

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
IN THE COLUMBIA DIVISION

Dianna Simons individually and on behalf
of other similarly situated Consenters,

Plaintiff,

v.

Sylvan Food Systems, Inc.,

Defendant.

Case No.: 3:11-cv-00792-CMC

VERIFIED AMENDED COMPLAINT

COLLECTIVE ACTION COMPLAINT UNDER THE FLSA

Plaintiff Dianna Simons (hereinafter “Plaintiff Simons”), by and through her undersigned counsel, makes the allegations contained herein on behalf of herself and all others similarly situated.

JURISDICTION

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, as this action is brought pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (hereinafter “FLSA”), and its implementing regulations, 29 CFR Part 541, *et seq.*

VENUE

2. Venue lies within this District pursuant to 28 U.S.C. § 1391, as Defendant’s principal place of business lies within this District and a substantial part of the events or omissions giving rise to the claims alleged herein occurred within this District.

PARTIES

3. Plaintiff Dianna Simons is an adult resident of Richland County, South Carolina.

4. Defendant Sylvan Food Systems, Inc. (hereinafter “Defendant”), is a for-profit corporation, organized under the laws of South Carolina, with its principal place of business at 1245 Boston Avenue, West Columbia, SC.

5. Plaintiff Simons brings this action against Defendant on behalf of herself individually and on behalf of other similarly situated Restaurant General Manager and Assistant Unit Manager employees (hereinafter “Consenters”) of Defendant.

FACTS

6. At all times relevant to this suit, Defendant has been and remains an employer within the meaning of the FLSA, 29 U.S.C. § 203, and is in the business of an enterprise engaged in interstate commerce, namely the operation various fast-food restaurants including, upon information and belief, but not limited to, those within the KFC Corporation franchise.

7. Defendant employs at its restaurants Restaurant General Managers and Assistant Unit Managers (hereinafter collectively “Restaurant-Level Managers”), such as Plaintiff Simons and the Consenters, who, at all times relevant, were employees within the meaning of the FLSA, 29 U.S.C. § 203.

8. Plaintiff Simons was a Restaurant-Level Manager for Defendant between February 2008 and February 2011.

9. Defendant classified and continues to classify their Restaurant-Level Managers, including Plaintiff Simons and the Consenters, as “exempt” employees for purposes of the FLSA, 29 U.S.C. § 213, and its implementing regulations.

10. Like other Consenters, Plaintiff Simons was required and permitted to work in excess of forty (40) hours per week and was compensated at a flat weekly rate without overtime compensation.

11. At all times relevant hereto, Defendant knew that Plaintiff Simons and the Consenters worked in excess of forty (40) hours per week.

12. Although Plaintiff Simons and the Consenters were classified as “exempt” for overtime purposes, Defendant had an actual policy and practice of making improper deductions from the salaries paid to Plaintiff Simons and the Consenters, including, but not limited to, deductions for:

- a. Cash register shortages;
- b. Failed restaurant inspections;
- c. Disciplinary suspensions;
- d. Inventory issues; and
- e. Time missed for illness in workweeks in which Restaurant-Level Managers had worked.

13. Defendant also enforced its improper deduction policy by requiring Restaurant-Level Managers to make undocumented cash payments to Defendant for various issues, including, but not limited to:

- a. Cash register shortages;
- b. Safe shortages; and

- c. Inventory losses.

14. Defendant has also had a written policy of making deductions from the salaries paid to Plaintiff Simons and the Consenters including, but not limited to:

- a. Cash register shortages;
- b. Safe shortages;
- c. Failed restaurant inspections;
- d. Disciplinary suspensions;
- e. Inventory issues;
- f. Time missed for illness in workweeks in which Restaurant-Level Managers had worked;
- g. Failure by a Restaurant-Level Manager or other employees to assign only one (1) employee to each register;
- h. Debt incurred by Defendant as a result of a Restaurant-Level Manager's failure to follow Defendant's written company policy regarding accepting checks and/or credit cards;
- i. A Restaurant-Level Manager's loss or negligent damage of any of Defendant's property;
- j. A Restaurant-Level Manager's failure to return Defendant's keys;
- k. Defendant's debts incurred due to a Restaurant-Level Manager's use of Defendant's accounts, employee cash losses, and personal phone calls; and
- l. Any problems due to abuse and not maintaining Defendant's company vehicle or accidents for which the Restaurant-Level Manager is responsible.

