

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ANDRE PHILLIPS, DAVIDA HOLT,)	
and WYONN HOLT,)	Class Action
)	Collective Action
on behalf of themselves)	
and all similarly situated individuals,)	No. _____
)	
Plaintiffs,)	Judge _____
)	
vs.)	Jury Demand
)	
McDONALD'S CORPORATION and)	
McDONALD'S RESTAURANTS OF)	
TENNESSEE, INC.,)	
)	
Defendants.)	

COMPLAINT

1. The plaintiffs are current employees or former employees of the defendants, and they bring this action as a collective action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (FLSA) against the defendants on behalf of themselves and all others similarly situated because of defendants' unlawful deprivation of plaintiffs' rights to overtime compensation.

2. Plaintiffs also assert claims for unjust enrichment and breach of contract under Tennessee law against defendants pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs assert these claims for unpaid wages on behalf of themselves and all members of the Tennessee Class defined below.

3. Plaintiffs also seek a declaratory judgment under 28 U.S.C. § 2201 and

compensation, damages, equitable and other relief available under the FLSA, as amended, 29 U.S.C. § 201 et seq. and common law.

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1337. Venue lies within this district pursuant to 28 U.S.C. § 1391.

5. This Court also has supplemental jurisdiction over plaintiffs' state law unjust enrichment and breach of contract claims under 28 U.S.C. § 1367 because the state law claims are sufficiently related to the FLSA claims that they form part of the same case or controversy.

6. This Court has subject matter jurisdiction to issue a declaratory judgment under 28 U.S.C. § 2201 because an actual controversy exists between the parties, as set out in this Complaint.

7. Venue for this action properly lies in the Middle District of Tennessee, pursuant to 28 U.S.C. § 1391, because defendants conduct business in this judicial district and because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

8. At all times material herein, each of the plaintiffs has been employed by the defendants McDonald's Corporation and McDonald's Restaurants of Tennessee, Inc. (hereinafter "McDonald's" or "defendants") at defendants' McDonald's restaurant locations in Nashville, Tennessee. Plaintiffs have each given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such consents are appended to this Complaint as Exhibit A. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated in accordance with 29 U.S.C. § 216(b).

9. Defendant McDonald's Corporation is a Delaware corporation with its principal place of business located at 1 McDonald's Dr., Oak Brook, IL 60523. It is currently licensed to do business in the State of Tennessee under the name McDonald's Restaurants of Tennessee, Inc., a subsidiary of McDonald's Corporation. Defendant McDonald's Corporation's registered agent for service of process is The Prentice-Hall Corporation System, Inc, 2908 Poston Ave, Nashville, TN 37203.

10. Defendant McDonald's Restaurants of Tennessee, Inc. is a subsidiary of McDonald's Corporation, which is currently licensed to do business in the State of Tennessee. Defendant McDonald's Restaurants of Tennessee, Inc.'s registered agent for service of process is The Prentice-Hall Corporation System, Inc, 2908 Poston Ave, Nashville, TN 37203.

11. Defendants are "employers" within the meaning of 29 U.S.C. §203(d) and a "person" within the meaning of 29 U.S.C. § 203(a).

12. At all times material to this action, defendants have been enterprises engaged in commerce as defined by 29 U.S.C. § 203(r)(1), and their annual dollar business volume has exceeded \$500,000.

13. At all times material herein, defendants have been actively conducting business in the State of Tennessee.

14. Plaintiff Davida Holt works at the McDonald's location at 4700 Charlotte Avenue and has been employed there since December 2012. She is an employee of the defendants and has worked hours for which she was not properly compensated including being denied overtime compensation.

15. Plaintiff Andre Phillips worked at two McDonald's locations. He worked at

the 7010 Highway 70 South location from December 2012 to February 2014. He worked at the 4700 Charlotte Avenue location from February 2014 to May 2014. He was an employee of the defendants and has worked hours for which she was not properly compensated including being denied overtime compensation.

16. Plaintiff Wyonn Holt works at the McDonald's location at 4700 Charlotte Avenue and has been employed there since December 2012. She was an employee of the defendants and has worked hours for which she was not properly compensated including being denied overtime compensation.

17. Plaintiffs identified in the above caption gave their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Complaint and set forth each plaintiff's name and address.

18. Plaintiffs are similarly situated to other hourly workers at defendants' McDonald's restaurants who are currently working for or who have worked for defendants as they have all been subject to defendants' unlawful policies and practices with respect to the failure to comply with the overtime requirements of the Fair Labor Standards Act.

COLLECTIVE ACTION ALLEGATIONS

19. Plaintiffs assert their FLSA claims pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the following putative plaintiffs:

All current and former hourly-paid workers who worked at any time or performed training related work since August 21, 2012 for defendants in the State of Tennessee.

(the "Collective Class").

**CLASS ACTION ALLEGATIONS PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 23**

20. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the following class of individuals:

All current and former hourly-paid, FLSA non-exempt workers who worked or performed training related work at any time since August 21, 2009 for defendants in the State of Tennessee.

