

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JOHN MORDOFF, on his own)	
behalf and for all others similarly situated,)	
)	
Plaintiff,)	COLLECTIVE ACTION
)	
v.)	CASE NO. _____
)	
UNITED STATES OF AMERICA,)	JURY DEMAND
)	
Defendant.)	

COLLECTIVE ACTION COMPLAINT

Plaintiff, John Mordoff (“Plaintiff”), by and through the undersigned counsel, brings this Complaint against Defendant the United States of America, and states and alleges as follows:

INTRODUCTION

1. This is a collective action brought by Plaintiff on behalf of himself and all similarly situated current and/or former employees of Defendant who worked for the Department of Veterans Affairs in one of its Veterans Canteen Service (VCS) restaurants and retail stores to recover for Defendant’s willful violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*

2. VCS operates more than 172 retail stores nationwide.¹ These stores offer health and beauty care products, beverages, snacks, entertainment, electronics, gifts, stationary, clothing, and other products.² Additionally, its VCS operates a number of Patriotcafe and Coffee

¹ See <http://www.vacanteen.va.gov/RetailOperations.php> last visited on May 28, 2015.

² *Id.*

shops nationwide in its medical centers.³ As of June 21, 2011, VCS employed more than 3,400 employees in its Canteen Operations.⁴

3. Plaintiff complains that Defendant has a common policy that misclassified him and all other similarly situated Assistant Chiefs as exempt employees. Specifically, Plaintiff complains that Defendant misclassified its Assistant Chiefs as exempt because they spend the majority of their time performing nonexempt work like preparing and serving food to customers. Assistant Chiefs spend very little time ordering food, performing quality control, or supervising other canteen employees.

4. Because of Defendant's illegal common policy, Plaintiff seeks to represent all current and former Assistant Chiefs whom Defendant improperly classified as exempt and thereby deprived them of their right to earn overtime pay at the rate of one and one-half times their regular rate of pay for hours worked in excess of 40 hours per week.

5. Plaintiff seeks a declaration that their rights, and the rights of the similarly situated Assistant Chiefs were violated, an award of unpaid wages, an award of liquidated damages, injunctive and declaratory relief, and an award of attorneys' fees and costs to make them whole for damages they suffered, and to ensure that they and future workers will not be subjected by Defendant to such illegal conduct.

JURISDICTION AND VENUE

6. This Court has jurisdiction over Plaintiff's FLSA claims under 28 U.S.C. § 1331 because they arise under the laws of the United States and under 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer ... in any Federal or

³ See <http://www.vacanteen.va.gov/FoodOperations.php> last visited May 28, 2015.

⁴ See <http://www.vacanteen.va.gov/OrgChart.php> last visited May 28, 2015.

State court of competent jurisdiction.” *See also, Smith v. United States*, No. 13-161C, 2014 WL 1266825 (Fed. Cl. Mar. 24, 2014) (court denied defendant’s jurisdictional motion to transfer).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(d) because Defendant resides within this District, conducts substantial business within this District, and because the actions and omissions giving rise to the claims pled in this Complaint occurred in this District.

PARTIES

8. Plaintiff is an individual who resides in Southhaven, Mississippi. During May 2014, he worked as an Assistant Chief in training in Little Rock, Arkansas. From June 2014 until March 2015, he worked as an Assistant Chief in Memphis Tennessee. His executed consent to sue is attached as Exhibit A.

9. Defendant is the Department of Veterans Affairs as a branch of the United States of America. As a public agency, Defendant is an enterprise engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(s)(1)(C).

GENERAL ALLEGATIONS

10. VCS employed Plaintiff, and those similarly situated, as Assistant Chiefs. Their primary job duties included preparing, making and serving food to canteen customers.

11. Defendant employs a uniform pay practice whereby each Assistant Chief is classified as exempt and is not paid for any hours worked in excess of 40 hours in a given workweek. Defendant subjected each Assistant Chief to its Pay Plan/Grade/Step pay policy.

12. In Plaintiff’s case, Defendant classified his Pay Plan/Grade/Step as VC; 11; 02, resulting in an hourly rate of \$21.77 per hour. Additionally, box 10 of his paystub shows that Defendant classified his position as exempt. While pay grades and steps may vary, Defendant’s

common policy classified the Assistant Chief position as exempt nationwide.

