales Account Executive Solutions Specialist, Solution Support Specialist, SDR Analyst, Sales Development Associate, Sales Account Rep, Small Business Sales Operations Specialist, Sales Opportunity Manager (SOM) Solution Specialist, or any other job title used to describe persons whose primary job duty was inside sales and who are currently employed or were previously employed by N3 LLC d/b/a N3 Results or Accenture LLP anywhere within the U.S. within the past three years preceding the filing of this lawsuit.

GENERAL FACTUAL COLLECTIVE ALLEGATIONS

66. Plaintiff is similarly situated to all these proposed ISR as she was employed by Defendants under the titles of Business Development Representative (BDR) for N3 Results LLC, and later as a Solutions

Specialist for Accenture during the term of her employment, and because: a) she solicited to sell N3 and Accenture's customer/accounts services and cloud applications; b) she was paid under the same common pay structure/plan applicable to all other inside sales representatives: a base hourly rate, with monthly bonuses and treated as exempt under the FLSA; c) she 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.

67. Cook's primary job duty in all her positions was soliciting businesses for sales using telephone and email, meaning developing warm leads called "opportunities", and to get these businesses to agree to attend sales meetings or demonstrations for other persons who then attempt to negotiate and close the sale or deal.

68. Upon information and belief, the inside sales representatives across the US and reporting to various ACCENTURE offices in multiple states all were paid pursuant to a common pay plan of a base hourly rate of pay plus entitlement to earn bonus on some percentage to goal plan.

69. All ISR were subject to the same job requirements, and all were performing their job duties in similar manners pursuant to shared N3 and Accenture company policies and procedures.

70. Upon information and belief, Defendants used misinformation and misleading communications to lead ISR to believe they were either salaried exempt employees or just not legally entitled to be paid for overtime hours by proclaiming as a policy: “we don’t pay overtime”.

71. Defendant failed to advise Plaintiff and all ISR that as per the FLSA, a meal break which is not at least 30 minutes of “**uninterrupted, non-work activity break**” is to be counted as work hours and to be reported and paid, compensable time, even if doing so put the employee into overtime hours.

72. Defendant pressured ISR to work as many hours as needed to hit goals or quotas, and pressured to do so under fear of termination of employment, while simultaneously discouraging the reporting of overtime hours when ISR self-reported work hours in time sheets.

73. All inside sales representatives were purposefully misled to believe by Defendant that they were not legally entitled to overtime wages unless: a) they tracked the time and b) made a request for payment, despite the FLSA requirements that employers are obligated to pay its non-exempt employees a premium for overtime hours worked when they know or should have known of the hours worked.

74. Defendants had 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.

75. Defendants absolutely knew that inside sales representatives (ISR) routinely worked overtime hours, as managers and supervisors witnessed the extra hours, managers and company officials saw and knew that ISR were accessing telephone systems, CRM databases, emails, and engaged in computer demonstrations both outside the standardized mandatory corporate schedule.

76. Defendants pressured ISR to work harder with promises of advancement by publishing and comparing sales production and Key Performance Indicators (KPI), praising the top performers while denigrating the lower performers such that ISR were pressured to work extra hours to hit sales goals, quotas and KPI to avoid termination.

77. Further, Defendants willfully discouraged ISR from reporting overtime hours by both misleading them into believing that it was a lawful pay practice to say simply we don't pay overtime, and by warning of disciplinary action if the ISR claimed or clocked in more than 40 hours on their time records.

78. Meanwhile, Defendants knowingly permitted Cook and ISR to commence work prior to their daily shift start time, work during permitted

meal breaks, and to continue to work after the ending shift time all with a blind-eye to it.

79. Defendants have willfully failed to pay Plaintiff and all similarly situated ISR employees in accordance with the Fair Labor Standards Act (FLSA). Specifically, Plaintiff and similarly situated employees were not paid time and a half of their regular rate pay for all hours worked in excess of forty (40) hours per week, nor paid any premium for the overtime hours worked.

80. Plaintiff Cook, and the class of similarly situated employees did not and currently do not perform work that meets the definition of any exemption under the FLSA, and the Defendants' pay practices are not only clearly unlawful, but UNFAIR as well.

81. Plaintiff, like all ISR, were assigned a corporate, standardized weekly work schedule of 42.5 to 45-hours, typically with 8.5 or 9 hour work days from 8:30 to 5:00 pm or 9 to 5:30 pm, Monday through Friday.

