

IN THE 23rd JUDICIAL CIRCUIT OF JEFFERSON COUNTY
STATE OF MISSOURI

MALISSA LYNCH,)
)
 Plaintiff,)
)
 vs.)
)
 TONYA KELLUM AGENCY, LLC)
)
 Serve:)
 Registered Agent, Tonya Kellum)
 8014 Lake City Way NE, Ste. A)
 Seattle, WA 98115)
)
 Defendant.)

Cause No:

JURY TRIAL DEMANDED

PETITION FOR DAMAGES

Plaintiff Malissa Lynch (“Plaintiff”) brings this claim under the Missouri Minimum Wage Law (“MMWL”), Mo. Rev. Stat. § 290.500 *et seq.*, the Missouri Wage Payment Act (“MWPA”), Mo. Rev. Stat. 290.010, *et. seq.*, and Missouri Common Law. In support thereof, Plaintiff states:

GENERAL ALLEGATIONS

1. Plaintiff Malissa Lynch is a citizen of the State of Missouri and currently resides in Jefferson County, Missouri.
2. Defendant Tonya Kellum Agency, LLC is a business located at 8014 Lake City Way NE, Ste. A, Seattle, Washington 98115.
3. During the period relevant to this cause of action, Defendant conducted business in the State of Missouri and entered into an employment contract with Plaintiff. Plaintiff worked for Defendant from her home in Jefferson County, Missouri.

4. Venue in this Court is proper because Defendant conducted business in the state of Missouri, entered an employment contract with Plaintiff who is a Missouri resident, and the allegations that give rise to this Petition occurred in Jefferson County, Missouri.

FACTUAL ALLEGATIONS

5. On or about October 3, 2022, Plaintiff began working for Defendant as an Insurance Service Representative.

6. Defendant's owner, Tonya Kellum, was Plaintiff's supervisor.

7. Under Plaintiff's employment contract with Defendant, she received a salary of \$2,733.00 per month.

8. In addition to her salary, the Plaintiff was to receive commissions for any new insurance policies she sold. Plaintiff would earn a commission of 3% for auto policies, 5% for fire policies, and 20% of the first month's premium for Life Insurance or Health Insurance policies.

9. Plaintiff worked more than forty (40) hours a week for Defendant.

10. When Plaintiff worked over forty (40) hours a week for Defendant she was not paid overtime in violation of Missouri law.

11. Plaintiff was not an exempt employee under Missouri law and therefore should have received overtime for hours worked over forty (40) each week.

12. On or about October 26, 2022, Defendant terminated Plaintiff's employment.

13. Defendant refused to pay Plaintiff her final paycheck after wrongfully terminating her.

14. Plaintiff's final paycheck should have totaled \$2,076.98, due to unpaid overtime work, plus any commissions Plaintiff earned during her final week of work.

15. On November 8, 2022, Plaintiff sent Defendant a letter requesting payment of her final paycheck.

16. Kellum did not promptly pay Plaintiff her owed wages.

17. On or about January 11, 2023, Defendant sent Plaintiff a check in the amount of \$383.76. This was not the full amount of wages Defendant still owed Plaintiff.

18. Defendant has provided no additional payments to Plaintiff.

COUNT I
VIOLATION OF THE MISSOURI MINIMUM WAGE LAW

19. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Petition

20. At all relevant times, Plaintiff was an employee entitled to the rights, protections, and benefits provided under the MMWL, Mo. Rev. Stat. § 290.500, *et seq.*

21. At all times relevant to the allegations in this Petition, Defendant was and is an employer within the meaning of Mo. Rev. Stat. § 290.500(4).

22. Pursuant to the MMWL, employees are entitled to be paid at least minimum wage for all hours worked in each workweek, and to be compensated at a rate of not less than one and one-half (1½) times the regular rate at which such employees are employed for all work performed in excess of forty (40) hours in a workweek.

23. Defendant violated the MMWL by failing to pay Plaintiff overtime wages to which she is legally entitled.\

24. Defendant violated the MMWL by establishing policies and practices which refused employees overtime pay, even if they worked over forty hours a week.

25. Pursuant to Mo. Rev. Stat. § 290.527, Plaintiff seeks damages equal to all unpaid wages and overtime due within two (2) years preceding the filing of this Petition plus periods of

equitable tolling, liquidated damages, costs, and reasonable attorneys' fees. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT II
QUANTUM MERUIT

26. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Petition.

27. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

28. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

29. The acceptance and retention of said benefit by Defendant is inequitable in light of the fact that Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant, as more fully described above.

30. The payment requested by the Plaintiff for the benefits produced by her is based on customary and reasonable rates for such services or like services at the time and in the locality where the services were rendered.

31. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Petition plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT III
UNJUST ENRICHMENT

32. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Petition.

33. Plaintiff performed work, for which Defendant received a benefit, without receiving full compensation.

34. Defendant appreciated the fact of the benefit conferred upon it by Plaintiff.

35. The acceptance and retention of said benefit by Defendant resulted in unjust enrichment because Plaintiff was uncompensated and under-compensated for the benefits conferred upon Defendant, as more fully described above.

36. Plaintiff seeks damages equal to all unpaid wages due within the five (5) years preceding the filing of this Petition plus periods of equitable tolling. Plaintiff also seeks an award of pre-judgment and post-judgment interest at the applicable legal rate.

COUNT IV
VIOLATION OF THE MISSOURI WAGE PAYMENT ACT

37. Plaintiff incorporates by reference, as if fully set forth herein, all preceding paragraphs of this Petition.

38. Defendant is a corporation doing business in the state of Missouri.

39. Defendant terminated Plaintiff's employment on October 26, 2022.

40. On November 8, 2022, Plaintiff sent Defendant written notice that she had not received all wages Defendant owed her.

41. Defendant failed to pay Plaintiff her unpaid wages within seven (7) days of receipt of Plaintiff's written notice that she had not been paid all wages Defendant owed her.

42. Defendant provided Plaintiff only part of her last paycheck more than 60 days after Plaintiff sent the letter on November 8.

43. Defendant's failure to pay Plaintiff violates Mo. Rev. Stat. 290.110.

44. Defendant owes Plaintiff wages at the same rate Plaintiff made while employed by Defendant for a period of 60 days from the date she was terminated by Defendant.

45. Plaintiff seeks damages equal to sixty (60) days' pay at the rate she was receiving from Defendant while employed, or \$2,773 per month, or \$5,546 as penalty for Defendant's failure to provide her last paycheck in a timely manner.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Court to enter judgment in her favor and against Defendant and thereafter:

- A. Award Plaintiff such damages as are fair and reasonable, including lost wages and other benefits of employment, compensatory damages, liquidated damages, pre- and post-judgment interest; and
- B. Award Plaintiff her costs and attorneys' fees; and
- C. Grant such other relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues triable by a jury in the Petition.

Respectfully Submitted:

/s/Nicole A. Matlock

Nicole Matlock

Sarah Jane Hunt

Michelle Faron

KENNEDY HUNT, P.C.

4500 West Pine Blvd.

St. Louis, MO 63108

314-872-9041 telephone

nmatlock@kennedyhuntlaw.com

sarahjane@kennedyhuntlaw.com

ATTORNEYS FOR PLAINTIFF