13. Defendant regularly scheduled Plaintiff to work from 4:30 am to 7:00 pm (and sometimes until 10:00 pm) Monday through Friday and an additional 8 hours on Saturday. This resulted in Plaintiff regularly working 80 to 85 hours each week. Defendant compensated Plaintiff by paying him \$21.77 per hour for 40 hours per week and nothing for every hour worked in excess of 40 hours in a given workweek. Based upon his regular schedule, Defendant shorted Plaintiff approximately \$1,300 (40 hours x \$32.66 per hour) in overtime pay each week. For example, for the pay period that ended on February 21, 2015, Plaintiff worked his typical 160 to 170 hours. Despite working these hours, his paystub (attached as Exhibit B) shows he was only paid for 80 hours for the two-week pay period. Thus, as calculated above, Defendant failed to pay him the overtime wages of \$2,600 that he earned that pay period.

14. Defendant continues to maintain its common policy of misclassifying Assistant Chiefs as exempt from the overtime requirements of the FLSA. However, the Assistant Chiefs spend nearly all of their time performing nonexempt work of preparing, making, and serving food. Therefore, their jobs are, in fact and in law, non-exempt from the minimum wage and overtime provisions of the FLSA.

15. The provisions of the FLSA, 29 U.S.C. § 207, require Defendant to compensate non-exempt employees who work in excess of 40 hours in a workweek at a rate of one and one-half times their regular rate of pay.

16. Contrary to the above statutory enactment, Defendant fails to pay Assistant Chiefs overtime pay at a rate of one and one-half times their regular rate for hours worked in excess of 40 hours during a workweek.

17. Defendant willfully violated the FLSA by knowingly and willfully failing to

compensate Plaintiffs for the hours they worked in excess of 40 hours per week according to the terms of the FLSA, 29 U.S.C. § 201, *et seq.*

18. At all times relevant to this action, Defendant was an “employer” under the FLSA, 29 U.S.C. § 203(d), subject to the provisions of 29 U.S.C. § 201, *et seq.*

19. Defendant is engaged in interstate commerce or in the production of goods for commerce, as defined by the FLSA.

20. At all times relevant to this action, Plaintiff and the similarly situated Assistant Chiefs were “employee[s]” of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

21. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) has been employed in an enterprise engaged in commerce or in the production of goods for commerce.

22. At all times relevant to this action, Defendant “suffered or permitted” Plaintiff and the similarly situated Assistant Chiefs to work and thus “employed” them within the meaning of the FLSA, 29 U.S.C. § 203(g).

23. The violations of the FLSA, 29 U.S.C. §§ 206 and 207, committed by Defendant and alleged in this Complaint present common questions of law and fact.

COLLECTIVE ACTION ALLEGATIONS

24. Plaintiff brings this action under the FLSA on his own behalf and on behalf of the following:

All current and former Assistant Chiefs of the Department of Veterans Affairs Veterans Canteen Services and who worked over 40 hours per workweek and were not paid at the rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per week.

25. Plaintiff does not bring this action on behalf of any executive, administrative, or

professional employees exempt from coverage under the FLSA.

26. An FLSA collective action is appropriate because the Assistant Chiefs described in this Complaint are “similarly situated” to Plaintiff in that they all performed the same job duties and were subject to Defendant’s common policy of misclassifying them as exempt.

27. The classification status of the Plaintiff and similarly situated Assistant Chiefs involves an identical legal question: did Defendant misclassify its Assistant Chiefs as exempt under the FLSA.

28. Plaintiff shares the same interests as the similarly situated Assistant Chiefs in that the outcome of this action will determine whether they are exempt under the FLSA. Because the facts in this case are similar, if not altogether identical, the factual assessment and legal standards lend themselves to a collective action.

COUNT I- FLSA VIOLATION FAILURE TO PAY OVERTIME WAGES

29. Plaintiff re-alleges and incorporates all previous paragraphs herein.

30. The FLSA requires an employer to pay employees the federally mandated overtime premium rate of one and one-half times their regular rate of pay for every hour worked in excess of 40 hours per workweek. 29 U.S.C. § 207.