(the “Tennessee Class”).

21. Plaintiffs Davida Holt, Wyonn Holt and Andre Phillips are members of the Tennessee Class they seek to represent.

22. The Tennessee Class is sufficiently numerous that joinder of all members is impractical, satisfying Federal Rule of Civil Procedure 23(a)(1). There are hundreds of class members during the class period.

23. All members of the Tennessee Class share the same pivotal questions of law and fact, thereby satisfying Federal Rule of Civil Procedure 23(a)(2). Namely, all members of the Tennessee Class share the questions of: (1) whether and to what extent did defendants fail to compensate them for all hours worked, (2) whether and to what extent these unpaid work hours include work hours under forty (40) in a week: (3) whether and to what extent these unpaid work hours include hours over forty (40) in a week for which “gap time” or overtime payments may be owed; (4) whether and to what extent such overtime hours were compensated at one and one-half times the regular rate of pay; (5) whether defendants’ actions constituted unjust enrichment; and (6) whether defendants’ actions constituted a breach of contract.

24. Plaintiffs' claims are typical of the claims of the Tennessee Class, thus satisfying Federal Rule of Civil Procedure 23(a)(3). Defendants' failure to pay for all hours worked was not the result of any plaintiff-specific circumstances. Rather, it arose from defendants' common time and attendance and payroll policies and practices that defendants applied to all Tennessee Class members.

25. Plaintiffs will fairly and adequately represent and protect the interests of the Tennessee Class. Further, plaintiffs have retained competent counsel experienced in representing classes of employees against their employers related to their employers' failure to pay them properly under the law, thus satisfying Federal Rule of Civil Procedure 23(a)(4).

26. By consistently failing to pay its workers for all hours worked, defendants have acted on grounds that apply generally to all members of the Tennessee Class, such that final injunctive relief and corresponding declaratory relief is appropriate respecting the class as a whole. Accordingly, plaintiffs are entitled to pursue their Tennessee state law claims as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(2).

27. By consistently failing to pay its workers for all hours worked, defendants have created a scenario where questions of law and fact common to Tennessee Class members predominate over any questions affecting only individual members. Thus, a class action is superior to other available methods for fair and efficient adjudication of this matter. Accordingly, plaintiffs are entitled to pursue their Tennessee state law claims as a class action, pursuant to Federal Rule of Civil Procedure 23(b)(3).

COUNT I: VIOLATIONS OF THE FLSA

28. At all times material herein, plaintiffs have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201 et seq.

29. At all times material herein, plaintiffs have worked in excess of the hourly levels specified in the FLSA, 29 U.S.C. § 207(a). As a result, at all times material herein, plaintiffs have been entitled to overtime compensation at a rate of not less than one and one-half times their regular rate of pay for the hours of overtime they have worked.

30. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1). provides that employees shall be paid overtime compensation at a rate of not less than one and one-half times their regular rate of pay for hours worked in excess of 40 hours per work week. At defendants' restaurants located in Tennessee, defendants have violated, and continue to violate, 29 U.S.C. § 207(a)(1) by failing and refusing to compensate plaintiffs and other employees for their hours of work in excess of 40 hours per work week at a rate of not less than one and one-half times the regular rate at which the plaintiffs are employed.

31. Defendants have deprived the plaintiffs and other similarly situated employees of overtime compensation by failing to compensate them for all of the time that they worked. For example, the plaintiffs were not paid for all of their hours of work, and were often instructed by their supervisor to work overtime hours (i.e., hours over 40 in a work week) off-the-clock so they would not go into overtime. Defendants also altered plaintiffs' time records to reduce the number of hours worked "on the clock." Through these unlawful policies and practices, defendants failed to compensate plaintiffs for all hours worked, including failing to compensate plaintiffs for work hours over 40 in a week.

32. Defendants have engaged in a systemic, knowing and deliberate practice of reducing or eliminating hours worked from the time for which they paid their hourly employees. Employees' pay checks have not included all hours worked on a regular and recurring basis, including in work weeks in which employees worked more than 40 hours.

33. Plaintiffs have performed their normal duties but have not been paid because the defendants either alter their time entries or force them to work off-the-clock.

Examples of these illegal policies and practices include:

- a. Requiring plaintiffs and other similarly situated employees to work complete shifts off-the-clock without compensation;
- b. Offering comp time instead of cash overtime which violates the FLSA;
- c. Completing necessary training, including the Learning Management Service program and the Servsafe program, off-the-clock without compensation;
- d. Managers eliminating recorded hours worked from employees' time records and not paying employees for this time to save on labor budgets.

34. These violations are willful. For example, the plaintiffs have complained to management employees about these practices and management has failed to remedy these violations; instead, management has continued these unlawful practices and continued violating the law.

35. Defendants' violations of the FLSA as alleged herein have been done in a willful and bad faith manner.

36. As a result of the aforesaid willful violations of the FLSA, overtime compensation has been unlawfully withheld by defendants from plaintiffs and similarly situated persons for which the defendants are liable pursuant to 29 U.S.C. § 216(b),

together with an additional equal amount as liquidated damages, as well as interest, reasonable attorneys' fees and the costs of this action.

