

14 CV 6398
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DONNA CILMI-SMITH, on behalf of herself and
those similarly situated,

Plaintiffs, JUDGE ENGELMAYER

– against –

GOVERNMENT EMPLOYEES INSURANCE
COMPANY, dba GEICO, a Delaware Corporation
doing business in the State of New York,

Defendant.

Jury Trial Demanded

CLASS AND COLLECTIVE
ACTION COMPLAINT

Case No.:

Plaintiff Donna Cilmi-Smith, on behalf of herself and all others similarly situated, by and through her undersigned counsel, for her Complaint against Government Employees Insurance Company, dba GEICO (“Defendant” or “GEICO”), upon personal knowledge as to herself, and upon information and belief as to other matters, alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this collective action under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) against Defendant, for unpaid overtime compensation and related penalties and damages on behalf of all current and former Personal Injury Protection (“PIP”) Adjusters (“Covered Position”) who were employed by Defendant and whom Defendant, as a practice and policy, willfully failed and refused to properly pay overtime compensation due for work performed in excess of 40 hours per week as required by law.

2. Plaintiff also brings this action pursuant to Federal Rule of Civil Procedure 23 on behalf of herself and all similarly situated current and former PIP Adjusters of GEICO who

worked in New York to remedy violations of the New York Labor Law (“NYLL”) Article 19, §§ 650 *et seq.* and the supporting New York State Department of Labor regulations.

3. Defendant provides automobile insurance services to the public nationwide. Plaintiff is informed and believes that Defendant operates numerous facilities throughout New York and the United States of America. In so doing, Defendant employs hundreds, or thousands, of individuals in recent years as PIP Adjusters.

4. The group that Plaintiff seeks to represent is a “Federal Collective Group” that consists of all individuals who were or are employed by Defendant in the Covered Position described in Paragraph 1 above, in the United States of America at any time from three years prior to the filing of this complaint, and who timely opt-in to any Federal Collective Group (the “Federal Eligibility Period”).

5. Plaintiff also seeks to represent a New York State class of PIP Adjusters who were not paid for hours worked in excess of 37.5 hours in a week.

6. Defendant violated Section 207 of the FLSA by failing to pay the Federal Collective Group overtime compensation for a work week in excess of 40 hours.

7. Defendant violated NYLL Article 19 and its supporting regulations by failing to pay the New York Class overtime for a work week in excess of 40 hours.

8. Despite actual knowledge of these facts and legal mandates, Defendant has enjoyed an advantage over its competition and has disadvantaged its employees, including Plaintiff and the Federal Collective Group, by failing to pay them overtime.

9. Plaintiff is informed and believes that officers of GEICO knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

10. Defendant has willfully refused to pay Plaintiff and the Federal Collective Group the required overtime compensation for overtime hours worked.

11. Defendant has willfully refused to pay Plaintiff and the New York State Class wages for hours worked in excess of 37.5 hours per week. Some of the uncompensated time

occurred during scheduled meal breaks, which were not paid for but during which time Plaintiff and the New York State Class were working.

12. As a result of Defendant's willful violation of the FLSA and NYLL, Plaintiff, the Federal Collective Group, and the New York Class were illegally and grossly undercompensated for their work.

13. This action is brought to redress and end this long-time pattern of unlawful conduct.

PARTIES

14. Plaintiff Donna Cilmi-Smith is a resident of Carle Place, New York, and was, during the relevant time period, employed by GEICO as a PIP Adjuster in Woodbury, New York, in a Covered Position from August 2012 through May 2013. During the period of that employment, she regularly worked over 40 hours per week and was not paid overtime. Ms. Cilmi-Smith's Consent to Become a Party Plaintiff pursuant to 29 U.S.C. § 216(b) is attached as Exhibit A to this Complaint.

