

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

KATHLEEN RUSSELL	:	Civil Action No.
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
BRODER & ORLAND, LLC, and	:	
CAROLE TOPOL ORLAND, ESQ.	:	
	:	
Defendants.	:	July 24, 2017

COMPLAINT AND JURY DEMAND

Kathleen Russell (hereinafter “Russell”) by and through her undersigned attorneys, hereby brings the following Complaint against Broder & Orland, LLC (hereinafter “Broder”), and Carole Topol Orland, Esq. In support thereof, Plaintiff alleges:

INTRODUCTION

1. Russell brings suit under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, the Employee Retirement Income Security Act (“ERISA”) 29 U.S.C. §§ 1001-1461, and state law for failure to pay overtime wages and failure to keep accurate records of hours worked, in violation of the Connecticut Minimum Wage Act (Connecticut General Statutes Title 31, Chapter 558, Parts I and II).

THE PARTIES

- 2. Plaintiff Kathleen Russell is a resident of Weston, Connecticut.
- 3. Defendant Broder is a law firm organized under the laws of the State of Connecticut with its principal place of business in Westport, Connecticut.

4. Defendant Carole Topol Orland, Esq. is a founding member of Broder and is a Connecticut resident.

JURISDICTION AND VENUE

5. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132. Venue is proper pursuant to 28 U.S.C. § 1391 and 29 U.S.C. § 1132(e)(2). Moreover, this Court has supplemental jurisdiction under 28 U.S.C. § 1367.

FACTUAL ALLEGATIONS

6. Broder hired Russell on January 3, 2013.

7. Broder hired Russell as a temporary receptionist but she later became an assistant to Carole Topol Orland, Esq.

8. Russell's primary duties did not include the exercise of discretion and independent judgment with respect to matters of significance. For example, she was not authorized to use her discretion when replenishing office kitchen or food supplies, and Broder sternly reprimanded her for spending \$100.00 to temporarily store files that were scheduled for shredding without first seeking approval by the firm's partners.

9. Russell was compensated as a salaried employee, when she in fact was a non-exempt employee. When Broder and Carole Topol Orland, Esq. terminated her, she was paid \$55,000.00 per year.

10. At all times relevant to this Complaint, Russell was an employee engaged in commerce, and/or was an employee in an enterprise engaged in commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a)(1). Russell was an employee of the Defendants as that term is defined by the federal Fair Labor Standards Act 29 U.S.C. §203(1), and by Connecticut General Statutes §§31-58(f) and 31-71(a)(2).

11. At all times relevant to this Complaint, the defendants were employers as that terms is defined by the federal Fair Labor Standards Act, 29 U.S.C. §203(d) and by Connecticut General Statutes §§31-58(e) and 31-71(a)(1).

12. Russell routinely worked forty-eight hours per week, and worked as many as fifty or more hours per week on occasion.

13. Russell regularly worked from 8:30 a.m. to 5:50 p.m. and worked at her desk through lunch.

14. Broder and Carole Topol Orland, Esq. knew that Russell routinely worked at her desk during her lunch hour.

15. Russell was often the first employee in the office each day, and consistently the last support staff member to leave, often staying as late as 6:15 p.m., when she was scheduled to leave at 5:30 p.m.

16. It was not unusual for Russell to receive a phone intake after 5:15 p.m. that would take 30 minutes or more to properly execute. When the phone rang after 5:30 p.m., Broder and Carole Topol Orland, Esq. expected her to answer it.

17. Russell often received e-mails from her employer during her scheduled time off that required a timely response, and, in the case of information not in Russell's possession, Russell would need to use either her personal home computer or personal tablet to access the firm's LogMeIn portal to retrieve the requested information and respond.

18. Broder and Carole Topol Orland, Esq. did not pay Russell for all hours worked.

19. Broder implemented a defined benefit plan approximately one year after hiring Russell, and Broder functioned as a fiduciary because it exercised discretionary control over the operation or administration of an ERISA plan.

20. Because Russell is over the age of 55, she was required to be, and was, included in the defined benefit plan.

21. On November 4, 2016, Broder and Carole Topol Orland, Esq., without any previous notice or indication, terminated Russell's employment at approximately 1:00 p.m., claiming "the firm had grown and their needs had changed." Broder and Carole Topol Orland, Esq. did not pay Russell for that day, nor any portion of it.

