

**IN THE CIRCUIT COURT OF SIXTEENTH JUDICIAL DISTRICT  
KANE COUNTY, ILLINOIS**

WILFREDO CRUZ, MATTHEW ALLBEE, )  
GUADALUPE VARELA and RAUL )  
TORRES, individually and on behalf of a )  
class of similarly situated persons, )

Plaintiffs, )

vs. )

UNILOCK CHICAGO, INC., an Illinois )  
corporation, and JONATHON HARN, an )  
individual )

Defendants.

Case No.05 CH 259

Judge Michael Colwell

**FIRST AMENDED  
CLASS ACTION COMPLAINT FOR AN  
ACCOUNTING, INJUNCTIVE RELIEF AND RECOVERY OF WAGES**

Plaintiffs WILFREDO CRUZ, MATHEW ALLBEE, GUADALUPE VARELA, and RAUL TORRES, individually and on behalf of a class of similarly situated persons, by their attorneys, the LAW OFFICES OF COLLEEN MCLAUGHLIN and ROBIN POTTER AND ASSOCIATES, P.C., and pursuant to 735 ILCS 5/2-801 *et seq.* class actions; 820 ILCS 115/1 *et seq.*, the Wage Payment and Collection Act; and 820 ILCS 105/1 *et seq.*, the Illinois Minimum Wage Act; complain of Defendant UNILOCK CHICAGO, INC. (“Unilock”) and Defendant JONATHON HARN (“Harn”), as follows:

**JURISDICTION AND VENUE**

1. Defendants have violated and continue to violate the Illinois Minimum Wage Law (“IMWL”), 820 ILCS §105/1 *et seq.* and the Illinois Wage Payment and Collection Act (“IWPCA”), 820 ILCS §115/1 *et seq.*, by refusing and failing to pay Plaintiffs and other similarly situated employees wages for all hours worked including overtime wages.

2. This Court has jurisdiction over these claims under the IMLW, 820 ILCS §105/12(a) and the IWPCA, 820 ILCS §115/11.

3. Venue is proper in this Court because the Unilock, Chicago, Inc. facility where Plaintiffs and the class they represent work is located in Aurora, Kane County, Illinois.

### **PARTIES**

4. Unilock is an Illinois corporation, subject to the laws of Illinois. Unilock is engaged in the business of manufacturing paving stones for residential and industrial landscaping and construction. On information and belief, Defendant Unilock typically employs, at its facility in Aurora, in excess of 100 employees, except during the winter slowdown. Due to the growth of the company and turnover of the workforce, Unilock has employed in excess of 300 employees over the last five years.

5. Defendant Unilock is an “employer” within the meaning of the IMWL, 820 ILCS §105/3 and the IWPCA, 820 ILCS 115/2.

6. Defendant Harn is an individual who at all relevant times was employed by Defendant Unilock as one of its Plant Managers. As Plant Manager, Harn knowingly permitted Unilock to violate the provisions of the IWPCA and the IMWL.

7. Defendant Harn is an “employer” within the meaning of the IWPCA, 820 ILCS §115/2 and §115/13 and the IMWL, 820 ILCS §105/3.

8. Plaintiff Wilfredo Cruz (“Cruz”) resides in Joliet, Illinois. Plaintiff worked as a full-time, non-exempt employee at Unilock from May, 2002 to March, 2004.

9. Plaintiff Cruz worked in the Tumbler Department. Plaintiff Cruz and the other Tumbler Department employees, loaded and unloaded large, unfinished paving stones into and

out of a machine called the “tumbler.” This process gives the stones a “weathered” appearance. In addition, Cruz was a line supervisor and performed certain clerical assignments.

10. Plaintiff Cruz was paid on an hourly basis, and his regular rate of pay at termination was \$14.25 per hour. Plaintiff Cruz was required to swipe his identification badge/card through an electronic timekeeping system to record his time.

11. Plaintiff Matthew Allbee (“Allbee”) resides in Aurora, Illinois and worked as full-time, non-exempt employee at Unilock from June, 2000 to September 2004. At all relevant times, Allbee had been employed by Unilock as a customer service employee and subsequently as a laborer in the yard and then as a Maintenance Technician. Allbee’s job duties as a customer service employee included basic clerical and administrative functions. Allbee’s job duties as a Maintenance Technician included repairing and servicing machinery and equipment at the plant.

12. Plaintiff Allbee was compensated on an hourly basis throughout his employment. Allbee’s last rate of pay was \$16.25 per hour and with a shift differential, his rate of pay was \$17.75 per hour. Plaintiff Allbee was required to swipe his identification badge/card through an electronic timekeeping system to record his time.