15. Defendant Government Employees Insurance Company (GEICO) is an indirect, wholly-owned subsidiary of Berkshire Hathaway, Inc. and is headquartered in Chevy Chase, Maryland. It is a Delaware corporation. According to Berkshire Hathaway's Form 10K for the year ended December 31, 2013, GEICO primarily offers private passenger automobile insurance to individuals in all 50 states and the District of Columbia. It reports:

As a result of an aggressive advertising campaign and competitive rates, voluntary policies-in-force have increased about 40% over the past five years. GEICO was the third largest private passenger auto insurer in the United States in terms of premium volume in 2012. According to A.M. Best data for 2012, the five largest automobile insurers have a combined market share of 52%, with GEICO's market share being approximately 9.7%. Since the publication of that data, management believes that GEICO's current market share has grown to approximately 10.4%

and that it is now the second largest private passenger auto insurer in the United States.

JURISDICTION AND VENUE

16. This Court has original federal question jurisdiction under 28 U.S.C. §1331 for the claims brought under the FLSA, 29 U.S.C. §201, *et seq.*

17. This Court has jurisdiction under 20 U.S.C. §1332(d) and the Class Action Fairness Act for the claims brought under NYLL § 650 *et seq.* and the supporting regulations of the New York State Department of Labor. At least one member of the New York Class is a citizen of a state different from Defendant, the amount in controversy exceeds \$5,000,000, and the claims asserted involve matters of national or interstate interest.

18. This Court also has supplemental jurisdiction under 28 U.S.C. §1367 for the claims under NYLL §650 *et seq.*, and the supporting regulations of the New York State Department of Labor because those claims are so related to the claims under FLSA that they form part of the same case or controversy.

19. The United States District Court for the Southern District of New York has personal jurisdiction because Defendant conducts business within this District.

20. Venue in this Court is proper under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

21. At all relevant times herein, 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 continues to employ, “employee[s],” including the Plaintiff and all similarly situated employees. At all times relevant herein, Defendant has had gross operating revenues in excess of \$500,000.00.

FLSA COLLECTIVE ACTION ALLEGATIONS

22. Plaintiff Donna Cilmi-Smith brings this action as a collective action pursuant to 29 U.S.C. § 216(b) of the FLSA, on behalf of herself and all persons who were, are, or will be

employed by the Defendant as PIP Adjusters at their GEICO offices within the United States, within three years from the commencement of this action, who have not been compensated at one and one-half times the regular rate of pay for all services performed in excess of 40 hours per work week.

23. At all relevant times, Plaintiff and the Federal Collective Group are and have been similarly situated, with substantially similar job requirements and pay provisions, and are and have been subject to Defendant's common policies, programs, practices, procedures, protocols, routines and rules, under which Defendant has willfully failed and refused to pay them at one and one-half times the regular rate of pay for all services performed in excess of 40 hours per work week. As an employee of Defendant, who was not adequately compensated for overtime hours worked as required by law, Plaintiff is similarly situated to other members of the Federal Collective Group and asserts claims that are typical of the claims of the Federal Collective Group. Plaintiff's claims stated herein are essentially the same as those of the Federal Collective Group members. Plaintiff will fairly and adequately represent and protect the interests of the Federal Collective Group and has no interests antagonistic to those of the other members of the Federal Collective Group.

24. This action 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 because Plaintiff is informed and believes that there are thousands of members of the Federal Collective Group, and there is a well-defined community of interest in the questions of law and fact affecting the Federal Collective Group such that they are similarly situated as a whole. The questions of law and fact common to the Federal Collective Group include: whether Defendant failed to adequately compensate the members of the Federal Collective Group for overtime hours worked as required by the FLSA, 29 U.S.C. §207 *et seq.*, and whether the members of the Federal Collective Group have been damaged and, if so, the extent of such damages.

25. Plaintiff has retained attorneys who are competent and experienced in the prosecution of collective action litigation.

26. Plaintiff and other members of the Federal Collective Group have suffered damages as a result of Defendant's wrongful conduct. Because of the size of the claims of the individual members of the Federal Collective Group, few, if any, members of the Federal Collective Group could afford to seek legal redress for the wrongs complained of herein. A collective action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent a collective action, the members of the Federal Collective Group will not obtain redress of their injuries and Defendant will retain the proceeds of their violations of FLSA.

