

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JEREMY GUSLOFF,
individually and on behalf of
all those similarly situated,

Case No. 21-cv-662

Plaintiff,

v.

QUINCY BIOSCIENCE HOLDING COMPANY, INC.
726 Heartland Trail, Suite 300
Madison, Wisconsin 53717

Defendant.

COLLECTIVE AND CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This is a collective and class action brought by Individual and Representative Plaintiff, Jeremy Gusloff (“Plaintiff”), on his own behalf and on behalf of the proposed classes identified below. Plaintiff and the putative class members, during the three years preceding this lawsuit, were employed as sales representatives by Defendant, Quincy Bioscience Holding Company, Inc. In this role, Plaintiff and the putative class members made sales over the phone. Plaintiff and the putative class members were paid an hourly wage and were also eligible for nondiscretionary commissions and bonuses based on their sales. Plaintiff and the putative class members were paid overtime wages when they worked in excess of 40 hours in a workweek. However, Defendant failed to properly calculate the regular rate of pay

when determining overtime wages. Specifically, Defendant failed to include commission payments in its computation of the regular rate for overtime pay to Plaintiff and the putative class members. As a result, Plaintiff and the putative class members were regularly denied earned overtime wages. Plaintiff, on behalf of himself and the putative classes, alleges that this conduct violates the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and the Wisconsin Wage Payment and Collection Act, Wis. Stat. § 109.01 *et seq.*

JURISDICTION AND VENUE

2. The Court has original jurisdiction over this action under 28 U.S.C. § 1331 because Plaintiff asserts claims under the FLSA, 29 U.S.C. § 201 *et seq.* The Court has supplemental jurisdiction over Plaintiff’s state-law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the Western District of Wisconsin under 28 U.S.C. § 1391 because Defendant resides in this district and because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this district.

PARTIES

4. Plaintiff, Jeremy Gusloff, is an adult resident of Ridgeway, Wisconsin. Gusloff was employed as a sales representative by Defendant within the past three years. Gusloff’s signed consent form is filed as Exhibit A to this Complaint and is incorporated herein by reference.

5. Defendant, Quincy Bioscience Holding Company, Inc., is a domestic business corporation. Its principal office address is located at 726 Heartland Trail,

Suite 300, Madison, Wisconsin. Its registered agent for service is Anthony J. Cords at 726 Heartland Trail, Suite 300, Madison, Wisconsin.

6. Defendant is an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203(s)(1). Defendant is an employer within the meaning of 29 U.S.C. § 203(d), Wis. Stat. § 103.001(6), and Wis. Stat. § 109.01(2).

FACTUAL ALLEGATIONS

7. Throughout the three years preceding the filing of this lawsuit, Plaintiff and the putative class members (the “Sales Representatives”) are or were employed by Defendant as sales representatives.

8. Throughout the three-year period preceding the filing of this lawsuit, Plaintiff and the Sales Representatives were classified by Defendant as non-exempt from overtime wages.

9. Throughout the three-year period preceding the filing of this lawsuit, Plaintiff and the Sales Representatives were paid an hourly wage for their work.

10. Throughout the three-year period preceding the filing of this Complaint, Plaintiff and the Sales Representatives were eligible to earn commissions and bonuses.

11. Defendant calculated the amounts of these commissions and bonuses based on Plaintiff's and the Sales Representatives' sales using standard formulas that Defendant made known to Plaintiff and the Sales Representatives.

12. Defendant promised in advance to pay these commissions and bonuses to Plaintiff and the Sales Representatives as an incentive to increase their sales.

13. Throughout the three-year period preceding the filing of this Complaint, Plaintiff and the Sales Representatives were paid overtime wages when they worked in excess of 40 hours in a workweek.

14. Upon information and belief, Defendant failed to include commissions or bonuses earned by Plaintiff and the Sales Representatives when calculating the overtime premium due for hours worked in excess of 40 in a workweek, instead calculating the overtime rate as one and one-half times the hourly rate of pay and depriving Plaintiff and the Sales Representatives of all earned overtime wages.

15. Plaintiff brings this action on behalf of himself and on behalf of all other similarly-situated employees pursuant to 29 U.S.C. § 216(b). The Collective Class of similarly-situated employees is defined as:

All persons who have been or are currently employed by Quincy Bioscience Holding Company, Inc., as sales representatives in the United States who received commission or bonus payments and who worked more than 40 hours per workweek at any time from three years prior to the commencement of this action to the present and ongoing.

16. Plaintiff brings this action on behalf of himself and on behalf of all other similarly-situated employees pursuant to Fed. R. Civ. P. 23. The Wisconsin Overtime Class is defined as:

All persons who have been or are currently employed by Quincy Bioscience Holding Company, Inc., as sales representatives in Wisconsin who received commission or bonus payments and who worked more than 40 hours per workweek at any time from two years prior to the commencement of this action to the present and ongoing.

CLASS ALLEGATIONS

17. Plaintiff brings the Second Claim for Relief on his own behalf and on behalf of the Wisconsin Overtime Class, as defined in paragraph 14, *supra*, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

18. The persons in the Wisconsin Overtime Class are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, upon information and belief, Defendant has employed more than 40 Sales Representatives within the two years preceding the filing of this Complaint.

19. There are questions of law and fact common to the Wisconsin Overtime Class that are capable of class-wide resolution and predominate over any questions solely affecting individual members of the class, including but not limited to:

- a. Whether Defendant excluded commissions and/or bonus payments when calculating the regular rate of pay for Plaintiff and the members of the putative class;
- b. Whether Defendant's exclusion of commission and/or bonus payments when calculating the regular rate of pay for Plaintiff and the members of the putative class was dilatory or otherwise unjust; and
- c. The proper measure of damages sustained by Plaintiff and the members of the putative class.

20. Plaintiff's claims are typical of those of the Wisconsin Overtime Class. Plaintiff, like other putative members of the Wisconsin Overtime Class, was subjected to Defendant's illegal pay policies and practices of excluding commissions and/or bonuses from the regular rate of pay when calculating overtime wages for hours worked in excess of 40 in a workweek.

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