13. Plaintiff Guadalupe Varela, (“Varela”) resides in Aurora, Illinois and has worked as full-time, non-exempt employee at Unilock from May 1995 to the present. Varela is originally from Mexico and speaks very little English. Varela does not read English. During his employment at Unilock, Varela has worked as a plant employee in Quality Control, as a Loader/Drier, as a Strapper and, currently, as a Control Operator. He has worked both day and night shifts.

14. Plaintiff Varela has been compensated on an hourly basis throughout his

employment. Varela's current rate of pay is \$15.00 per hour. Plaintiff Varela was required to swipe his identification badge/card through an electronic timekeeping system to record his time until sometime in 2005 when the timekeeping system switched to biometric employee identification to record time.

15. Plaintiff Raul Torres, ("Torres") resides in Montgomery, Illinois and has worked as full-time, non-exempt employee at Unilock from 1997 to the present. Torres is originally from Mexico and speaks very little English. Torres does not read English. During his employment at Unilock, Torres has worked as a plant employee as a Strapper and as a Machine Operator. He has worked both day and night shifts.

16. Plaintiff Torres has been compensated on an hourly basis throughout his employment. Torres' current rate of pay is \$13.50 per hour. Plaintiff Torres was required to swipe his identification badge/card through an electronic timekeeping system to record his time until sometime in 2005 when the timekeeping system switched to biometric employee identification to record time.

### **CLASS ALLEGATIONS**

17. Plaintiffs seek to represent a class defined as follows: all former and current, non-exempt Unilock employees in Illinois, who were compensated on an hourly basis, and who were and continue to be denied wages for all hours worked, including overtime wages, due to

them under the IMWL and IWPCA at anytime within the applicable limitations period and continuing through the present.<sup>1</sup>

18. This suit is brought pursuant to 735 ILCS 5/2-801 as a class action. Plaintiffs and the class meet all the requirements for class certification.

19. The number of similar situated persons is at least 200. This factor alone makes joinder impracticable.

20. In addition, because of high employee turnover, the proposed class is geographically dispersed. Some class members no longer live in Illinois or in the continental United States. Many class members are lay persons and/or persons with limited educations. Many class members speak little English, or speak English as a second language. Other class members worked for Unilock for short time periods, and suffered relatively limited damages, due to their short duration of employment. These additional factors make joinder impracticable.

21. There are questions of fact common to Plaintiffs and the class and these questions predominate over any question that may exist with respect to the individual plaintiffs. Common questions of fact include, but are not limited to the following: (1) the fact that Plaintiffs and the class are all non-exempt employees who worked in similar manufacturing-related positions for Unilock; (2) the fact that Plaintiffs and the class were/are all compensated on an hourly basis; (3) the fact that Plaintiffs and the class were/are all subject to the same wage and hour policies and procedures, including but not limited to, the manual editing of time records to reduce hours recorded and paid for, including hours paid at the employee's overtime rate; (4) the fact that

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<sup>1</sup>For claims arising under the IMWL, the limitations period is June 2001 and continuing through the present. For claims arising under the IWPCA, the limitations period is June 1999 and continuing through the present.

Plaintiffs and the class were/are all required to record their in and out times on the same electronic timekeeping system that was/is set up to electronically disregard certain recorded times that employees are at the workplace and engaging in work related activities; (5) the fact that Plaintiffs and the class were/are all reporting to the same individuals and subject to the same policies and procedures concerning work related activities such as the time they were expected to report to their work stations, and the procedures for donning and doffing and cleaning and maintaining their Personal Protection Equipment, including uniforms; and (6) the fact that Plaintiffs and the class were/are all compensated by the same payroll department, on the basis of common time records, payroll policies, documents and computer systems.

22. In addition, there are questions of law common to Plaintiffs and the class, including but not limited to the following: (1) whether the Defendants' failure to pay Plaintiffs and the class wages for all hours worked violated the IMWL and the IWPCA; and (2) whether the Defendants' failure to pay Plaintiffs and the class overtime for all hours worked over forty in a one-week period violated Illinois law.

23. Plaintiffs' claims are typical of the claims of the absent class members. Plaintiffs and the class they seek to represent are non exempt "employees" within the meaning of the IMWL, 820 ILCS §§105/3(d), 105/4(a). Plaintiffs and the class are "employees" within the meaning of the IWPCA, 820 ILCS 115/2. Plaintiffs and the class are compensated on an hourly basis. Plaintiffs Allbee, Cruz, Varela, and Torres individually suffered and were damaged by all violations complained of herein, and are typical of other hourly employees in all material respects.