27. The names and addresses of the Federal Collective Group are available from Defendant's records, and notice should be provided to the FLSA Collective Group via first class mail to the last address known to their employer as soon as possible.

CLASS ACTION ALLEGATIONS

28. Plaintiff brings the Second Cause of Action, the NYLL claims, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all current and former PIP adjusters employed by GEICO in the State of New York for work performed during the period from August 12, 2008 through the present (the "New York Class").

29. Excluded from the New York Class are Defendant, GEICO legal representatives, officers, directors, assigns and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in GEICO; the Judge(s) to whom this case is assigned and any member of the Judge's immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the New York Class.

30. The New York Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, these similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records. Upon information and belief, there are at least 200 members of the New York Class.

31. Common questions of law and fact exist as to the New York Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- a. Whether GEICO violated NYLL, Article 19, and the supporting New York State

Department of Labor regulations.

b. Whether GEICO failed to compensate Plaintiff and the New York Class for all hours worked in excess of 37.5 hours per work week, and failed to pay them overtime for all hours worked in excess of 40 hours per work week;

c. Whether GEICO's policy of failing to pay workers was instituted willfully or with reckless disregard of the law;

d. Whether GEICO failed to keep true and accurate time and pay records for all hours worked by Plaintiff and the New York Class, and other records required by the NYLL; and

e. The nature and extent of classwide injury and the measure of damages for those injuries.

32. The claims of Plaintiff are typical of the claims of the New York Class she seeks to represent. Plaintiff and all members of the New York Class work, or have worked, for GEICO as PIP Adjusters in the State of New York. Plaintiff and the New York Class enjoy the same statutory rights under the NYLL to be paid overtime wages. Plaintiff and the New York Class have all sustained similar types of damages as a result of GEICO's failure to comply with the NYLL. Plaintiff and members of the New York Class have all been injured in that they have been uncompensated or under-compensated due to GEICO's failure to comply with the NYLL. Plaintiff and members of the New York Class have all been injured in that they have been uncompensated or under-compensated due to GEICO's common policies, practices, and patterns of conduct.

33. Plaintiff will fairly and adequately represent and protect the interests of the members of the New York Class. Plaintiff understands that as a class representative, she assumes a fiduciary responsibility to the class to represent its interests fairly and adequately. Plaintiff recognizes that as a class representative, she must represent and consider the interests of the class just as she would represent and consider her own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over the interests of the class. Plaintiff recognizes that any resolution of a class

action must be in the best interest of the class. Plaintiff understands that in order to provide adequate representations, she must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or at trial. Plaintiff has retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between Plaintiff and New York Class members.

34. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the New York Class have been damaged and are entitled to recover damages as a result of GEICO's violation of the NYLL as well as its common and uniform policies, practices and procedures. Although the relative damages suffered by individual members of the New York Class are not *de minimus*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiff lacks the financial resources to conduct a thorough examination of GEICO's timekeeping and compensation practices and to prosecute vigorously a lawsuit against GEICO to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about GEICO's practices.

35. This action is properly maintainable as a class under Federal Rule of Civil Procedure 23(b)(3).

SUBSTANTIVE ALLEGATIONS

36. Defendant's policy and practice is to deny earned wages, including overtime pay, to their PIP Adjusters throughout the United States. In particular, Defendant routinely requires these employees to perform work substantially in excess of 40 hours per work week, and fails to pay them sufficient overtime compensation by illegally denying them the permission to record all time worked.

37. Plaintiff Donna Cilmi-Smith was employed by Defendant beginning in August 2012, and was a PIP Adjuster through May 2013, at Defendant's office located in Woodbury, New York.

38. Defendant has a common policy of imposing quotas upon its PIP Adjusters, requiring them to handle a certain number of claims per day, in order to maintain their employment. Adjusters failing to meet these quotas face discipline, including termination. In connection with this, Plaintiff and other PIP adjusters were required to return calls from insureds within 48 hours, or risk discipline.