31. Defendant violated the FLSA by failing to pay Plaintiff and those similarly situated Assistant Chiefs the federally mandated overtime premium for all hours worked in excess of 40 hours per workweek.

32. Defendant employs a common policy that evades overtime pay for Plaintiff and the similarly situated Assistant Chiefs he seeks to represent in an FLSA collective action.

33. Defendant’s violation of the FLSA is knowing and willful.

34. Defendant’s failure to pay its Assistant Chiefs at the rate of one and one-half

times their regular rate of pay for work performed in excess of 40 hours in a workweek violates the FLSA. All Assistant Chiefs are victims of a common policy that operates to compensate them at a rate less than the federally mandated overtime wage rate for hours worked in excess of 40 in a workweek. This uniform, FLSA-violating common policy applies to all Assistant Chiefs who worked for Defendant.

35. The FLSA provides a remedy, entitling an employee to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. Certifying the case as a collective action under 29 U.S.C. 216(b);
2. Ordering Defendant to disclose in computer format, or other format if no computer format is available, the names and addresses of all those individuals who are similarly situated individuals, and permitting Plaintiff to send notice of this action to all those similarly situated individuals to apprise them of their right to join this action;
3. Declaring that Defendant willfully violated the FLSA and its attendant regulations as set forth above;
4. Declaring that Defendant violated its obligations under the FLSA;
5. Granting judgment in favor of Plaintiff and against Defendant and awarding the amount of unpaid overtime wages;
6. Awarding liquidated damages to Plaintiff;
7. Awarding pre- and post-judgment interest to Plaintiff on these damages and reasonable costs and attorney fees incurred by Plaintiff in filing this action; and

8. Such further relief as this court deems appropriate.

JURY DEMAND

Now Comes, Plaintiff, by and through his attorneys, and hereby demands a trial by jury under Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

Dated: August 14, 2015

Respectfully submitted,

/s/ David W. Garrison

DAVID W. GARRISON (No. 24968)
BARRETT JOHNSTON MARTIN & GARRISON, LLC
Bank of America Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: (615) 244-2202
Facsimile: (615) 252-3798
dgarrison@barrettjohnston.com

Attorney for Plaintiffs

David H. Grounds (MN Bar No. 285742)*
dgrounds@johnsonbecker.com
G. Tony Atwal (MN Bar No. 331636)*
tatwal@johnsonbecker.com
JOHNSONBECKER, PLLC
33 South Sixth Street, Suite 4530
Minneapolis, Minnesota 55402
Telephone: (612) 436-1800
Fax: (612) 436-1801

Jesse L. Young (MI Bar No. P72614)*
jyoung@sommerspc.com
Neil B. Pioch (MI Bar No. P67677)*
npioch@sommerspc.com
SOMMERS SCHWARTZ, P.C.
One Towne Square, Suite 1700
Southfield, Michigan 48076
Telephone: (248) 355-0300

Lead Attorneys for Plaintiffs

*Pro Hac Vice Motion Anticipated

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JOHN MORDOFF, on his own behalf and for all others similarly situated,

(b) County of Residence of First Listed Plaintiff DeSoto County, MS (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Barrett Johnston Martin & Garrison, LLC, Bank of America Plaza, 414 Union Street, Suite 900, Nashville, TN 37219 (615) 244 - 2202

DEFENDANTS

UNITED STATES OF AMERICA,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, et seq.
Brief description of cause: Overtime Wage Violation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: X Yes O No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/14/2015 SIGNATURE OF ATTORNEY OF RECORD /s/ David W. Garrison

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

JOHN MORDOFF, on his own)
behalf and for others similarly situated,)
v.)
UNITED STATES OF AMERICA,)
Defendant)

CONSENT TO JOIN

1. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b), I hereby consent to join and act as a plaintiff in the above-captioned lawsuit.
2. I agree to be bound by any adjudication or court rulings in the lawsuit, whether favorable or unfavorable.
3. I hereby designate Johnson Becker, PLLC to represent me in the lawsuit under the terms and conditions set forth on the following page.

Signature: *John W Mordoff*
John W Mordoff (Jun 4, 2015)

Print Name: John W. Mordoff

Date Signed: June 4, 2015