24. Plaintiffs Allbee, Cruz, Varela, and Torres, by virtue of the fact that they personally were damaged by the acts complained of herein, have a vested interest in obtaining their unpaid wages and overtime. Plaintiffs Allbee, Cruz, Varela, and Torres have knowingly and willingly undertaken and are able to prosecute these claims on behalf of themselves and all similarly-situated persons.

25. This is not a collusive or friendly action. Plaintiffs have retained counsel experienced in wage and hour and in class action litigation.

26. Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

27. A class action is the most appropriate method for the fair and efficient resolution of the matters alleged in this Complaint.

### **FACTS**

28. Unilock operates its plant facility at full capacity approximately 8 months out of the years. When in full operation, Unilock operates with two (2), twelve (12) hour shifts. Most employees work either a 6 am to 6 pm shift or a 6 pm to 6 am shift.

29. During the peak operational period, Unilock budgets 11.5 hours per day, per employee; a 12-hour shift less one-half hour for lunch. On information and belief, for most of the relevant time period for the majority of plant employees, the timekeeping system was programmed to automatically deduct thirty (30) minutes for lunch regardless of whether the employee actually swiped in and out for lunch or whether the employee's swiped time indicated less than 30 minutes was taken for lunch.

30. During most of the relevant time period, many employees often had their lunch periods cut short or were required to work through lunch periods. These employees had one half hour of pay deducted even though they did not receive a lunch break or returned to work early from lunch.

31. During the peak operational period, the machinery is in operation 24 hours a day, typically 5 to 6 days a week. The machines are shut down twice a day for cleaning. The big clean up is typically done at or near the end of the day shift and takes approximately 2 hours to accomplish. A shorter clean up (knock down) is done at or near the end of the night shift and takes approximately one-half hour. It was the practice of the Defendants to have the machinery back up and running the processes at the start of next shift.

32. Prior to June 27, 2004, plant employees were instructed by Defendants to report to their work stations 10-15 minutes prior to the start of their shift.

33. When the machinery is in operation, it cannot be left unmanned. If the machinery is operating during shift change, which is most often the case, plant employees were required to report to their work stations early so that they could confer with their prior shift counterpart on the materials being run, issues with the machinery and the day's operations and to replace their counterpart so that he could get cleaned up, changed and swipe out by the end of his shift.

34. When the machinery is shut down for clean up or over the weekend, it requires warm up time to get into operation. In those instances when the machinery was not in operation prior to the changing of the shifts, employees were still required to be at their work stations early to assist in the start up procedures.

35. To be at their work stations 10-15 minutes prior to the start of their scheduled shifts, employees typically arrived at work and swiped in 15-30 minutes prior to the start of the scheduled shifts in order to have the time to change into their uniforms, gather their safety gear and walk to their work stations so that they arrived at their work stations 10-15 minutes prior to the start of their scheduled shift.

36. Although employees were required to report to their work stations 10-15 minutes prior to the start of their shifts, they were regularly not paid for this time. Unilock rounds time to nearest quarter hour. However, during most of the relevant time period for the majority of plant employees, default parameters, referred to as “grace periods” were set by Unilock in the electronic timekeeping system. On information and belief, there was a 30 minute grace period set for the start of shift and a 15 minute grace period set for the end of shift. Rounding to the nearest quarter-hour only occurs outside of these grace periods.

37. As a result of these default parameters (grace periods), although the time swiped in and out still accurately appears on the employee’s time record, if an employee punched in at any time within 30 minutes of their programmed shift start time, the system would automatically not include that time in the “total” hours worked for that day but instead calculate the employee’s time from the start of his scheduled shift. If an employee swiped out at any time within 15 minutes of the end of his shift, the system would automatically not include that time in the “total” hours worked for that day but instead calculate the employee’s time from the end of his scheduled shift.

38. For example, if an employee with a scheduled start time of 6 am swiped in at 5:39 am, his time would not be rounded to 5:45 am. Instead, his total time calculation and his pay

would be from 6 am, the scheduled start of his shift. If an employee swiped out at 6:09 pm, instead of rounding to the closest quarter hour which would be 6:15 pm, the employee would be paid as if he swiped out at 6 pm, the scheduled end of shift.

39. In addition to the default parameters depriving employees of at least 2.5 hours per pay period and often as much as 5 to 7.5 hours per pay period, employee's time was also regularly manually edited by Defendant Harn, without verification of time actually worked by the employee, to reduce the total number of hours paid.