39. In addition to their regular quotas, in the past three years, the workload for PIP Adjusters increased significantly. Defendant reduced its premium rates significantly, and advertised these rate reductions to the public. As a result, there has been a large influx of new policy holders and a corresponding increase in the number of claims Plaintiff and members of the Federal Collective Group and of the New York Class were responsible for processing in a timely basis. The workload of Plaintiff and members of the Federal Collective Group, and of the New York Class increased, without Defendant hiring sufficient additional personnel at a rate which could cover the increased business and workload. Accordingly, Plaintiff and the members of the Federal Collective Group and of the New York Class were required to increase the amount of time worked off-the-clock, and to work more than 37.5 hours, in a work week, above the prior levels.

40. Defendant's own literature confirms this recent increase in business. Its parent's 2013 Form 10K reports that "as a result of an aggressive advertising campaign and competitive rates, voluntary policies-in-force have increased about 44% over the past five years."

41. Plaintiff and the members of the Federal Collective Group and of the New York Class were not permitted to record all hours worked due to company policy. As a result of management's instruction, Plaintiff and the members of the Federal Collective Group and of the New York Class did not record all hours worked, and were not compensated for all time worked, nor at the appropriate overtime rate, where applicable.

42. Defendant has a policy under which overtime must be preapproved, or it cannot be recorded. However, Defendant does not have any corresponding policy or mechanism to allow an employee to stop working after 37.5 hours in a week, in the event the employee needs to work additional hours and cannot locate a supervisor or otherwise obtain approval to work

overtime. The direct result of the preapproval policy is that Covered Employees will work overtime when necessary to meet customer expectations or company goals, but are not allowed to record all of their time. This is in violation of 29 C.F.R. §785.11. *See also, Chao v. Gotham Registry, Inc.*, 514 F.3d 280, 290 (2d Cir. 2008).

43. The nature of the work of PIP Adjusters makes it particularly difficult to anticipate overtime, in that they must respond to their insureds in a timely fashion when there has been an automobile accident. Because by nature, their duties arise from “accidents,” PIP Adjusters may be called to work, or need to arrive at work, or stay late at work, to accommodate the needs of Defendant’s insureds. This results in failure to obtain “preapproval,” because neither the employer, nor the employee, can anticipate when an insured will make a claim or require appraisal services. As a result, Defendant fails to pay for all hours worked, and hours over 40 in a week not getting compensated, in violation of FLSA and the NYLL.

44. Defendant’s literature confirms that it places a premium on cost savings, and customer satisfaction, which policies lead to an adjuster’s need to meet customer needs irrespective of work schedule, and a corporate desire to control labor costs by a policy of discouraging reporting of overtime through its preapproval policy:

GEICO’s policies are marketed mainly by direct response methods in which customers apply for coverage directly to the company via the Internet or over the telephone. This is a significant element in our strategy to be a low-cost auto insurer. In addition, we strive to provide excellent service to customers, with the goal of establishing long-term customer relationships. Berkshire Hathaway 2013 Form 10-K at p. 35.

45. In her position as a PIP Adjuster, Plaintiff was repeatedly paid a substandard wage insofar as she was routinely required to work in excess of 40 hours per week without receiving overtime compensation. Plaintiff is informed and believes that this conduct of Defendant is and was commonplace at all of its offices throughout the nation.

46. In fact, Defendant has a policy wherein the regularly-scheduled work week ends at 37.5 hours, and any additional work must be preapproved. However, Defendant, knowing work in additional to 37.5 hours must be preapproved, withholds its approval for working time in excess of 37.5 hours per week. Accordingly, Defendant has failed to and continues to fail to pay its adjusters for time worked in excess of 37.5 hours.

47. Due to the excessive workload and discipline inherent in missing deadlines and policies (such as the 48-hour rule for returning insured's calls), Plaintiff and other class members regularly needed to work through their meal and rest breaks to accomplish deadlines and meet work expectations, which time has been uncompensated.

48. Defendant has employed and continues to employ numerous other PIP Adjusters at all of their office locations throughout New York and the nation.

