

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ADAM MAHMOOD
3849 N Cherry Lane Apt. 201
Kansas City, MO 64116

BRIAN CAVATAIO
17927 W 163rd Terrace
Olathe, KS 66062

GLORIA MITCHELL
4075 SW Lido Drive
Lee's Summit, MO 64082

BARBARA SALES
14121 W 88th Terrace
Lenexa, KS 66215

SCOTT SPILLMAN
14370 NW 64TH Terrace
Parkville, MO 64152

Individually and on Behalf of all Others
Similarly Situated,

Plaintiffs,

v.

GRANTHAM UNIVERSITY INC.
A Missouri Corporation
Registered Agent:
CT Corporation System
120 South Central Ave
Clayton, MO 63105

Defendant.

JURY TRIAL DEMANDED

Case No. 4:10-CV-0621

COLLECTIVE ACTION COMPLAINT

COME NOW Plaintiffs, Adam Mahmood (“Plaintiff” or “Mahmood”), Brian Cavataio (“Plaintiff” or “Cavataio”), Gloria Mitchell (“Plaintiff” or “Mitchell”), Barbara Sales (“Plaintiff” or “Sales”), and Scott Spillman (“Plaintiff” or “Spillman”) (hereinafter collectively

“Representative Plaintiffs”) on behalf of themselves and all others similarly situated, by and through undersigned counsel, hereby bring this Collective Action Complaint (“Complaint”) against Defendant, Grantham University Inc. (“Defendant” or “Grantham”), and allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action against Defendant Grantham University Inc. for unpaid regular and overtime compensation and related penalties and damages. Defendant’s practice and policy is to willfully fail and refuse to properly pay regular and overtime compensation due Plaintiffs and all other similarly situated current and former employees working in non-exempt positions as Admissions Representatives.

2. Defendant’s practices are in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201, et seq. (“FLSA”), and Plaintiffs seek monetary damages, declaratory and injunctive relief, and other equitable and ancillary relief to seek redress for Defendant’s willful and unlawful conduct.

3. At all relevant times hereto, 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 the FLSA, 29 U.S.C. § 203. At all relevant times hereto, Defendant has employed and/or continues to employ employees, including each of the putative members of the FLSA representative action. At all times relevant hereto, Defendant has had gross operating revenues in excess of Five Hundred Thousand Dollars (\$500,000.00).

PARTIES

4. Plaintiff Adam Mahmood is a Missouri resident currently residing at 3849 N Cherry Lane Apt. 201, Kansas City, Missouri 64116. Mahmood was employed as an Admissions Representative at Defendant’s administration offices at 7200 NW 86th Street, Kansas

City, Missouri 64153 until April 27, 2010. Pursuant to 29 U.S.C. § 216(b), Plaintiff Adam Mahmood consents to be a party for the purpose of this FLSA representative action.

5. Plaintiff Brian Cavataio is a Kansas resident currently residing at 17927 W 163rd Terrace, Olathe, Kansas 66062. From April 6, 2009, through May 10, 2010, Cavataio was employed as an Admissions Representative at Defendant's administration offices at 7200 NW 86th Street, Kansas City, Missouri 64153. From May 11, 2010, through May 26, 2010, Cavataio was employed as an Education Liaison at the same location. Pursuant to 29 U.S.C. § 216(b), Plaintiff Brian Cavataio consents to be a party for the purpose of this FLSA representative action.

6. Plaintiff Gloria Mitchell is a Missouri resident currently residing at 4075 SW Lido Drive, Lee's Summit, Missouri 64082. Mitchell was employed as an Admissions Representative at Defendant's administration offices at 7200 NW 86th Street, Kansas City, Missouri 64153 until June 4, 2010. Pursuant to 29 U.S.C. § 216(b), Plaintiff Gloria Mitchell consents to be a party for the purpose of this FLSA representative action.

7. Plaintiff Barbara Sales is a Kansas resident currently residing at 14121 W 88th Terrace, Lenexa, Kansas 66215. Sales was employed as an Admissions Representative at Defendant's administration offices at 7200 NW 86th Street, Kansas City, Missouri 64153 until February 19, 2010. Pursuant to 29 U.S.C. § 216(b), Plaintiff Barbara Sales consents to be a party for the purpose of this FLSA representative action.

8. Plaintiff Scott Spillman is a Missouri resident currently residing at 14370 NW 64th Terrace, Parkville, Missouri 64152. Spillman was employed as an Admissions Representative at Defendant's administration offices at 7200 NW 86th Street, Kansas City, Missouri 64153 until July 2009. Pursuant to 29 U.S.C. § 216(b), Plaintiff Scott Spillman consents to be a party for the purpose of this FLSA representative action.

9. The putative class in this FLSA representative action consists of current and former employees of Defendant who were employed during the statutory period covered by this Complaint as Admissions Representatives, which are non-exempt positions entitled to both regular hourly and overtime wages for all hours worked pursuant to the FLSA.