82. Defendants presented ISR time sheets which are pre-polulated with exactly 8 hour days and 40 hours a week, without any meal break times, and equated to 40 hours each workweek.

83. ISR were told to take a meal break during a set 2 hour block of time such as between 12pm and 2pm, but the company did not have ISR

clock in and out for these breaks or track the times such meal breaks.

84. Defendants thus automatically deducted time for meal breaks, whether it was 30 minutes or 1 hour which was allotted for the ISR, and without regard to whether these employees took some, part or none of this time.

85. The Defendants maintained a company-wide policy throughout the relevant 3 year class period of willfully refusing to pay overtime wages or any premium pay for overtime hours worked for inside sales representatives despite, clear knowledge inside sales representatives have worked and continuing to work overtime hours, and as classified under the FLSA, non-exempt employees automatically due such wages.

86. Defendants pressured Plaintiff and other ISR to work as many hours as necessary to meet sales production goals, and meet their assigned KPI, including a high number of mandated daily # of telephone calls, numbers of sent email requirements and for many, a set number of sales appointments called opportunity meetings, under threats of formal discipline and termination of employment.

87. Defendants also discouraged Plaintiff and other ISR from making claims for overtime or reporting more than 40 hours in their weekly time sheets, and from presenting accurate time records.

88. Defendants maintained a *De Facto* off the clock policy (although there technically was not a time clock system), in which inside sales representatives were told to focus on their bonuses rather than any overtime pay requirements of the FLSA, and placing them in fear of discipline and termination if they ever dared to submit a claim for overtime wages.

89. At no time during the relevant 3 year time period did Defendants formally discipline inside sales representatives for working off the clock overtime hours, and didn't prevent ISR from logging in and commencing work prior to the start of their assigned shift time, or staying after the ending shift times.

90. All inside sales representatives followed standardized company policies and procedures applicable to all, and aside from variances in the communications related to the specific products they were selling, all had uniform, standardized and common job requirements for working as inside sales representatives.

91. The inside sales reps, including Plaintiff and the classes of similarly situated employees all made primarily outbound calls to sell the N3 client's products and services to businesses and professionals from their desks and with demonstrations on the web.

92. All ISR performed routine jobs whose primary job duty was production, setting and attending appointments and making the sales pitches and demonstrations of the products and services, to upsell or obtain renewals for both assigned accounts and any leads given to them by management to communicate with.

93. Plaintiff, as well as the members of the putative class of similarly situated employees, routinely worked through part or all of their lunch breaks, and also performed other work incidental to their job at home.

94. Many sales calls and demonstrations had to take place in the evening hours to accommodate business owners and their officers, especially those in the western time zones, so as not to disrupt their business during standard daily working hours.

95. Pursuant to FLSA §207, Defendants, as the joint employers of Plaintiff and the class of similarly situated employees, were and is currently required to pay an overtime premium at one and one-half times each employee's regular rate of pay hourly rate for hours worked in excess of forty (40) hours per week, which must include the value of bonuses or commissions earned in the calculations.

96. Defendants clearly knew or should have known, that these inside sales representatives do not satisfy any exemption, specifically: a)

they fail the executive exemption as they do not supervise other employees, b) fail the administrative exemption as their primary job duty is sales and production, and does not involve the exercise of discretion and independent judgment in matters of significance affecting the company; and c) clearly are not outside sales representatives or engaged in retail sales; d) are not professionally exempt as the position does not require specialized education and training; e) are not subject to any FLSA exemptions because and do not regularly perform exempt duties of an executive, administrative or professional employee.

97. Moreover, having been operating sales departments and numerous offices in the US, has known of and clearly has been aware of lawsuits against other large companies for not properly compensating inside sales representatives properly pursuant to the FLSA.

98. The offices did not mandate logging in and out for lunch or meal breaks and the company automatically deducted 1 hour for breaks (or 30 minutes for some ISR) regardless of knowledge the employee was working through some or all of their meal breaks and logged into the telephone system.

99. In order to meet sales quotas and KPI, and maximize their bonus pay, Plaintiff and other sales representatives would routinely work as

many overtime hours as they wished with the full knowledge, approval and encouragement of sales Managers/Directors and officers of the Defendants.

100. Defendants made known the employees who were not hitting quotas and KPI and observed numerous employees including themselves being terminated for allegedly not meeting sales goals and quotas.

101. Accenture also was aware that in order for inside sales representatives to meet 100% of the goals and KPI, inside sales representatives routinely had to work over 40 hours each week, and that the ISR positions were not a 9-5, 40 hour per week position.