15. As evidence of its policies and practices, Defendant provided one or more *Employee Handbook/Policy Manual* documents to its employees, including Plaintiff and the Consenters, which served to put Defendant's employees, including Plaintiff Simons, on notice from the time of hire that they were subject to these improper payroll deductions.

16. Plaintiff Simons, in her role as a Restaurant-Level Manager, was subject to such a deduction resulting from a cash register till shortage, with the shortage amount being divided and deducted as an equal payroll salary deduction between Plaintiff Simons and two other similarly situated Restaurant-Level Managers.

17. Though it was not set forth in the *Employee Handbook/Policy Manual*, Defendant also had an actual practice of taking payroll deductions from Restaurant-Level Managers, such as Plaintiff Simons, based upon employee work quality.

18. At all times relevant hereto, Defendant knew that Plaintiff Simons and the Consenters were subject to and actually incurred improper pay deductions and that they performed work for which they should have been paid overtime pay at one-and-a-half times their regular rate of pay.

19. These work-quality-based deductions included, but, upon information and belief, were not limited to, payroll deductions from salaried Restaurant-Level Managers for negative restaurant inspection results Defendant deemed to be the employees' fault or responsibility and payroll deductions for failing to follow Defendant's procedures.

20. For example, Plaintiff Simons was the subject of substantial payroll deductions for failing to follow Defendant's procedures, such as the deduction taken from her salary after she allegedly permitted cooked chicken to remain under a warmer past the time established for removing the chicken from the warmer.

21. Plaintiff Simons was subject to another substantial payroll deduction on the basis that, according to Defendant's own report, she was the "highest ranking manager" on a February 1, 2011, shift during which "[s]he allowed the store to run out of product and could not meet customer demand," resulting in a failing inspection score.

22. Upon information and belief, during the times relevant hereto, Defendant also had an actual practice of taking payroll deductions from Plaintiff Simons and the Consenters for absences resulting from illness and disciplinary suspensions of less than one week, both of which were reductions from salary that were not pursuant to an established leave policy and were taken from compensation for weeks in which they worked at least part of the workweek and/or were suspensions in bad faith which were not resultant from major safety violations.

23. In a January 25, 2007, memorandum to their employees, which was incorporated into the "Policy and Procedure Manual," Defendant described its policy that "salaried managers work a minimum of fifty hours per week," and that Defendant "do[es] not offer sick days or extra days off."

24. Plaintiff Simons was also improperly suspended without pay for one week and demoted from Assistant Unit Manager to an hourly-rate "Shift Supervisor" position, on the purported basis that she failed to keep up with customer demand on February 1, 2011, as more fully described in Paragraph 23, above.

25. Defendant also subjected Plaintiff Simons to improper disciplinary suspensions and resultant pay withholdings for an alleged failure to maintain proper temperature on a hot food item and again for purportedly allowing cooked chicken to remain under a warmer for several minutes past the time established for removing the chicken, as described above in Paragraph 21.

26. Defendant also required Plaintiff Simons and other Consenters to make up partial-day absences from work but did not return any withheld amounts for the absences.

27. For example, Plaintiff Simons required a medical procedure during December 2010 which required that she miss work for three (3) days. Although Plaintiff Simons performed work during the week of her sick leave, was not on unpaid FMLA leave, and the company had no sick leave policy, she was docked three days pay for her absences. She also was required by Defendant to work additional shifts following her return from the medical absences to make up for her missed time, but was not recompensed for the pay withholding or otherwise paid for the made up hours.

28. Further, upon information and belief, Defendant failed and continue to fail to accurately record, report, and/or preserve records of Plaintiff Simons and the Consenters sufficient to determine their wages, hours, and conditions and practices of employment, in contravention of the FLSA, 29 U.S.C. §§ 201, *et seq.*, as Defendant could not, or would not, explain to Plaintiff Simons the basis for certain unidentified deductions from her salary, listed as “miscellaneous” on her pay stubs, even after the improper deductions were brought to the attention of Defendant’s agents and/or employees.