49. During the relevant time period, PIP Adjusters consistently worked considerably more than 40 hours per week.

50. The duties of PIP Adjusters have been set forth in uniform written company-wide policies and procedures promulgated by the Defendant, nationwide. All of Defendant's PIP Adjusters are similarly situated in that they share common job duties and descriptions, and have all been subject to Defendant's uniform policy and practice that requires preapproval for overtime, under circumstances in which Defendant knows that overtime cannot be anticipated when dealing with customer demands in an automobile accident environment, and that the quota requirements additionally contribute to the need to work overtime.

51. Evidence generally reflecting the number of overtime hours worked by each PIP Adjuster, and the compensation rates for the relevant work periods is in the possession of Defendant. While Plaintiff and members of the Federal Collective Group and of the New York Class are unable to state at this time the exact amount owing due to the failure to capture all overtime worked on regular timekeeping mechanisms, Plaintiff proposes to obtain such information by appropriate and focused discovery proceedings to be taken promptly in this action, and requests that damages or restitution be awarded according to proof thus obtained and presented to the Court. When an employer fails to keep time records, employees may establish

the hours 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).

52. Plaintiff is informed and believes that Defendant has, and continues to, directly and/or indirectly, employ and/or exercise control over the wages, hours and working conditions of PIP Adjusters.

53. The same unlawful practices and procedures described above apply to all of Defendant's past and current PIP Adjusters.

COUNT I

FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. §§ 201 *ET SEQ.* (ON BEHALF OF PLAINTIFF AND THE FEDERAL COLLECTIVE GROUP)

54. Plaintiff, on behalf of herself and the Federal Collective Group, alleges and incorporates by reference the allegations in each of the preceding paragraphs as though fully set forth herein.

55. Plaintiff consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). Plaintiff's written consent form is being concurrently filed with this Court as Exhibit A to this Complaint.

56. Plaintiff brings this claim on behalf of thousands of other similarly situated persons, if any, who consent in writing to join this action, and anticipates that other individuals will sign consent forms and join as Plaintiffs.

57. At all times material herein, Plaintiff, and the similarly situated members of the Federal Collective Group, have been entitled to the substantive rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

58. At all relevant times, Defendant has been, and continues to be, an "employer" engaged in interstate commerce and/or in the production of goods for commerce, within the meaning of FLSA, 29 U.S.C. § 203. At all relevant times, Defendant has employed and continues to employ employees, including Plaintiff and the members of the Federal Collective

Group. Plaintiff is informed and believes, and thereon alleges that, at all relevant times, Defendant has had gross operating revenues in excess of \$500,000.

59. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours per work week.

60. Plaintiff and all PIP Adjusters working for Defendant are similarly situated in that they all perform essentially the same respective job functions, and are all subject to Defendant's same compensation policy, plan, or procedure that requires them to perform work and/or requires them to be present at work while not properly compensating them for their services, as more fully described above.

61. During their employment with Defendant, within the applicable statute of limitations, Plaintiff and the other Federal Collective Group members have routinely worked, and continue to work, in excess of 40 hours per work week. Despite the hours worked by Plaintiff and the Federal Collective Group members similarly situated to Plaintiff, Defendant has willfully, in bad faith and in knowing violation of the FLSA, failed and refused to pay them the appropriate overtime compensation for all the hours worked in excess of 40 hours per work week in violation of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a).

62. The foregoing conduct of Defendant constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

63. Plaintiff, on behalf of herself and the Federal Collective Group, seeks damages in the amount of all respective unpaid overtime compensation at a rate of one and one-half times the regular rate of pay for work performed in excess of 40 hours in a work week, plus liquidated damages from three years immediately preceding the filing of this action, and interest and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

64. Plaintiff, on behalf of herself and the Federal Collective Group, seeks an injunction enjoining Defendant from failing and refusing to pay PIP Adjusters for all of the time worked, including overtime pay at one and one-half times the regular rate. Defendant's practices

and policies continue to the present, and will continue into the future in the absence of injunctive relief.