22. The defined benefit plan vests annually on December 31, and thus approximately eight weeks after Russell's November 4, 2016 termination, Russell's earlier contributions would have vested at 60%. Terminating Russell allowed Broder to increase its senior partners' contributions into the Defined-Benefit plan without having to pay Russell the same benefits.

THE CLAIMS

COUNT ONE

1-22. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as paragraphs 1 through 22 of this, Count One, as if fully set forth herein.

23. Broder violated 29 U.S.C. § 207 by employing Russell for a workweek longer than forty hours without compensating Russell for her employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which Russell was employed, and further did not pay Russell for all hours worked.

COUNT TWO

1-22. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as paragraphs 1 through 22 of this, Count Two, as if fully set forth herein.

23. Broder violated 29 U.S.C. § 1140 by discharging Russell for the purpose of interfering with the attainment of a right to which Russell was entitled under the provisions of an employee benefit plan, and in order to keep Russell's rights from vesting.

24. By terminating Russell to increase its senior partners' contributions into the Defined-Benefit plan without having to pay Russell the same benefits, Broder breached its fiduciary duty.

25. As a result, Russell has suffered economic and consequential losses.

COUNT THREE

1-22. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as paragraphs 1 through 22 of this, Count Three, as if fully set forth herein.

23. Carole Topol Orland, Esq. is a person as that term is defined by 29 U.S.C. § 1140.

24. Carole Topol Orland, Esq. violated 29 U.S.C. § 1140 by discharging Russell for the purpose of interfering with the attainment of a right to which Russell was entitled under the provisions of an employee benefit plan, and in order to keep Russell's rights from vesting.

25. By terminating Russell to increase its senior partners' contributions into the Defined-Benefit plan without having to pay Russell the same benefits, Carole Topol Orland, Esq. breached her fiduciary duty.

26. As a result, Russell has suffered economic and consequential losses.

COUNT FOUR

1-22. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as paragraphs 1 through 22 of this, Count Four, as if fully set forth herein.

23. Carole Topol Orland, Esq. was the ultimate responsible authority to set the hours of Russell's employment and to pay wages, and was the specific cause of the wage violation.

24. Carole Topol Orland, Esq. violated Conn. Gen. Stat. §§ 31-76c and 31-60 by employing Russell for a week longer than forty hours without remunerating Russell for her employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which Russell was employed.

25. Carole Topol Orland, Esq. failed to pay all wages due to Russell in accordance with Conn. Gen. Stat. §§ 31-71a to 31-71i.

26. Carole Topol Orland, Esq. violated Conn. Gen Stat. § 31-66 by failing to keep at the place of employment for a period of three years a true and accurate record of the hours worked by, and the wages paid by Carole Topol Orland, Esq. to, Russell.

COUNT FIVE

1-22. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as paragraphs 1 through 22 of this, Count Five, as if fully set forth herein.

23. Broder violated Conn. Gen. Stat. §§ 31-76c and 31-60 by employing Russell for a week longer than forty hours without remunerating Russell for her employment in excess of forty hours at a rate not less than one and one-half times the regular rate at which Russell was employed.

24. Broder failed to pay all wages due to Russell in accordance with Conn. Gen. Stat. §§ 31-71a to 31-71i.

25. Broder violated Conn. Gen Stat. § 31-66 by failing to keep at the place of employment for a period of three years a true and accurate record of the hours worked by, and the wages paid by Broder to, Russell.

WHEREFORE, Kathleen Russell claims:

1. Compensatory damages;
2. Reinstatement, back pay and front pay;
3. Liquidated damages for all overtime and federal wages due pursuant to 29 U.S.C. §216(b);
4. Attorneys' fees and punitive damages;
5. An accounting of Defendants' ERISA defined benefit plan, including contributions made, both matching and individual;
6. Costs; and
7. Such further legal and equitable relief as the Court deems appropriate.

Kathleen Russell hereby requests a trial by jury as to all claims triable by jury.

THE PLAINTIFF,
KATHLEEN RUSSELL

By: _____
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