

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Doreen Camp, individually and on behalf of other similarly situated individuals,	:	
	:	CIVIL ACTION NO.:
	:	
Plaintiffs,	:	
	:	
V.	:	
	:	
Lupin Pharmaceuticals, Inc.,	:	September 2, 2010
	:	
Defendants	:	
	:	

COLLECTIVE ACTION COMPLAINT

This is a collective action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is brought to remedy widespread overtime violations by Defendant Lupin Pharmaceuticals, Inc., (hereinafter “Lupin”) that have deprived plaintiff, a former Lupin pharmaceutical sales representative, along with all other pharmaceutical sales representatives, or persons holding similar positions, at Lupin, of overtime wages which they earned and to which they are entitled.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because these are claims brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.
2. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c) because a substantial part of the events, acts or omissions giving rise to claims in this Complaint took place in this judicial district.

3. This court has personal jurisdiction over defendant pursuant to Connecticut's long-arm statute because it transacts business in the State of Connecticut, it enters into employment contracts in Connecticut with the pharmaceutical representatives, including Plaintiff Camp, and its conduct in violating the Fair Labor Standards Act is tortious as that term is defined under the long arm statute.

THE PARTIES

4. Plaintiff Doreen Camp is an individual residing within this judicial district. She worked for defendant from approximately October 2009 to March 2010. Her employment officially ended in August 2010. During that time, plaintiff held the position of pharmaceutical sales representative.
5. Her formal title was "Professional Sales Representative" although in the industry, she was generally known as a pharmaceutical sales representative.
6. She worked out of her home and her territory included northern Connecticut, Massachusetts, New York and Rhode Island.
7. Defendant Lupin is a corporation organized and existing under the laws of the state of Maryland.
8. Lupin Pharmaceuticals, Inc. is the U.S. wholly owned subsidiary of Lupin Limited. On its website, it claims to be "among the top six pharmaceutical companies in India." Through its sales and marketing headquarters in Baltimore, MD, Lupin Pharmaceuticals, Inc. claims to be in the "business of delivering high-quality, branded and generic medications trusted by healthcare professionals and patients across geographies."

9. It advertises that its “mission is to become a transnational pharmaceutical company through the development and introduction of a wide portfolio of branded and generic products in key markets.”
10. Its principal office is located at 111 South Calvert Street, 21st Floor, Baltimore, Maryland. In this Complaint, “Lupin” refers (unless otherwise stated) to the named defendant and all successor, predecessor, subsidiary and related entities to which these allegations pertain. Lupin does business in all fifty states.
11. Lupin, which is subject to FLSA requirements, is an employer within the meaning of the FLSA. Lupin was the employer of Plaintiff and all other pharmaceutical sales representatives, and similar positions, in the various states in which they work, including Connecticut, because it had the power to hire and fire those employees, it supervised and controlled their work schedules and conditions of employment, it had the authority to set their rates and methods of payment and maintained their employment records.

COLLECTIVE ACTION ALLEGATIONS

12. Plaintiff brings the first cause of action on behalf of herself and all other Lupin professional sales representatives (“Reps”) or similar positions who have worked for defendant in the United States at any time between September 1, 2007 and the date of final judgment in this matter.
13. Plaintiff and the other Reps are similarly situated in that they are all assigned similar duties, including calling on physicians to promote Lupin’s products, and are subject to Lupin’s common plan or practice of designating them as exempt under the outside sales exemption of the FLSA when in fact their work is not exempt outside sales work because they do not actually make a sale. *See, In re*

Novartis Wage Hour Litigation, 611 F.3d 141 (2d Cir. 2010).

FACTUAL BACKGROUND

14. Plaintiff Camp was formally referred to as a “Professional Sales Representative.” (“Rep”) with Defendant from October 2009 to March 2010.
15. Lupin employs over 300 Reps nationwide. These Reps may be assigned a variety of formal titles, including “Professional Sales Representative” and others, but their job duties were materially the same.
16. Lupin assigned all Reps the same primary duties which was to make what Lupin characterizes as “sales” calls on physicians although its Reps do not sell the Lupin products to physicians.
17. During their visits with physicians Reps do not enter into contracts with physicians over the price or quantity of Lupin’s products, obtain their orders for Lupin’s products, or get binding commitments from the physicians to purchase or prescribe Lupin’s products.
18. Rather, in visits typically lasting no longer than five minutes, the Reps provide physicians with information about the features and benefits of particular Lupin products and encourage the physicians to prescribe those products.
19. The Reps give the physicians samples of drugs. These samples are not sold, and no money is exchanged. Selling drug samples is a federal crime. 21 U.S.C. §§ 353(c)(1), 333(b)(1)(B). The goal of the Reps is to get physicians to say that they will prescribe Lupin products for their patients.
20. To enable the Reps to reach their goals, Lupin puts them through a training program. The training is extensive, and is similar for all Reps.
21. Lupin uniformly manages the way its Reps perform their jobs, including by

setting the frequency with which a Rep must call on each physician and how often specific products should be promoted. For each product, Lupin has a principal marketing message which Reps are instructed to convey to physicians on each call.

22. Lupin pays its Reps a base salary and periodic bonuses.
23. It does not pay overtime premiums to its Reps despite the fact that Lupin knows that they frequently work more than forty hours in a week.
24. The decision to classify Reps as exempt from the requirements of the FLSA was made by defendant's corporate officers based on the general job description of the position.
25. In March of 2009, the United States District Court for the District of Connecticut ruled that pharmaceutical reps at Schering Corporation were entitled to be paid overtime wages. *Kuzinski v. Schering Corporation*, 604 F.Supp.2d 385 (D.Conn. 2009).
26. Despite this ruling, of which Defendant was aware, Defendant failed and refused to reclassify plaintiff and other reps to be non-exempt as that ruling required and instead consciously chose to maintain their classification of "exempt" employees and deny these, whose duties were materially the same as those in the *Kuzinski* matter, overtime wages which they had earned
27. On July 6, 2010, the Second Circuit Court of Appeals affirmed *Kuzinski*. *Kuzinski v. Schering Corporation*, 2010 WL 2669304 (2d Cir. 2010).
28. Despite this appellate ruling, of which Defendant was aware, Defendant failed and refused to reclassify its pharmaceutical sales representatives to be non-exempt and instead consciously chose to maintain their classification of

“exempt” employees and deny these, whose duties were materially the same as those in the *Kuzinski* matter, overtime wages which they had earned.

COUNT ONE VIOLATION OF THE FAIR LABOR STANDARDS ACT

29. Based on the foregoing, Lupin’s conduct in this regard was a willful violation of the Fair Labor Standards Act and entitles plaintiff and all other similarly situated pharmaceutical sales representatives who opt into this litigation to compensation for all overtime hours worked, liquidated damages, attorneys’ fees and court costs.

DEMAND FOR RELIEF

Wherefore, Plaintiff claims:

- a. Unpaid overtime wages under the Fair Labor Standards Act,
- b. Liquidated damages under the Fair Labor Standards Act,
- c. An order directing Lupin to supply the names and home addresses of the similarly situated pharmaceutical sales representatives to plaintiff's counsel so that a notice can be sent to them inviting them to join this action;
- d. Interest and costs;
- e. Attorneys' fees under the Fair Labor Standards Act,
- f. Such other relief as in law or equity may pertain.

Doreen Camp, individually and
on behalf of other similarly
situated individuals

By: 

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