

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

PATRICK TRACY, HEATHER ARRASMITH,
JESSICA BACULIK, TIFFANY BALL, NICHOLAS
BARTNIKOWSKI, DANA CAITO, LORI CLARK,
CATHERINE CONNOR, ROBERT DAVOLI, JR.,
CORY DAY, JACOB DREYFUSS, PAMELA
ERHARDT, DANIEL FISHER, MEGAN FOX,
THOMAS GAUGHAN, PETER GAVIN, JR.,
CHRISTINE GEBHARDT, THOMAS GORCZYCA,
MARCIE HILL, HEATHER HOPKINSON,
CAROLYN HUMPHREY, TRACY JORGENSEN,
JAMES KING III, CHRISTINA KOSSOUDJI,
MARY LACOMB, CHRISTY LEWIS, SARAH
LOVELAND, THERESA LUNDQUIST, DAVID
MACEY, ROBERT MARCELLO, GAYE MAYO,
NANCY MILHOLLAND, BRANDON PACIFICO,
TINA ROBBINS, LISA RYBARCZYK, KEVIN
SCOTT, CASSANDRA SOMMERS, KEVIN
THORN, KELLY WHITING,
*on behalf of themselves and all other
employees similarly situated,*

Plaintiffs,

v.

NVR, INC.,

Defendant.

CLASS ACTION
SECOND AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL

Civil Action No.

04-CV-06541 DGL

NATURE OF CLAIM

1. This is a proceeding for declaratory relief and monetary damages to redress the deprivation of rights secured to plaintiffs Patrick Tracy, Heather Arrasmith, Jessica Baculik, Tiffany Ball, Nicholas Bartnikowski, Dana Caito, Lori Clark, Catherine Connor, Robert Davoli, Jr., Cory Day, Jacob Dreyfuss, Pamela Erhardt, Daniel Fisher, Megan Fox, Thomas Gaughan, Peter Gavin, Jr., Christine Gebhardt, Thomas Gorczyca, Marcie Hill, Heather

Hopkinson, Carolyn Humphrey, Tracy Jorgensen, James King III, Christina Kossoudji, Mary LaComb, Christy Lewis, Sarah Loveland, Theresa Lundquist, David Macey, Robert Marcello, Gaye Mayo, Nancy Milholland, Brandon Pacifico, Tina Robbins, Lisa Rybarczyk, Kevin Scott, Cassandra Sommers, Kevin Thorn and Kelly Whiting individually, as well as all other employees similarly situated, under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA"); the New York Labor Law; and the laws of Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Washington, DC and West Virginia, for failure to pay wages and other violations.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343 (3) and (4) conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights; under 28 U.S.C. § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce; and under the Declaratory Judgment Statute, 28 U.S.C. § 2201.

3. This Court's supplemental jurisdiction of claims arising under New York State Labor Law is also invoked.

4. Venue is appropriate in the Western District of New York because, among other reasons, the defendant is a resident of and does business in this district.

CLASS ACTION ALLEGATIONS

5. The claims arising under New York State Labor Law are properly maintainable as a class action under Federal Rule of Civil Procedure 23.

6. The class action is maintainable under subsections (1), (2) and (3) of Rule

23(b).

7. The class (hereinafter referred to as those individuals “similarly situated” or “class members”) consists of current and former individuals who worked for NVR, Inc. or its subsidiaries or divisions, including, without limitation, Ryan Homes, NVHomes and Fox Ridge Homes (collectively, “NVR”) who in the last six years were suffered or permitted to work more than 40 hours in a week by NVR, whose job duties included performing sales functions and whose job duties did not require the individual to be away from the employer’s premises more than 80% of the time and who did not receive compensation at time and one half for hours they worked over 40 in a week. The class includes, without limitation, those individuals with the job title of Sales and Marketing Representative, Sales Associates, or with any title who performed similar duties of the named plaintiff and/or the class definition and were paid as exempt employees.

8. The class size is believed to be over 50 employees.

9. The named plaintiffs will adequately represent the interests of the class members because they are similarly situated to the class members and their claims are typical of, and concurrent to, the claims of the other class members.

10. There are no known conflicts of interest between the named plaintiffs and the other class members.

11. The class counsel, Dolin, Thomas & Solomon LLP, is qualified and able to litigate the class members’ claims.

12. The class counsel concentrates its practice in employment litigation, and its attorneys are experienced in class action litigation, including class actions arising under federal and state wage and hour laws.

13. Common questions of law and fact predominate in this action because the claims of all class members are based on whether NVR's policy of not paying statutory overtime to exempt and/or nonexempt employees for hours worked in excess of forty per week violates New York Labor Law and other state statutes requiring the payment of overtime.

14. The class action is maintainable under subsection (3) of Rule 23(b) because common questions of law and fact predominate among the class members and because the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

PARTIES

A. Defendant

15. NVR, Inc. is a corporation with its headquarters being in McLean, Virginia.

16. Defendant is an enterprise engaged in interstate commerce, with annual gross volume of sales made not less than \$500,000.

17. At all times relevant to this action, the defendant is the employer of plaintiffs within the meaning of 29 U.S.C. § 203(d) and comprises an "enterprise" engaged in commerce as defined in 29 U.S.C. §§ 203(r), 203(s).