102. Inside sales representatives were warned when falling short of quotas and or KPI, that their jobs could be terminated and encouraged to work as many hours as necessary and possible to hit goals and quotas.

103. Defendants unlawfully placed the onus and obligation on the employee to actually submit and request payment for the overtime hours worked, meanwhile discouraging reporting the overtime hours worked.

104. Defendants' representations and communications to employees about the company's obligations under the FLSA and the employees' rights to overtime pay were false and intentionally misleading, as well as unlawful and unfair, as was the entire De Facto overtime policy and failure to track and record on a timekeeping system the employees accurate and actual work

hours.

105. All inside sales representatives were trained to perform their job duties and expected to perform their job duties in similar manners throughout their multiple offices, aside from the variances for the separate product lines.

106. All inside sales representatives attended sales meetings during which the Defendants went over new procedures, policies and sales protocols and was clear to Plaintiff, applied to all inside sales representatives employed by the Defendants.

107. Defendants should be well aware that the FLSA requires the regular rate of pay calculation to include not only the base pay, but the bonuses and commissions in the calculation; thus the overtime rates of the Plaintiffs class must be based upon not just the base salary, but the commissions and bonuses as well. See FLSA sections 778.108, 778.117, 778.208, 778.209.

108. Evidence reflecting or demonstrating the precise number of overtime hours worked by Plaintiff and every member of the Class, as well as the applicable compensation rates, is in the possession of Defendants.

109. However, and to the extent ESI records are unavailable, Plaintiff, and members of the Class, may establish the hours they worked

solely by their testimony and the burden of overcoming such testimony shifts to the employer. *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

COUNT I
FLSA VIOLATIONS OF FLSA §207 AND DECLARATORY ACTION
PURSUANT TO 28 U.S.C. SECTIONS 2201 and 2202

110. Plaintiff alleges and incorporates by reference all preceding paragraphs of this Complaint and fully restates and re-allege all facts and claims herein.

111. Defendants have willfully and intentionally engaged in a common company pattern and practice of violating the provisions of the FLSA, by failing to compensate all inside sales representatives under the various job titles identified in this complaint as required pursuant to the FLSA overtime wage provisions during one or more weeks.

112. Plaintiff and class of similarly situated current and former persons who worked for Accenture and its wholly owned subsidiary N3 as inside sales representatives were denied overtime compensation pursuant to FLSA §207 as required to be paid by Defendants.

113. Plaintiff and all those similarly situated are employees of Defendants during their time as contemplated by 29 U.S.C. § 203.

114. Defendants do not, and cannot have a good faith basis for failing to pay Plaintiff and the class of inside sales representatives overtime pay, particularly here when they knew inside sales representatives were working overtime, and discouraged and placed the obligation upon the inside sales reps to formally make a claim for overtime pay.

115. Further, Defendants were aware and clearly knew Plaintiff and the inside sales rep position was a non-exempt position, subject to the time tracking requirements of the FLSA, and automatically required to pay any non-exempt employee overtime premium when they knew or should have known such employees worked any time over 40 hours in a work week.

116. Plaintiff, and the class of similarly situated, are thus entitled to an equal sum in overtime wages owed at rates of one and one half times their regular rates of pay as liquidated damages. See *Johnson v. Big Lots Stores, Inc.*, 604 F.Supp.2d 903 at 925 (E.D. La. 2009).

117. Defendants knowingly and willfully failed to track the hours worked by Plaintiff and other ISR in violation of the FLSA and 29 CFR Part 576.

118. Defendants suggested, encouraged and requested that all inside sales representatives work as many hours as they could to meet or exceed sales goals and KPI as long as they did not report more than 40 hours

without prior approval, but meanwhile had direct or constructive knowledge of inside sales representatives working overtime hours yet willfully chose not to compensate Plaintiff and the class of similarly situated.

119. Again, the FLSA required Defendants to pay the overtime wages when they know employees “worked” over 40 hours in any work week, and does not permit an employer to escape or nullify its obligations by placing the duty on the employee to formally submit the hours and make a claim for overtime pay.

120. Regardless, the entire 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.

121. Defendants made clear to the 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.

122. Defendants have 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).

123. Defendants knew and had reason to know, that overtime wages are to be paid at one and one half times the employees' regular rates of pay to include all compensation earned but, as a means to save hundreds of millions of dollars in labor costs, willfully chose to either misclassify the inside sales rep position as exempt or simply chose to institute policies, procedures and practices which both discouraged employees against making a claim for overtime pay and by not themselves paying overtime wages when they knew or should have known employees were working overtime without being paid for all hours worked.