65. Plaintiff, on behalf of herself and the Federal Collective Group, seeks recovery of attorneys' fees, costs, and expenses to be paid by Defendant, as provided by the FLSA, 29 U.S.C. § 216(b).

COUNT TWO
NEW YORK LABOR LAW –Unpaid Regular Time And Overtime
(On behalf of the New York Class)

66. Plaintiff, on behalf of herself and the New York Class, alleges and incorporates by reference the allegations in each of the preceding paragraphs as though fully set forth herein.

67. GEICO engaged in a widespread pattern, policy and practice of violating the NYLL, as detailed in this Class and Collective Action Complaint.

68. At all times relevant, Plaintiff and members of the New York Class have been employees and GEICO has been their employer within the meaning of the NYLL.

69. Plaintiff and the New York Class members are covered by the NYLL.

70. GEICO employed Plaintiff and members of the New York Class as an employer.

71. GEICO has failed to pay Plaintiff and the members of the New York Class wages at the regular rate of pay for all hours worked over 37.5 hours but less than 40 hours per week, and overtime wages for all hours worked in excess of 40 hours per week to which they are entitled under NYLL Article 19 §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

72. GEICO failed to pay Plaintiff and members of the New York Class overtime at a wage rate of one and one-half times their regular rate of pay.

73. GEICO failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiff and members of the New York Class.

74. GEICO's violations of the NYLL, as described in this Class and Collective Action Complaint, have been willful and intentional.

75. Due to GEICO's violations of the NYLL, Plaintiff and the members of the New York Class are entitled to recover from GEICO unpaid wages, overtime, reasonable attorneys'

fees and costs of the action, liquidated damages as provided by NYLL Article 6, §198, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and all members of the Federal Collective Group, and all members of the New York Class, prays for relief as follows:

- a. Designation of this action as a collective action on behalf of the Federal Collective Group and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of the Federal Collective Group, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consent to Become a Party Plaintiff forms pursuant to 29 U.S.C. §216(b);
- b. Designation of plaintiff Donna Cilmi-Smith as representative plaintiff of the Federal Collective Group of PIP Adjusters;
- c. Designation of Kaplan Fox & Kilsheimer LLP, The Markham Law Firm, and United Employees Law Group as the attorneys representing the Federal Collective Group of PIP Adjusters and as class counsel for the New York Class;
- 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 its 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 Plaintiff and the Federal Collective Group of PIP Adjusters, including liquidated damages, to be paid by Defendant;

- g. Certification of this action as a class action and designation of Plaintiff as a class representative on behalf of the New York Class;
- h. Unpaid overtime pay, unpaid wages, liquidated damages, and penalties as permitted by law pursuant to the NYLL;
- i. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees, and a reasonable incentive awards for Plaintiff to compensate her for the time spent attempting to recover wages for Class members and for the risks she took doing so;
- j. Pre-judgment and post-judgment interest, as provided by law; and
- k. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

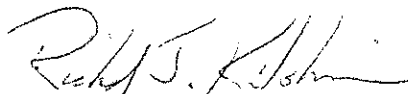
DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on the causes of action and claims with respect to which she and all members of the proposed collective action and of the New York Class have a right to jury trial.

DATED: August 12, 2014

Respectfully submitted,

KAPLAN FOX & KILSHEIMER LLP



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*Attorneys for Plaintiff and the Proposed Federal
Collective Group Members and New York Class*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Donna Cilmi-Smith, on behalf of herself and those
similarly situated,

Plaintiffs,

- against -

GOVERNMENT EMPLOYEES INSURANCE
COMPANY, dba GEICO, a Delaware Corporation
doing business in the State of New York,

Defendant.

ECF Case

Jury Trial Demanded

FLSA COLLECTIVE ACTION

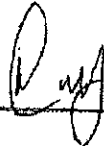
CONSENT TO SUE

Case No.:

Pursuant to 29 U.S.C. section 216(b), I consent to act as a named plaintiff in this case,
both on my own behalf and on behalf of all persons similarly situated.

Dated: March 16, ²⁰¹⁴~~2013~~

Signature:



Printed name:

Donna Cilmi-Smith