

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

LILLI MORSE,

Plaintiff,

vs.

Case No. 8:11-CV-779-T-27EAJ

JP MORGAN CHASE & CO.,

Defendant.

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**ORDER**

**BEFORE THE COURT** is Defendant's motion to dismiss (Dkt. 6). Plaintiff has responded in opposition (Dkt. 8). Upon consideration, the motion (Dkt. 6) is GRANTED *in part*.

**Background**

Lilli Morse commenced this action under the Fair Labor Standards Act, alleging that her former employer, JP Morgan Chase & Co. ("JPM"), failed to pay her overtime wages and, when she complained on her Facebook page, retaliated by terminating her employment. JPM moved to dismiss arguing, first, that Morse failed to plead sufficient facts to state a claim for unpaid overtime wages, and second, that a Facebook posting lacks the hallmarks of a serious complaint to an employer. Morse responded in opposition, arguing that she has pled sufficient facts to support her claims.

**Discussion**

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires that a complaint provide "a short and plain statement of the claim showing that the pleader is entitled to relief," in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation omitted). Although a complaint need not include a detailed recitation of facts, it must contain sufficient allegations which "state a claim to

relief that is plausible on its face.” *Id.* at 570.

JPM’s first argument is that Morse has not stated a claim for unpaid overtime wages under the FLSA. The Court disagrees. “The elements that must be shown are simply a failure to pay overtime compensation and/or minimum wages to covered employees . . . .” *Sec’y of Labor v. Labbe*, 319 F. App’x 761, 763 (11th Cir. 2008). Notwithstanding JPM’s argument, Morse has pled sufficient facts to state a cause of action for unpaid overtime wages. JPM’s primary concern appears to be the lack of factual detail regarding any similarly-situated workers who could potentially opt-in, should this become a collective action. While well-taken, the Court is of the opinion that this argument is more appropriately addressed at the conditional certification stage. *See Morgan v. Family Dollar Stores, Inc.*, 551 F.3d 1233, 1258-61 (11th Cir. 2008).

JPM’s second argument is that Morse cannot base a retaliation claim on a complaint posted on her Facebook page. The FLSA’s retaliation provision makes it unlawful “to discharge . . . any employee because such employee has filed any complaint . . . .” 29 U.S.C. § 215(a)(3). The question therefore is whether a posting on an employee’s Facebook page constitutes the filing of a complaint within the meaning of the FLSA.

The requirement that a complaint be “filed” is intended to provide the employer with “fair notice” that an employee “is in fact making a complaint about an Act violation,” rather than “just letting off steam.” *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 1334 (2011). “[A] ‘filing’ is a serious occasion, rather than a triviality.” *Id.* “As such, the phrase ‘filed any complaint’ contemplates some degree of formality, certainly to the point where the recipient has been given fair notice that a grievance has been lodged and does, or should, reasonably understand the matter as part of its business concerns.” *Id.*

Although the statutory requirements may be satisfied by an “informal workplace grievance

procedure,” Morse does not allege that she made anything close to a serious complaint to her employer. *See id.* In fact, she never complained to her employer at all. She simply voiced her disagreement with her employer’s payment practices on her Facebook page. This “letting off steam” falls far short of the activity protected by § 215(a)(3). *Id.*

*Conclusion*

Accordingly, Defendant’s motion to dismiss (Dkt. 6) is GRANTED *in part*, to the extent that Count II is DISMISSED without prejudice. Plaintiff is granted leave to amend Count II within 14 days. If Plaintiff fails to file an amended complaint, Defendant shall answer Count I of the complaint within 28 days of this order. The motion is denied in all other respects.

**DONE AND ORDERED** this 23<sup>rd</sup> day of June, 2010.

  
**JAMES D. WHITTEMORE**  
United States District Judge

Copies to:  
Counsel of record