124. Defendants were well aware that in order to meet quotas and goals, inside sales representatives would have to routinely or even occasionally work overtime hours, and that the inside sales rep position was simply not a 40 hour per week job.

125. To summarize, Defendants have willfully and lacking in good faith, violated the FLSA by the following unlawful pay practices applicable to Plaintiffs and the class of similarly situated employees by: a) willfully withholding payment of overtime wages when they knew or should have known Plaintiffs and the class of inside sales representatives actually worked over 40 hours; b) misleading and falsely advising Plaintiffs that they were

not entitled to overtime pay; while simultaneously discouraging ISR against reporting more than 40 hours; and c) not properly tracking and recording all work hours of inside sales representatives; and d) even when paying overtime wages, willfully underpaid employees by failing to include the value of bonuses earned in the regular rate and thus the overtime rates of pay.

126. Defendants have willfully refused to notify its employees that it has violated the FLSA by not paying overtime wages in the past, and have intentionally misled employees about their rights under the FLSA as to past overtime wages for overtime hours worked and about entitlement going forward.

127. As a result of Defendants' willful violations of the FLSA, Plaintiff and the similarly situated collective members have suffered economic damages by Defendants' willful failure to pay overtime compensation in accordance with FLSA §207 and unlawful pay practices.

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

129. As a result of Defendants's unlawful acts and pay practices, complained of herein, Plaintiff and all other similarly situated present and

former employees working as inside sales representatives under various job titles, have been deprived of overtime compensation in amounts to be determined at trial; and are entitled to recovery of such amounts, liquidated damages in amount equal to the overtime wages due, prejudgment interest, attorneys' fees, costs and other compensation pursuant to *29 U.S.C. §216(b)*, as well as injunctive relief pursuant to *29 U.S.C. §217*.

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated past and present inside sales representatives who worked for Defendants in the 3 years preceding the filing of this complaint to the present, seek the following the following relief:

- a. That Plaintiff be authorized to give notice of this Section 216b collective action to all past and present inside sales representatives employed by ACCENTURE and N3 at any time during the three (3) year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice for each respective class;
- b. Designate the Named Plaintiff as Representatives of the Collective Class for purposes of engaging in mediation, with the authority to execute any Collective Class settlement agreement the parties might reach, which is subject to Court's approval before making any such agreement binding.
- c. That the Court find and declare Defendants actions and conduct to be in violation of the overtime compensation provisions of the FLSA, specifically section 207(a), and in violation of the

record keeping requirements of 29 CFR part 516;

- d. That the Court find and declare Defendants' violations of the FLSA were and are willful and lacking any good faith or safe harbor basis under the FLSA;
- e. That the Court enjoin Defendants, under to *29 U.S.C. § 217*, from withholding future payment of overtime compensation owed to members of the Collective or Class.
- f. That the Court award to Plaintiff and the Plaintiff Class or Collective, comprised of all similarly situated employees, overtime compensation at a rate of one and one half time their regular rates of pay, including the value of all compensation earned, for previous hours worked in excess of forty (40) for any given week during the past three years AND liquidated damages of an equal amount of the overtime compensation, in addition to pre-judgment interest on said award pursuant to FLSA §216 and all other related economic losses;
- g. That the Court award Plaintiff and all other persons who opt into this action, recovery of their reasonable attorneys' fees and costs and expenses of litigation pursuant to FLSA § 216, including expert fees;
- h. That the Court award Plaintiff Cook a Class Representative service fee award for the justice she sought out for all those similarly situated and opt in plaintiffs, and for her services in this case as representative for the collective and to her counsel;
- i. That the Court issue in order of judgment under 29 U.S.C 216-17, 28 U.S.C. 2201 and 2202 finding that the Defendants unlawfully and willfully violated the FLSA by failing to pay overtime wages and failing to properly and willfully failing to accurately record all hours worked of non-exempt employees in violation of 29 CFR part 516, as well as issue an INJUNCTION barring the Defendants from further violating the FLSA;

- j. That the Court award any other legal and equitable relief as this Court may deem appropriate, including the value of underpaid matching funds in company pension or 401k plans.
- k. That the Court hold Defendants jointly and severally liable for all damages awarded by this court or the jury.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by this Complaint.

Submitted this 27th day of December, 2024.

/s/ Mitchell L. Feldman, Esquire

Mitchell Feldman, Esq.

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