B. Plaintiffs

Named Plaintiffs

18. At all relevant times, Mr. Tracy was an employee of defendant under the FLSA and the New York Labor Law.

19. At all relevant times, Heather Arrasmith was an employee of defendant.

20. At all relevant times, Jessica Baculik was an employee of defendant.

21. At all relevant times, Tiffany Ball was an employee of defendant.
22. At all relevant times, Nicholas Bartnikowski was an employee of defendant.
23. At all relevant times, Dana Catio was an employee of defendant.
24. At all relevant times, Lori Clark was an employee of defendant.
25. At all relevant times, Catherine Connor was an employee of defendant.
26. At all relevant times, Robert Davoli, Jr. was an employee of defendant.
27. At all relevant times, Cory Day was an employee of defendant.
28. At all relevant times, Jacob Dreyfuss was an employee of defendant.
29. At all relevant times, Pamela Erhardt was an employee of defendant.
30. At all relevant times, Daniel Fisher was an employee of defendant.
31. At all relevant times, Megan Fox was an employee of defendant.
32. At all relevant times, Thomas Gaughan was an employee of defendant.
33. At all relevant times, Peter Gavin, Jr. was an employee of defendant.
34. At all relevant times, Christine Gebhardt was an employee of defendant.
35. At all relevant times, Thomas Gorczyca was an employee of defendant.
36. At all relevant times, Marcie Hill was an employee of defendant.
37. At all relevant times, Heather Hopkinson was an employee of defendant.
38. At all relevant times, Carolyn Humphrey was an employee of defendant.
39. At all relevant times, Tracy Jorgensen was an employee of defendant.
40. At all relevant times, James King III was an employee of defendant.
41. At all relevant times, Christina Kossoudji was an employee of defendant.
42. At all relevant times, Mary LaComb was an employee of defendant.
43. At all relevant times, Christy Lewis was an employee of defendant.

-
44. At all relevant times, Sarah Loveland was an employee of defendant.
 45. At all relevant times, Theresa Lundquist was an employee of defendant.
 46. At all relevant times, David Macey was an employee of defendant.
 47. At all relevant times, Robert Marcello was an employee of defendant.
 48. At all relevant times, Gaye Mayo was an employee of defendant.
 49. At all relevant times, Nancy Milholland was an employee of defendant.
 50. At all relevant times, Brandon Pacifico was an employee of defendant.
 51. At all relevant times, Tina Robbins was an employee of defendant.
 52. At all relevant times, Lisa Rybarczyk was an employee of defendant.
 53. At all relevant times, Kevin Scott was an employee of defendant.
 54. At all relevant times, Cassandra Sommers was an employee of defendant.
 55. At all relevant times, Kevin Thorn was an employee of defendant.
 56. At all relevant times, Kelley Whiting was an employee of defendant.

Class and Collective Action Members

57. The class and collective action members (“Class Members”) are those employees similarly situated to named plaintiffs as set forth above.

FACTUAL BACKGROUND

58. Named plaintiffs performed inside sales work of the same type as the Class Members, and as with the other Class Members, were not paid time and one-half for hours they worked over 40 in a week.

59. Named plaintiffs and Class Members frequently worked over 40 hours in a week while employed by defendant.

60. Defendant’s policy and/or practice was to not compensate named plaintiffs and

Class Members at time-and-one-half for hours when the named plaintiffs and Class Members worked over 40 in a week.

61. When performing this job duty, named plaintiffs understood that the defendant knew these positions were supposed to be paid statutory overtime, however, defendant willfully failed to pay statutory overtime when named plaintiff and Class Members worked over 40 hours in a week.

62. The defendant's practice is to be deliberately indifferent to these violations of the statutory overtime requirements.

63. This failure to pay overtime as required by the FLSA, the New York Labor Law and the various state laws was willful.

FIRST CAUSE OF ACTION
FLSA

64. Plaintiffs reallege the above paragraphs as if fully restated herein.

65. Defendant willfully violated its obligations under the FLSA and is liable to plaintiffs.

SECOND CAUSE OF ACTION
New York Labor Law

66. Plaintiffs reallege the above paragraphs as if fully restated herein.

67. Defendant willfully violated its obligations under the New York Labor Law and is liable to plaintiffs.

THIRD CAUSE OF ACTION
State Labor Laws

68. Plaintiffs reallege the above paragraphs as if fully restated herein.

69. Defendant willfully violated its obligations under the laws of the states of

Maryland, New Jersey, North Carolina, Ohio, Pennsylvania, Washington, DC and West Virginia and is liable to plaintiffs.

WHEREFORE, plaintiffs demand judgment against defendant in their favor and that they be given the following relief:

- (a) an order preliminarily and permanently restraining defendant from engaging in the aforementioned pay violations;
- (b) an award of the value of plaintiffs' unpaid wages, including fringe benefits;
- (c) liquidated damages under the FLSA equal to the sum of the amount of wages and overtime which were not properly paid to plaintiffs (plaintiffs who do not affirmatively opt-in the class expressly waive their rights to liquidated damages or any other statutory penalty provided under New York law);
- (d) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating plaintiffs' rights;
- (e) an award of pre- and post-judgment interest; and
- (f) such other and further legal or equitable relief as this Court deems to be just and appropriate.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact.

Dated: March 14, 2007

DOLIN, THOMAS & SOLOMON LLP

By: s/ J. Nelson Thomas
J. Nelson Thomas, Esq.
Michael J. Lingle, Esq.
Attorneys for Plaintiffs
693 East Avenue
Rochester, New York 14607
Telephone: (585) 272-0540
nthomas@theemploymentattorneys.com
mlingle@theemploymentattorneys.com