37. The employment and work records for the plaintiffs are in the exclusive possession, custody and control of defendants, and plaintiffs are unable to state at this time the exact amount owing to each of them. Defendants are under a duty imposed by law under 29 U.S.C. § 211(c) and the regulations of the United States Department of Labor to maintain and preserve plaintiffs' payroll and other employment records from which the amounts of defendants' liability can be ascertained.

COUNT II: DECLARATORY JUDGMENT – FLSA VIOLATIONS

38. All previous paragraphs are incorporated as though fully set forth herein.

39. Plaintiffs bring this claim on behalf of themselves and the Collective Class, pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b) and 28 U.S.C. § 2201.

40. At all times material to the allegations herein, Plaintiff and the Collective Class have been employees entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, et seq.

41. Defendants are and have been at all relevant times an employer covered by the FLSA.

42. Plaintiffs and the Collective Class are and/or were victims of a common, company-wide compensation policy that fails to record and compensate all time that defendants required, encouraged, and/or permitted plaintiffs and the Collective Class to work off the clock without compensation or changes time records to reduce their hours worked.

43. Some or all of this uncompensated time is time worked in excess of forty (40) hours per week.

44. The FLSA requires that covered employees receive overtime compensation “not less than one and one-half times” their regular rate of pay for hours worked over forty (40) in a week. 29 U.S.C. § 207.

45. Defendants have violated the FLSA by failing to compensate plaintiffs and the putative class for all time worked, including overtime.

46. In violation of the FLSA, defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions requiring defendants to compensate plaintiffs and the putative class for all hours worked, including at one-and-one-half times their regular hourly rates for hours over 40 in a week.

47. There is an actual controversy regarding whether the defendants violated the overtime provisions of the FLSA and whether those violations were willful.

48. Accordingly, plaintiffs and the putative class are entitled to a declaratory judgment that defendants have violated the overtime provisions of the FLSA, and that those violations are willful. 28 U.S.C. § 2201.

COUNT III: TENNESSEE BREACH OF CONTRACT

49. All previous paragraphs are incorporated as though fully set forth herein.

50. Plaintiffs bring this claim on behalf of all members of the Tennessee Class.

51. Plaintiffs and the Tennessee Class members entered into employment agreements with defendants whereby they agreed to perform work for defendants in exchange for being compensated for all time worked.

52. The agreements were made between parties capable of contracting and

contained mutual obligations and valid consideration.

53. Plaintiffs and the Tennessee Class members have performed all conditions precedent, if any, required of them under the agreement.

54. Defendants failed and refused to perform their obligations in accordance with the terms and conditions of the agreement by failing to pay plaintiffs and the Tennessee Class members for all time worked on behalf of defendants.

55. Plaintiffs and the Tennessee Class members have suffered damages as a result of the defendants' breach.

COUNT IV: TENNESSEE UNJUST ENRICHMENT

56. All previous paragraphs are incorporated as though fully set forth herein.

57. Plaintiffs bring this claim on behalf of all members of the Tennessee Class in the alternative to Count III.

58. Under Tennessee law, defendants are obligated to pay plaintiffs and the Tennessee Class members for all time worked.

59. Because of the wrongful activities described above, including the failure to pay wages due and owing, defendants have received the benefit of plaintiffs and the Tennessee Class members' unpaid labor and have therefore received money belonging to the plaintiffs and the Tennessee Class.

60. Defendants were clearly aware of and appreciated the benefit that plaintiffs and the Tennessee Class members conferred upon them.

61. Defendants have been unjustly enriched as a result of their accepting the work of plaintiffs and the Tennessee Class without proper compensation for all time

worked. It would be unjust to allow defendants to enjoy the fruits of such employees' labor without proper compensation.

PRAYER FOR RELIEF

Wherefore, the plaintiffs pray that this Court grant relief against the defendants as follows:

- (a) Enter a declaratory judgment declaring that the defendants have willfully and wrongfully violated their statutory and legal obligations and deprived plaintiffs and all others who are similarly situated of their rights, privileges, protections, compensation, benefits, and entitlements under the law, as alleged herein;
- (b) Order a complete and accurate accounting of all the compensation to which the plaintiffs, all others who are similarly situated, and the Tennessee Class are entitled;
- (c) Award plaintiffs, all others who are similarly situated, and the Tennessee Class monetary damages in the form of back pay compensation; liquidated damages to plaintiffs and all others similarly situated equal to their unpaid compensation owed pursuant to the FLSA; plus pre-judgment and post-judgment interest;
- (d) Award plaintiffs, all others who are similarly situated, and the Tennessee Class their reasonable attorneys' fees to be paid by the defendants, and the costs and disbursements of this action; and
- (e) Grant such other legal and equitable relief as may be just and proper.

JURY TRIAL DEMAND

Plaintiffs hereby demand a jury trial in this action.

Dated: August 21, 2015

Respectfully submitted,

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