10. Defendant Grantham University is a corporation organized under the laws of the State of Missouri maintaining a principal place of business at 7200 NW 86th St, Kansas City, Missouri 64153. Defendant provides associate, bachelors, and graduate-level courses to students over the internet.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over Defendant pursuant to 28 U.S.C. § 1331 and pursuant to 29 U.S.C. § 216(b) which provides in relevant part that suit under the FLSA “may be maintained against any employer . . . in any Federal or State Court of competent jurisdiction.”

12. The United States District Court for the Western District of Missouri has personal jurisdiction over Defendant inasmuch as Defendant conducts business within this District.

13. Venue is properly laid in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as Defendant has offices, conducts business, and/or can be found in the Western District of Missouri, and the cause of action set forth herein has arisen and occurred in substantial part in this district. Venue is also properly laid in this Court pursuant to 29 U.S.C. § 1132(e)(2) because Defendant has substantial business contacts within the State of Missouri.

FACTS PERTAINING TO NAMED PLAINTIFFS

14. Until April 27, 2010, Plaintiff Adam Mahmood was employed at Defendant’s administration offices in Kansas City, Missouri. At all times relevant hereto, Mahmood was

employed as an Admissions Representative, a non-exempt position entitled to regular hourly and overtime wages for all hours worked pursuant to the FLSA.

15. Until May 26, 2010, Plaintiff Brian Cavataio was employed at Defendant's administration offices in Kansas City, Missouri. From April 6, 2009, through May 10, 2010, Cavataio was employed as an Admissions Representative, a non-exempt position entitled to regular hourly and overtime wages for all hours worked pursuant to the FLSA.

16. Until June 4, 2010, Plaintiff Gloria Mitchell was employed at Defendant's administration offices in Kansas City, Missouri. At all times relevant hereto, Mitchell was employed as an Admissions Representative, a non-exempt position entitled to regular hourly and overtime wages for all hours worked pursuant to the FLSA.

17. Until February 19, 2010, Plaintiff Barbara Sales was employed at Defendant's administration offices in Kansas City, Missouri. At all times relevant hereto, Sales was employed as an Admissions Representative, a non-exempt position entitled to regular hourly and overtime wages for all hours worked pursuant to the FLSA.

18. Until July 2009, Plaintiff Scott Spillman was employed at Defendant's administration offices in Kansas City, Missouri. From March 2006 through April 2007, and again from September 2008 through July 2009, Spillman was employed as an Admissions Representative, a non-exempt position entitled to regular hourly and overtime wages for all hours worked pursuant to the FLSA.

19. Plaintiffs Mahmood, Cavataio, Mitchell, Sales, and Spillman regularly worked hours in excess of forty (40) hours each week. In fact, the Representative Plaintiffs estimate that they frequently worked approximately forty-five (44) to fifty (50) hours on average each week in order to complete the tasks assigned to them.

20. Plaintiffs worked hours in excess of forty (40) each week with the knowledge, permission and mandate of their superiors.

21. Admissions Managers, including but not limited to James Berry, Gretchen Lammle, Clarence Henderson, Chase Cookson, Daryl Thornton, Greg Seay, Tonya Edwards, Jared Parlette, Richard Young, Diana Williams, Rachel Arganbright, and Phyllis Quincoces regularly adjusted the time records for Admissions Representatives using Defendant's ADP ezLaborManager software to reflect that the Admissions Representatives in their charge had worked fewer hours than they had actually worked. In fact, Admissions Managers, including but not limited to those identified herein, regularly adjusted the time records for Admissions Representatives in their charge to reflect that they had worked exactly forty (40) hours in a given workweek when in fact they had worked more than forty (40) hours in a given workweek.

22. Admissions Managers, including but not limited to those identified herein, were routinely instructed by members of Grantham Senior Management to adjust the time records for Admissions Representatives to reflect fewer hours than had actually been worked. By way of example, Admissions Manager Phyllis Quincoces was instructed during orientation and thereafter by Vice President of Enrollment Management Deanne Wandler and Human Resources payroll representative Deborah Goody to adjust time records for Admissions Representatives in her charge to reflect that they had worked only forty (40) hours each week, regardless of the number of hours each had actually worked. Other Admissions Managers were regularly given similar instructions by members of Grantham Senior Management.

23. Admissions Representatives are also required to log in to their computer and phone before they are able to clock-in and register their arrival in Defendant's timekeeping system. In 2008, Admissions Manager Diana Williams informed Plaintiff Adam Mahmood that he and the other Admissions Representatives on their team were to be at work fifteen (15)

minutes prior to the scheduled commencement of their shift in order to complete all pre-shift preparations before they clocked in and registered their arrival in Defendant's timekeeping system. Other Admissions Representatives, including the Representative Plaintiffs, were regularly given similar instructions by their Admissions Managers.