40. Employees are paid every two weeks. Time sheets for all plant employees are printed out and reviewed at least twice during the two week pay period. Throughout the relevant time period, Defendant Harn has been primarily responsible for the review and editing of employee time records. During the relevant time period, and at least through the end of June 2004, Harn systematically and routinely had employee time records altered to reduce the total number of hours for which an employee was entitled to be paid on any given day.

41. For example, if an employee scheduled in the system to start work at 6 am swiped in at 5:29 am (outside the 30 minute grace period), the time system would calculate that employee's time from 5:30 am (the nearest quarter hour) and include that half hour in the total number of hours paid for that day. During the review process, Harn routinely instructed the office staff to change the swipe in time so that it fell within the grace period. Once the employee's time was edited to be within the grace period, the computer automatically calculated from the start of scheduled shift, thus reducing the employee's pay for that day by one-half hour.

42. Harn regularly altered employee's time records at both the start of and end of a shift.

43. Harn's falsification of employee time cards was knowing and willful and done with the purpose and intent of depriving employees of all wages due them.

44. All employees are exposed to dust and dirt containing silica on a daily basis. Silica is a carcinogen. During various activities and clean up the wearing of a dust mask and/or canister style respirator is required.

45. Unilock provides its plant employees uniforms. Employees are provided lockers in which to keep their clean uniforms and other safety equipment. Unilock instructs its Employees to change out of their uniforms and leave their uniforms at work for cleaning in order to limit the dust to which employees and their families are exposed. Wash areas and vacuum hoses (to blow off the dust) are also provided.

46. Prior to June 27, 2004, plant employees were allowed to change into and out of their uniforms while "on the clock."

47. In late June 2004, Unilock instituted a new time card policy whereby employees were no longer allowed to swipe in more than 7 minutes before the start of their scheduled shifts or to swipe out more than 7 minutes after the end of the scheduled shifts without the express permission of management.

48. Prior to this time, Defendants did not provide any instruction or restriction on when an employee could swipe in and out.

49. As a result of this change in policy, employees are no longer provided the time necessary to don or doff their uniforms or clean up, which are integral and indispensable activities that directly benefit Unilock, while "on the clock."

50. Employees who work the night shift are entitled to a shift premium. On

information and belief, shift premiums are not always paid for every hour an employee works on the night shift. In addition, the shift premium is not paid at the overtime rate for all overtime hours worked by an employee assigned to night shift.

51. Employees often work Saturdays and/or Sundays during the peak season. These days may be “scheduled” or “unscheduled.” The employees often do not work a full 12 hour shift on these weekend days. When employees work a shortened work day on weekends, they often do not take a half-hour uninterrupted lunch break. However, on information and belief, the timekeeping system still automatically deducts 30 minutes for lunch for which employees are not paid.

52. During the relevant time period, some employees have also been required to collect and prepare tools, equipment, personal protection equipment and parts necessitated by management assigned projects, prior to clocking in or after clocking out. This off-the-clock work results in fifteen minutes to two hours per day of time that is purposefully and willfully not paid.

53. During the relevant time period, some employees have also been daily engaged by plant management to discuss assignment and status of projects for fifteen to forty-five minutes while not on the clock, resulting in time spent for the benefit of the employer for which employees are not paid.

54. Plaintiffs have complained of not being paid for all hours worked to various agents of Unilock, including but not limited to, Debbie Motlock, Colin Duffey, and Jon Harn. Said complaints for the most part were ignored or dismissed as a “mix up.”

55. It is, and has been at all relevant times, the practice and policy of Defendants to

purposefully and willfully avoid paying its hourly employees for all hours it suffered and permitted their employees to work as described above. The Defendants daily and regularly “round off” hours or edit time that Defendants suffer and permit employees to work. Defendants also purposefully and willfully suffer and permit employees to work “off the clock” and perform integral and indispensable activities that directly benefit the Defendants in the operation of their business.

56. On information and belief, Defendants have practiced a policy of indiscriminately rounding off and editing employees’ time to purposefully deny employees’ wages in order to meet the operational budget.

57. The integral and indispensable activities that are performed for the benefit of the Unilock, for which employees are not paid regular and overtime wages for all hours worked, are performed daily and regularly. The time involved is not de minimis.

58. It is, and has been, the practice and policy of Defendant that hours worked by employees are collected by electronic means; are hours worked on a regular basis; and do not present a hardship for the Defendant to track and collect.

59. The books and records of Defendant, are material to the Plaintiffs’ case as they disclose the hours worked by each employee, the editing of hours not paid, and what each employee was paid for each week.

