

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

PATRICIA VEERKAMP, individually )  
and on behalf of others similarly situated, )  
 ) CLASS ACTION  
Plaintiff, ) CAUSE NO. 1:04-CV-0049-DFH/TAB  
 )  
v. )  
 )  
U.S. SECURITY ASSOCIATES, INC., )  
 )  
Defendant. )

**AMENDED COMPLAINT AND JURY DEMAND**

Comes now the Plaintiff, Patricia Veerkamp (hereinafter “Plaintiff”) by counsel, and files an Amended Complaint against Defendant, U.S. Security Associates, Inc. (hereinafter “Defendant”). In support of said Amended Complaint, Plaintiff alleges and states as follows:

**I. STATEMENT OF THE CASE**

1. Plaintiff brings this class action against Defendant pursuant to the Fair Labor Standards Act, 29 U.S.C. § 213, Indiana Code §§ 22-2-5-2, 22-2-2-4, 34-4-30 and 22-2-9-2 for failure to pay Plaintiff wages due, and for conversion, breach of implied contract and unjust enrichment under Indiana common law.

**II. FACTUAL ALLEGATIONS**

2. Defendant conducts business in the Southern District of Indiana. Therefore, jurisdiction and venue are proper in this Court.

3. Plaintiff began employment with Defendant on or about July 3, 2002, as a security guard. Defendant assigned her to work at the Federal Express Indianapolis International Airport location.

4. Defendant instructed Plaintiff and her non-supervisory security guard co-workers to arrive fifteen (15) early for work, but did not record or pay them for this time. Defendant gave this instruction, or similar instructions, to all of its non-supervisory security guard employees at the Federal Express location and at its other locations throughout Indiana.

5. During the fifteen (15) minutes before Plaintiff's shift, Plaintiff and her co-workers were not able to conduct business or otherwise use that time for personal purposes. Rather, Defendant required them to wait in a room for fifteen (15) minutes until the shift started.

6. Plaintiff frequently worked more than 40 hours per week. Defendant did not pay Plaintiff for hours time worked over 40 per week on several occasions. Defendant treated other employees similarly.

7. Plaintiff ended her employment with Defendant in October of 2002.

8. Defendant's intentional, knowing and willful violation of Indiana and federal law caused Plaintiff and her similarly situated co-workers to suffer economic damages.

### **III. CLASS ACTION**

9. The class of Defendant's employees in Indiana is so numerous that joinder of all members is impracticable.

10. There are questions of law of fact common to the class of employees.

11. The claims and defenses of the Plaintiff and Defendant are typical of the claims or defenses of all the class members.

12. The representative Plaintiff will fairly and adequately protect the interests of the class.

13. The questions of law and facts are common to all members of the class and predominate any questions effecting only individual class members.

#### **IV. LEGAL THEORIES**

##### **COUNT I UNPAID WAGES**

14. Plaintiff hereby incorporates by reference paragraphs 1-13 of Plaintiff's Amended Complaint for Damages.

15. Pursuant to Indiana Code § 22-2-5, *et seq.* and § 22-2-9-2, the wages, benefits, and costs and expenses owed Plaintiff and other similarly situated employees by Defendant as its employees are all "wages" within the meaning of the statute, which are supposed to be made at regular intervals according to a predetermined schedule, independent of any other factor of employment.

16. Defendant failed to pay Plaintiff and other similarly situated employees for all the wages due them, pursuant to Indiana law.

##### **COUNT II CONVERSION**

17. Plaintiff hereby incorporates by reference paragraphs 1-16 of Plaintiff's Amended Complaint for Damages.

18. Pursuant to Indiana Code 34-4-30 *et seq.*, Indiana's civil conversion

statute, the amounts owed Plaintiff and other similarly situated employees by Defendant are not just a simple debt, but constitute a specific chattel, determined by the precise amounts agreed to by Plaintiff and Defendant for wages. As such, the deliberate and intentional non-payment of wages owed to Plaintiff and other similarly situated employees by Defendant constitutes a wrongful taking of money.