29. In or about November 2010, Plaintiff Simons also lodged a complaint with Tim Wilson, an upper level management employee/agent of Defendant, regarding the impropriety of the pay deductions to which she was subjected for issues related to the quality or quantity of her work.

30. Following Plaintiff Simons’ complaint, Mr. Wilson refused to return the deducted salary, and further, Plaintiff Simons’ was subjected to subsequent adverse employment actions in

the form of additional improper pay deduction(s) for work quality, an improper disciplinary suspension, and a demotion to a lower paying hourly position.

31. Despite Defendant's own *Employee Handbook/Policy Manual's* stating specifically that "[a]ny deductions made from an employee's wages for mishandling company funds or property will [be] made in compliance with Department of Labor Laws," Defendant made deductions that were not in compliance with Department of Labor Laws, including but not limited to, specifically, the FLSA.

32. Upon information and belief, and as described above, Defendant was and is well-aware of its obligations under the FLSA such that its conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), as Defendant knew (or showed reckless disregard for) the fact that the alleged conduct and practices violated the FLSA and its implementing regulations.

FOR A FIRST CAUSE OF ACTION
(Violation of the FLSA: Assessment of Improper Payroll Deductions)

33. The above-referenced paragraphs are realleged and incorporated by reference, as though set forth fully herein.

34. Defendant has violated the FLSA and its implementing regulations by subjecting Plaintiff Simons and the Consenters to improper payroll deductions based on quantity and/or quality of work and for failing to pay Plaintiff Simons and the Consenters for all of the work they performed, including but not limited to overtime pay, within the pay period for which it was worked.

35. As evidenced by Defendant's written policies and the numerous deductions taken from Plaintiff Simons' fixed compensation, these deductions were hardly isolated or inadvertent but rather were the result of Defendant's willful, actual practice of making these improper

deductions without regard to the rights of Plaintiff Simons and the Consenters under the FLSA and its implementing regulations.

36. As a result of these deductions, and pursuant to 29 C.F.R. § 541.603, Plaintiff Simons and the Consenters were not paid on a salary basis or properly classified as “exempt” for purposes of the FLSA and, thus, are entitled to overtime compensation for all hours worked in excess of forty (40) per week, as mandated by the FLSA.

FOR A SECOND CAUSE OF ACTION
(Violation of the FLSA: Deductions for Personal and/or Sick Leave)

37. The above-referenced paragraphs are realleged and incorporated by reference, as though set forth fully herein.

38. Defendant has violated the FLSA and its implementing regulations by withholding pay for personal and/or sick leave, without a policy, in weeks where Plaintiff Simons and the Consenters performed work, and for failing to pay overtime pay.

39. As evidenced by Defendant’s written policies and the numerous deductions taken from Plaintiff Simons’ fixed compensation, the withholding of pay for sick and personal leave was hardly isolated or inadvertent but rather was the result of Defendant’s willful, actual practice of withholding these funds without regard to the rights of Plaintiff Simons and the Consenters under the FLSA and its implementing regulations.

40. As a result of these deductions, and pursuant to 29 C.F.R. § 541.603, Plaintiff Simons and the Consenters were not paid on a salary basis or properly classified as “exempt” for purposes of the FLSA and, thus, are entitled to overtime compensation for all hours worked in excess of forty (40) per week, as mandated by the FLSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Simons and similarly-situated Consenters who join in this action demand:

1. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216(b);
2. Judgment against Defendant for an amount equal to Plaintiff's unpaid back wages at the applicable overtime rates;
3. Judgment against Defendant that its violations of the FLSA and its implementing regulations were willful;
4. Liquidated damages in an amount equivalent to the overtime damages owed to Plaintiff;
5. All recoverable costs, expenses, and attorneys' fees incurred in pursuing this action; and
6. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
7. Leave to amend to add other defendants who meet the definition of Plaintiff's "employer," 29 U.S.C. § 203(d);
8. Injunctive relief to require Defendant to record, report, and preserve records sufficient to enable Plaintiff Simons and the Consenters to determine their wages, hours, and conditions and practices of employment, including practices regarding deductions and payment and nonpayment of overtime, as mandated by the FLSA; and
9. All such further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff Simons, on her behalf and on behalf of all Consenters, hereby demands a trial by jury.

Respectfully submitted,

s/W. Jonathan Harling

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