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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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10 In re Allstate Insurance Company } MDL No. 1541 (2:03md1541)
11 Fair Labor Standards Act Litigation } ALL CASES

12 **ORDER RE CONTINUING PLAINTIFFS AND**
13 **TERMINATION OF THIS MDL ACTION**

14 In its Order to Show Cause Re Continuing Plaintiffs (doc. #220),
15 the Court advised all of the Continuing Plaintiffs, the sole remaining plaintiffs in
16 this MDL action, that summary judgment would be granted in the defendants'
17 favor as to all claims of any Continuing Plaintiff who did not show cause in writing
18 by January 23, 2009 explaining why the Court's reasoning in the summary
19 judgment order (doc. #188), which the Court entered in the Gaglione v. Allstate
20 Insurance Co. member case, should not be applied to him or her.

21 Pending before the Court is Defendants' Motion to Dismiss the Claims of
22 the Continuing Plaintiffs Kathryn Evans Thompson, Arthur McFadden, Danny
23 Fate Padgett, and Charles Neal (doc. #223), to which none of the Continuing
24 Plaintiffs named therein have to date filed any response in opposition and their
25 time for doing so has long since expired. Having reviewed the record, the Court
26 finds that the motion should be granted and the claims of these named
27 Continuing Plaintiffs should be dismissed with prejudice because none of them
28 filed the required memorandum.

1 Also pending before the Court is the Response of Continuing Plaintiff
2 Judith Gilman to Order to Show Cause re Continuing Plaintiffs (doc. #222); Ms.
3 Gilman, who became an opt-in plaintiff on May 19, 2006 (doc. #142), is the only
4 Continuing Plaintiff to have filed a memorandum in response to the Order to
5 Show Cause. Having reviewed Ms. Gilman's letter and the defendants' reply in
6 opposition thereto (doc. #224), the Court finds as a matter of law that Ms. Gilman
7 has failed to show any sufficient cause as to why summary judgment should not
8 be entered against her.

9 As correctly noted by the defendants, none of the arguments raised by Ms.
10 Gilman to show why her situation is distinguishable are sufficient to establish that
11 she should be treated any differently than the casualty adjuster at issue in the
12 Gaglione summary judgment order (doc. #188). First, the fact that Ms. Gilman is
13 a current Allstate casualty adjuster rather than a former one is legally irrelevant.
14 Second, even if Allstate's CCPR claims-handling process has been replaced by a
15 new one called Next Gen, which Ms. Gilman conclusorily states denies her
16 crucial independent judgment, the Court has already determined in its summary
17 judgment order that for purposes of the Department of Labor's test for
18 determining eligibility for overtime compensation Allstate adjusters such as Ms.
19 Gilman not only engage in administrative work that is of substantial importance to
20 Allstate, but that they, as a matter of both fact and law, also exercise sufficient
21 discretion and independent judgment to be ineligible for overtime compensation
22 notwithstanding Allstate's detailed claim handling procedures. Third, the fact that
23 Ms. Gilman states that she cannot complete her job duties within a 40-hour work
24 week is irrelevant to the issue of whether she is properly classified as an exempt
25 employee for purposes of the Fair Labor Standards Act.¹

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28 The Court makes no finding herein regarding the defendants' one-

1 Given that the claims of all Continuing Plaintiffs are now dismissed, the
2 Court finds that this MDL action should be terminated and that all of its member
3 cases should be dismissed.²

4 Therefore,

5 IT IS ORDERED that Defendants' Motion to Dismiss the Claims of the
6 Continuing Plaintiffs Kathryn Evans Thompson, Arthur McFadden, Danny Fate
7 Padgett, and Charles Neal (doc. #223) is granted and that summary judgment
8 shall be entered in favor of the defendants as to all claims of Continuing Plaintiffs
9 Kathryn Evans Thompson, Arthur McFadden, Danny Fate Padgett, and Charles
10 Neal, and all of those claims are dismissed with prejudice.

11 IT IS FURTHER ORDERED that the Response of Continuing Plaintiff
12 Judith Gilman to Order to Show Cause Re Continuing Plaintiffs (doc. #222) is
13 overruled and that summary judgment shall be entered in favor of the defendants
14 as to all claims of Continuing Plaintiff Judith Gilman, and all of those claims are
15 dismissed with prejudice.

16 IT IS FURTHER ORDERED that Continuing Plaintiffs Kathryn Evans
17 Thompson, Arthur McFadden, Danny Fate Padgett, Charles Neal, and

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20 sentence request in its reply that Ms. Gilman be ordered to pay all of the
21 defendants' costs incurred in litigating this MDL action. As noted by Ms. Gilman,
22 the Court's Order to Show Cause re Voluntary Dismissal (doc. #215) did not
23 require any Continuing Plaintiff to pay the defendants' costs and the defendants
24 have not to date advanced any legal argument as to why such costs are proper.
25 The Court will resolve the issue if and when the defendants properly raise and
26 support it post-judgment.

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28 Because the Continuing Plaintiffs are all opt-in plaintiffs who were not
assigned to any particular member case, the Court concludes for purposes of
judicial economy and efficiency that they should be assigned to the lowest
numbered member case, Rosa v. Allstate Insurance Co., CV-03-1741-PHX-PGR,
solely for purposes of entry of judgment.

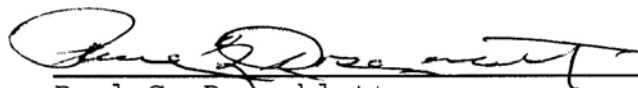
1 Judith Gilman are deemed to be plaintiffs in Rosa v. Allstate Insurance Co., CV-
2 03-1741-PHX-PGR, for purposes of entry of judgment.

3 IT IS FURTHER ORDERED that the Motion for Leave to Withdraw (doc.
4 #217) is granted and that Kelly McInerney and the law firm of McInerney & Jones
5 are withdrawn as counsel for the Continuing Plaintiffs.³

6 IT IS FURTHER ORDERED that the Clerk of the Court shall terminate this
7 MDL action.

8 IT IS FURTHER ORDERED that member cases Rosa v. Allstate Insurance
9 Co., CV-03-1741-PHX-PGR, Montano v. Allstate Insurance Co., CV-04-0014-
10 PHX-PGR, Gaglione v. Allstate Insurance Co., CV-04-0015-PHX-PGR, and
11 Wunder v. Allstate Insurance Co., CV-04-1028-PHX-PGR are all dismissed in
12 their entirety and that the Clerk of the Court shall enter judgment for the
13 defendants in each member case.

14 DATED this 15th day of September, 2009.

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17 Paul G. Rosenblatt
18 United States District Judge

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27 The Court requests that Kelly McInerney provide a copy of this order
28 and the resulting judgment in the Rosa case to all Continuing Plaintiffs.