19. Pursuant to the parties' agreement on wages, Defendant was obligated to pay Plaintiff and other similarly situated employees wages for work. By their course of dealing, Defendant knew that Plaintiff and other similarly situated employees continued to work in exchange for payment of the agreed upon wages.

20. Because the civil conversion statute applies to the amounts owed Plaintiff and her co-workers by Defendant, Plaintiff and similarly situated employees are entitled to an award under the civil conversion statute not to exceed three times the actual loss, the costs of this action and a reasonable attorney's fee.

### **COUNT III EQUITY/UNJUST ENRICHMENT**

21. Plaintiff hereby incorporates by reference paragraphs 1-20 of Plaintiff's Amended Complaint for Damages.

22. Defendant received the benefit of Plaintiff's and other similarly situated employee's work, without compensating Plaintiff and her co-workers. As a matter of equity, Defendant should not be allowed to prosper at the expense of Plaintiff and similarly situated employees.

23. The money Defendant owed Plaintiff and other similarly situated employees as wages, all inured directly to Defendant's benefit by its nonpayment for

work done and time spent for Defendant's benefit. Plaintiff and her similarly situated co-workers should have what they are entitled to in equity, by quantum meruit, and Defendant should not be unjustly enriched by its nonpayment of wages.

**COUNT IV  
BREACH OF IMPLIED CONTRACT**

24. Plaintiff hereby incorporates by reference paragraphs 1 – 23 of Plaintiff's Amended Complaint for Damages.

25. Defendant entered into an implied contract with Plaintiff and her similarly situated co-workers to pay them wages for all work done and time spent for Defendant's benefit.

26. Defendant breached this implied contract by failing to pay Plaintiff and her similarly situated co-workers all the wages due for the benefit given to Defendant.

27. Plaintiff and other similarly situated employees were all at will employees. The law implies that a contract for payment of wages existed by the very nature of the employer/employee relationship.

28. Defendant used a common course of conduct which caused Plaintiff and other similarly situated employees not to be paid for arriving fifteen (15) minutes early for work, and other wages due. The common course of conduct constituted a breach of implied contract.

29. Plaintiff and her similarly situated co-workers were injured by Defendant's breach of implied contract to pay wages.

30. Defendant's actions were intentional, willful, malicious, and in reckless disregard for the rights of Plaintiff and her similarly situated co-workers.

**COUNT V**  
**FAIR LABOR STANDARD ACT**

31. Plaintiff hereby incorporates by reference paragraphs 1 - 30 of Plaintiff's Amended Complaint for Damages.

32. Defendant failed to pay Plaintiff and other similarly situated employees overtime wages at a rate of one and a half times the normal hourly pay rate for hours worked in excess of forty (40) hours per week including, but not limited to, the time non-supervisory security guard employees spent arriving fifteen (15) minutes early for work and waiting for their shift to begin.

33. Plaintiff and her similarly situated co-workers were not supervisors or bona fide administrative or management employees as defined by the FLSA and relevant regulations.

34. Defendant's actions were intentional, willful, malicious and in reckless disregard for Plaintiff's rights, and those of similarly situated employees.

**V. REQUESTED RELIEF**

WHEREFORE, the Plaintiff respectfully requests that the Court enter judgment in her favor and award her and those similarly situated the following relief:

- a. All wages and other economic benefits lost as a result the Defendant's unlawful acts;
- b. Compensatory damages;
- c. Punitive damages;
- d. All costs and attorney fees incurred in litigating this action;
- e. Treble damages for failure to pay wages under Indiana law;

- f. Double damages for failure to pay overtime under the FLSA;
- g. Pre- and post-judgment interest; and,
- h. Any and all other legal and/or equitable relief to which Plaintiff and similarly situated employees are entitled.

**VI. DEMAND FOR TRIAL BY JURY**

Comes now the Plaintiff, Patricia Veerkamp, by counsel, and requests a trial by jury on all issues deemed so triable.

Respectfully submitted:

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Amy Ficklin DeBrotta (#17294-49)

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