**COUNT I—(ILLINOIS MINIMUM WAGE ACT)**

60. Plaintiffs reallege and restate paragraphs 1-59, as fully set forth herein.

61. The Plaintiffs, and the class they represent, were not paid regular wages for all hours worked in each week in violation of the maximum hours provision of the Illinois

Minimum Wage Law, 820 ILCS 105/4(a).

62. The Plaintiffs, and the class they represent, were not paid overtime wages for all hours worked in excess of 40 in each week, at the rate of one and one half their regular rate in violation of the maximum hours provision of the Illinois Minimum Wage Law, 820 ILCS 105/4(a).

63. It is, and has been, the practice and policy of Defendants to purposefully and willfully suffer and permit employees to work and thus perform integral and indispensable activities that directly benefit Unilock in operation of its business, resulting in Plaintiffs and the class not being paid regular and overtime wages for all hours worked.

64. It is, and has been, the practice and policy of Defendants to purposefully round off substantial amounts of time worked and willingly edit time reports for the purpose of withholding payment of overtime pay for those hours worked in excess of 40 in each week.

65. The individual Plaintiffs, Matthew Allbee, Wilfredo Cruz, Guadalupe Varela and Raul Torres represent all hourly employees of Unilock from June 2001 through and including the present.

66. Defendants' violation of the IMWL is willful. Defendants are and have always been aware that plaintiffs and the class are required by law to be paid overtime and to be paid for all hours worked. Defendants have suffered and instructed plaintiffs and the class to work off the clock and/or refused to pay plaintiffs and the class for time worked.

67. This Court should certify this suit as a class action and determine the rights of the parties as to the individual Plaintiffs' and as to the class' back pay, any damages due, pursuant to 820 ILCS 105/12, with prejudgment interest pursuant to 815 ILCS 205/12; and the Court should

direct the Defendants to account for all of said back wages, penalties and prejudgment interest thereon, due the Plaintiffs and the class they represent.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, and the class they represent, ask the court to enter judgment in their favor, and against the Defendants for the following relief:

- A. For a judgment for all back wages due, as provided by the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*;
- B. For prejudgment interest on the back wages in accordance with 815 ILCS 205/2 and punitive damages under The Illinois Minimum Wage Law, 820 ILCS 105/12a;
- C. For reasonable attorney's fees and costs of this action as provided by the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*;
- D. That the court determine the rights of the parties and direct the Defendants to account for all hours worked and wages paid to the class members during the temporality of the class;
- E. That the court enter an injunction requiring Defendants to comply with the Illinois Minimum Wage Act in the future; and
- F. For such other and further relief as the Court may deem just and equitable.

### **COUNT II – ILLINOIS WAGE PAYMENT AND COLLECTION ACT**

This cause of action arises out of the identical nucleus of operative facts as does Count I and Plaintiffs on behalf of themselves and all others similarly situated complain against

Defendants as follows:

68. Plaintiffs re-alleges and restates paragraphs 1-59, as fully set forth herein.

69. At any and all times relevant hereto, at the Defendants' request, Plaintiffs and the class they represent performed labor services for Unilock.

70. Defendants promised and agreed to pay Plaintiffs and the class they represent for said labor at hourly rates which varied during the relevant time period, and for individual Plaintiffs, and, pursuant to the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 *et seq.*, Plaintiffs and each member of the class they represent are entitled to be paid for their wages, pursuant to this agreement.

71. Defendants promised and agreed to pay Plaintiffs and the class they represent overtime wages at a rate of one and one-half times their regular rates of pay for hours worked over forty in a one-week period.

72. Defendants have failed, neglected or refused to pay Plaintiffs for all their regular and overtime wages commencing at least in 1999 to the present, pursuant to 820 ILCS 115/4 and 5; and, as a direct and proximate result thereof, Plaintiffs have been damaged in an unknown amount.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs and the class they represent ask the court:

- A. To order Defendants to make an accounting of all the hours worked and wages paid to the Plaintiffs and to each and every class member they represent commencing at least in June 1999 through and to the present;
- B. To enter judgment in favor of the Plaintiffs and the class they represent, and

against the Defendant for the back wages due, plus prejudgment interest at the statutory rate pursuant to 815 ILCS 205/2;

- C. For reasonable attorney's fees and costs of this action as provided by the Illinois Attorneys Fees In Wage Actions Act, 705 ILCS 225/1.
- D. That the court enter an injunction requiring Defendants to comply with the Illinois Wage Payment and Collection Act in the future; and,
- E. Such other and further relief as may be just in law and in equity.

Respectfully submitted,

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One of Plaintiffs' Attorneys

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