

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**JAMES FALCON, on Behalf of Himself
and Others Similarly Situated,**

Plaintiffs,

vs.

**STARBUCKS CORPORATION and
DOES 1 through 100,**

Defendants.

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CIVIL ACTION NO. H-05-0792

PLAINTIFF'S FIRST AMENDED COLLECTIVE ACTION COMPLAINT

Plaintiff James Falcon ("Plaintiff") brings this collective action complaint on behalf of himself and others similarly situated to recover unpaid overtime wages from Starbucks Corporation ("Starbucks") and Does 1 through 100 ("Does") (collectively "Defendants").

I. NATURE OF SUIT

1. The Fair Labor Standards Act ("FLSA") is designed to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers" 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) & 207(a).

2. The overtime requirements of the FLSA serve the purposes of: 1) spreading out employment by placing financial pressure on the employer to hire additional workers rather than employing the same number of workers for longer hours; and 2) compensating employees who work overtime.

3. Starbucks violates the FLSA by failing to pay its Assistant Store Managers time and one-half for each hour worked in excess of forty (40) per workweek. Accordingly, Plaintiff brings this collective action to recover unpaid overtime compensation under section 216(b) of the FLSA.

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because it arises under the laws of the United States, specifically under the FLSA, 29 U.S.C. § 201, *et seq.*

5. Plaintiff's claims arise under section 16(b) of the FLSA. 29 U.S.C. § 216(b). In connection with the acts and course of conduct alleged in this complaint, Plaintiff engaged in commerce or in the production of goods for commerce. Further, Starbucks is an employer that engaged and continues to engage in commerce or in the production of goods for commerce and is therefore covered by the FLSA.

6. Venue is proper in the Southern District of Texas -- Houston Division because a substantial part of the acts and conduct charged herein occurred in this district.

III. THE PARTIES

7. Plaintiff James Falcon is a resident of Harris County, Texas. Falcon was an employee employed by Starbucks within the meaning of the FLSA. Falcon's consent to this action is attached as Exhibit 1.

8. The class of similarly situated employees consists of all current and former Assistant Store Managers of Starbucks who were not paid time and one-half for each hour worked in excess of forty (40) per workweek. These similarly situated persons are referred to as "Members of the Class" or "the Class."

9. Defendant Starbucks is a foreign corporation, qualified to do and doing business in Texas, and is within the jurisdiction of this Court. Starbucks is an "employer" under the

FLSA and acted as such in relation to Plaintiffs and Members of the Class. Starbucks has been served and answered herein.

10. At this time, Plaintiff is unaware of the true names and capacities of the defendants sued herein as Does 1 through 100, inclusive, and therefore Plaintiff sues such defendants by fictitious names. Plaintiff will seek leave of this Court to amend this Complaint when Plaintiff ascertains the true names and capacities of Does, who are individuals and/or entities. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named defendants was responsible for the occurrences alleged herein and proximately caused the injuries and damages sustained by Plaintiff alleged herein.

IV. FACTS UNDERLYING THE CLAIMS

11. Plaintiff is a former employee who was employed by Starbucks as an Assistant Store Manager. In the latter part of 2002, Starbucks implemented a ruse whereby it reclassified its Assistant Store Managers and began paying them on an hourly basis instead of paying them a salary (the "Reclassification"). Although Plaintiff's duties, and the duties of other Assistant Store Managers, were to become less "managerial" in nature as a result of the Reclassification, Plaintiff's duties only changed on paper, not in practice.

12. Prior to the Reclassification, Starbucks did not pay Plaintiff time and one-half for hours worked over forty (40) in a workweek. Following the Reclassification, Starbucks paid Plaintiff for forty (40) hours per workweek and strongly discouraged the payment of overtime to Plaintiff and other Assistant Store Managers. Plaintiff's District Manager, Kim Castillo, made it clear to Plaintiff that he would face repercussions if he worked overtime. However, it was impossible for Plaintiff to accomplish all the work that Starbucks required of him without working over forty (40) hours in a workweek. As a result, and with the full knowledge of Ms. Castillo, Plaintiff regularly clocked forty (40) hours per workweek, and then continued to work additional hours each workweek off-the-clock in order to meet Starbucks' expectations for his store.

13. Both before and after the Reclassification, Plaintiff's primary duties as an Assistant Store Manager consisted of performing the duties of baristas, who are classified by Starbucks as non-exempt, hourly employees. These barista duties included, among other things, waiting on customers, making drinks for customers, serving customers, operating the cash register, ensuring that the store remained clean and orderly, and cleaning and maintaining store equipment, and demonstrating the use of coffee machines and other items sold by Starbucks.

14. Although Plaintiff did perform some managerial duties as an Assistant Store Manager, Plaintiff performed such duties less than forty percent (40%) of the time while employed by Starbucks, and following the Reclassification, Plaintiff performed such duties only approximately twenty percent (20%) of the time. Both before and after the Reclassification, Plaintiff rarely exercised discretionary powers, and he was not relatively free from supervision concerning matters of significance, including scheduling employees and making decisions with respect to human resources issues. Any relative freedom from supervision that did exist for Plaintiff is the same as that which Starbucks afforded, and continues to afford, other non-exempt "managerial" employees, such as Shift Supervisors. Moreover, the limited managerial duties of Plaintiff were relatively unimportant in comparison to the non-exempt duties Plaintiff performed. Accordingly, Plaintiff's primary job duties at all times were those of a non-exempt employee under the FLSA.