24. Plaintiff Gloria Mitchell was told at the commencement of her employment that she was going to get paid for only forty (40) hours of work each week, and that in the event that she worked more than forty (40) hours in given workweek, her time records would be amended to reflect that she had worked only forty hours. Other Admissions Representatives, including the Representative Plaintiffs, were regularly given similar operational instructions by their Admissions Managers.

25. Senior Admissions Manager James Berry told Plaintiff Adam Mahmood that "[he] would appreciate if [Plaintiff Adam Mahmood] stayed longer, but I can't pay you for more than 40 hours." Other Admissions Representatives, including the Representative Plaintiffs, were regularly given similar operational instructions by their Admissions Managers.

FACTS PERTAINING TO EACH MEMBER OF THE COLLECTIVE CLASS

26. Employees working as Admissions Representatives are responsible for determining admissibility, transferability of credit, and residency for all new and readmitted undergraduate students. Admissions Representatives also inform students and families about educational opportunities, admission, transfer of credit, financial assistance, and university policies and requirements. Defendant characterizes its Admissions Representative positions as non-exempt, and compensates its Admissions Representatives by paying them an hourly wage based upon a forty (40) hour workweek.

27. Admissions Representatives are assigned minimum enrollment targets of twelve (12) new students each month, and regular work schedules for Admissions Representatives are

from 9 a.m. until 6 p.m. each weekday. Admissions Representatives are encouraged to work before their scheduled shift, after their scheduled shift, and on weekends in order to meet their minimum enrollment targets.

28. Plaintiffs and others employed as Admissions Representatives also frequently worked hours in excess of forty (40) hours week each week in order to complete generally the tasks assigned to them with the knowledge, permission, and mandate of their superiors.

29. All Admissions Representatives are similarly situated in that they each perform the same job functions.

30. All Admissions Representatives are also similarly situated in that they are all subject to Defendant's same compensation policies and practices which requires Admissions Representatives to perform work and/or requires them to be present at work while not compensating them for their services. As a result, Defendant's compensation policies and practices deny Admissions Representatives compensation for services performed, and similarly deny Admissions Representatives overtime compensation.

COUNT ONE – FAIR LABOR STANDARDS ACT

31. Plaintiffs hereby incorporate by reference each preceding paragraph of this Complaint as though fully set forth herein.

32. Plaintiffs bring this action on behalf of all persons who were, are, or will be employed by Defendant in the position of Admissions Representative within three years from the commencement of this action to recover unpaid regular and overtime compensation pursuant to the FLSA.

33. This Complaint is being brought and maintained as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) for all claims asserted by Plaintiffs because their claims are similar to the claims of the members of the putative FLSA representative action.

34. The names and addresses of the members of the putative FLSA representative action are available from Defendant. To the extent required by law, notice will be provided to members of the putative FLSA representative action via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

35. At all relevant times herein, Defendant has been and continues to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

36. At all relevant times herein, Defendant employed and/or continues to employ Plaintiffs and each member of the putative FLSA representative action in non-exempt positions within the meaning of the FLSA.

37. The FLSA requires each covered employer to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half (1.5) the regular rate of pay for work performed in excess of forty (40) hours in a workweek.

38. Defendant willfully and intentionally engaged in a persistent pattern and practice of violating provisions of the FLSA by simply failing and refusing to pay the correct amount of overtime wages and, in many instances, any overtime compensation at all to its current and former employees, including Plaintiffs Adam Mahmood, Brian Cavataio, Gloria Mitchell, Barbara Sales, Scott Spillman, and each member of the putative FLSA representative action who were employed by Defendant as Admissions Representatives.

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

40. As a direct and proximate cause of Defendant's actions, Plaintiffs Adam Mahmood, Brian Cavataio, Gloria Mitchell, Barbara Sales, Scott Spillman, and each member of the putative FLSA representative action suffered damages, including but not limited to their

unpaid compensation, unpaid overtime compensation, an additional amount equal as liquidated damages, additional liquidated damages for unreasonable delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all proposed members of the Collective Class, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed members of the FLSA representative action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative FLSA representative action plaintiffs, apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents to Join pursuant to U.S.C. § 216(b).
- b. Designation of Plaintiffs Adam Mahmood, Brian Cavataio, Gloria Mitchell, Barbara Sales, and Scott Spillman as Representative Plaintiffs of the putative FLSA representative action group consisting of Admissions Representatives;
- c. Designation of LG Law LLC as the attorneys representing the putative FLSA representative action plaintiffs;
- 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, along with any and all persons or entities acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns of conduct set forth herein;

- f. An award of damages for overtime compensation due for Plaintiffs and the putative FLSA representative action plaintiffs, including liquidated damages, to be paid by Defendant;
- g. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- h. Pre-judgment and post-judgment interest as allowed by law; and
- i. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper;

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed FLSA representative action have a right to trial by jury.

DESIGNATED TRIAL LOCATION

Plaintiffs, by and through their counsel of record, hereby designate the place of trial as **Kansas City, Missouri.**

Respectfully submitted,



/s/ Lewis M. Galloway

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