15. Starbucks regularly expressed to Plaintiff that it expected him to attend various promotional and charity events in the community to represent Starbucks, including walks for a variety of causes (cancer walks, breast cancer walks, AIDS walks, and dog walks), fun runs, charity catering events, beach clean-ups, and the like. Starbucks expected Plaintiff to attend these events without pay, and Plaintiff was not compensated for attending such events. When Plaintiff failed to attend an event, he was reprimanded by Ms. Castillo. On a number of occasions, Plaintiff was also required to work off-the-clock at various catering events when his store was short of help, low on labor hours, and/or when a scheduled employee called in sick.

These promotional and charity events, and catering events, all contributed to Plaintiff working overtime.

16. As an Assistant Store Manager, Plaintiff regularly worked more than forty (40) hours per workweek, both before and after the Reclassification, and in fact, worked an average of fifty (50) hours per workweek.

17. Because Plaintiff was a non-exempt employee, both before and after the Reclassification, Starbucks was required to pay Plaintiff time and one-half for each hour worked in excess of forty (40) per workweek. However, Starbucks failed to compensate Plaintiff for all hours he worked in excess of forty (40) hours in a workweek at time and one-half.

18. Starbucks' illegal pattern and practice with respect to denying payment to Plaintiff for overtime compensation was and is in violation of the FLSA. Starbucks knew or should have known that its policies and practices violate(d) the FLSA, and Starbucks has not made a good faith effort to comply with the FLSA. Instead, Starbucks knowingly, willfully, and/or with reckless disregard carried out its illegal pattern or practice regarding its failure to pay Plaintiff overtime compensation. Indeed, Starbucks went so far as to implement the Reclassification with respect to its Assistant Store Managers in an attempt to further knowingly and willfully sidestep the FLSA. As set forth below, other prior and current Assistant Store Managers of Starbucks were subjected to the same wrongful policies, practices, and/or procedures.

V. COLLECTIVE ACTION ALLEGATIONS

19. Other persons employed by Starbucks as Assistant Store Managers have been victimized by the foregoing patterns, practices, and/or policies, which are in violation of the FLSA. Many of these employees and former employees have worked with Plaintiff over the years, and/or Plaintiff has spoken with them at various Starbucks meetings, and they have reported that they were not paid time and one-half for hours worked in excess of forty (40) during a workweek, both before and after the Reclassification. Thus, from discussions with

these employees and former employees, Plaintiff is aware that the illegal practices or policies imposed on Plaintiff have been imposed on other current and former Assistant Store Managers employed by Starbucks.

20. Accordingly, Starbucks' pattern or practice of failing to pay its Assistant Store Managers time and one-half for all hours worked in excess of forty (40) in a workweek, both before and after the Reclassification, is a generally applicable policy or practice and does not depend on the personal circumstances of the Members of the Class. Thus, Plaintiff's experience is typical of the experience of the Members of the Class.

21. All Assistant Store Managers employed by Starbucks who were denied overtime compensation for hours worked in excess of forty (40) in a workweek, both before and after the Reclassification, are similarly situated. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The class is therefore defined as:

All current and former Assistant Store Managers employed by Starbucks at any time during the time period of March 11, 2002 to present who were denied overtime compensation for hours worked in excess of forty (40) in a workweek.

VI. CAUSES OF ACTION

22. Plaintiff incorporates herein all allegations contained in paragraphs 1 through 21.

23. Starbucks' practice of failing to pay its Assistant Store Managers overtime compensation at time and one-half for all hours worked in excess of forty (40) hours in a workweek, both before and after the Reclassification, was and is in violation of the FLSA. Accordingly, Plaintiff and all those similarly situated are entitled to be paid time and one-half for each hour worked in excess of forty (40) per workweek, both before and after the Reclassification, and to have such overtime calculated in accordance with the Code of Federal

Regulations, including commission/bonus payments earned in the appropriate workweek in the calculation of the regular rate for the purposes of determining overtime entitlement.

24. Additionally, Plaintiff and all those similarly situated are entitled to an amount equal to all their unpaid wages as liquidated damages, as well as reasonable attorneys' fees and costs of this action.

VII. JURY DEMAND

25. Plaintiff hereby demands a trial by jury.

VIII. PRAYER

26. WHEREFORE, Plaintiff James Falcon respectfully requests that judgment be entered in his favor, awarding him and all similarly situated employees:

- a. overtime wages for all unpaid hours worked in excess of forty (40) hours in a workweek, both before and after the Reclassification, at the rate of one and one-half (1 ½) times his regular hourly rate;
- b. an equal amount as liquidated damages as allowed under the FLSA;
- c. an injunction against further violations;
- d. reasonable attorneys' fees, costs, and expenses of this action as provided by the FLSA; and
- e. such other and further relief as may be required by law.

Respectfully submitted,

By: 

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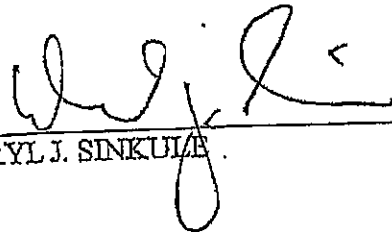
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded by Notice of Electronic Filing on Known Filing Users, or via courier, certified mail (return receipt requested), facsimile transmittal, and/or first class mail delivery on unknown Filing Users, on this the 18th day of August, 2005, addressed as follows:

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DARYL J. SINKULE

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FOR THE Southern DISTRICT OF TEXAS
Houston DIVISION

James Falcon, et al.,

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vs.

Starbucks Corporation, et al.,

Defendants.

CIVIL ACTION NO. H-05-0792

NOTICE OF CONSENT

I, James Falcon, hereby consent to be a party plaintiff in this case, which is a suit to recover unpaid wages under the Fair Labor Standards Act.

DATE: February 11, 2005.

Signature [Signature]

