

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
AT KANSAS CITY**

DAWN MARIE SHOCKEY)
1305 South 80th Street)
Kansas City, KS 66111)

JURY TRIAL DEMANDED

On Behalf of Themselves and)
All Others Similarly Situated,)

Plaintiff,)

vs.)

Case no.: 09-CV-2260-JAR-DJW

HUHTAMAKI CONSUMER)
PACKAGING INC.)
Registered Agent:)
National Registered Agents of KS, Inc)
2101 SW 21st Street)
Topeka KS 66604)

-and-)

HUHTAMAKI AMERICAS, INC.)
Registered Agent:)
National Registered Agents of KS, Inc)
2101 SW 21st Street)
Topeka KS 66604)

Defendants.)

FIRST AMENDED COMPLAINT
Collective Action Under the FLSA

COMES NOW the Plaintiff Dawn Shockey on behalf of herself, and all others similarly situated, by and through counsel, and hereby sets forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. §216(b) as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action against Defendants Huhtamaki Consumer Packaging, Inc. (“Huhtamaki Packaging”) and Huhtamaki Americas, Inc. (“Huhtamaki”) for unpaid

overtime compensation and related penalties and damages. Huhtamaki operates(ed) twelve plant locations in eleven states that manufacture various types of paper products related to food distribution and storage. Defendants' practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiff, and all other similarly situated employees, who work in Defendants' manufacturing facilities. In particular, Defendants require their non-exempt plant employees to arrive at work early before each shift to perform work, and stay late after each shift to perform work, but fail to compensate these employees for this time. Doing so denies such persons overtime pay and is in direct violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA).

2. Defendants' practices are in direct violation of the FLSA, and Plaintiffs seek injunctive and declaratory relief; compensation for work performed, overtime premiums for all overtime work required, suffered, or permitted by Defendants; liquidated and/or other damages as permitted by applicable law; and attorney's fees, costs, and expenses incurred in this action.

PARTIES

3. Plaintiff Dawn Shockey currently resides at 1305 South 80th Street, Kansas City, Kansas. Plaintiff was employed by the Defendants at their facility located in De Soto Kansas.
4. Defendant Huhtamaki Consumer Packaging, Inc. ("Huhtamaki Packaging") is a Delaware corporation registered and in good standing to do business in the state of Kansas. Defendant Huhtamaki Packaging operates a facility at 9201 Packaging Drive, De Soto, KS 66018.

5. Defendant Huhtamaki Americas, Inc. (“Huhtamaki”) is Delaware corporation registered and in good standing to do business in the state of Kansas. Defendant Huhtamaki has its principle place of business at 9201 Packaging Drive, De Soto, KS 66018.

JURISDICTION AND VENUE

6. This Court has original federal question jurisdiction under 28 U.S.C. § 1311 for the claims brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
7. The United States District Court for the District of Kansas has personal jurisdiction because Defendants conduct business within this District.
8. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendant has offices, conducts business and can be found in the District of Kansas, and the cause of action set forth herein has arisen and occurred in part in the District of Kansas. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendant has substantial business contacts within the District of Kansas.
9. At all relevant times, Defendant Huhtamaki Consumer Packaging, Inc. has been, and continues to be, an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant has employed, and/or continues to employ, “employees,” including each of the putative representative action plaintiffs, at the following three (3) plant locations: (i) De Soto, Kansas; (ii) Fulton, New York; and (iii) Los Angeles, California. At all times relevant herein, Defendant has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).
10. At all relevant times, Defendant Huhtamaki Americas, Inc. has been, and continues to be, an “employer” engaged in the interstate “commerce” and/or in the production of “goods”

COUNT I – FLSA CLAIM
Huhtamaki Consumer Packaging, Inc.

11. Plaintiff hereby incorporates paragraphs 1-10 of this Complaint.
12. Plaintiff Dawn Shockey was employed by the Defendant Huhtamaki Consumer Packaging, Inc. (“Huhtamaki Packaging”) from on or about September 2008 through March 30, 2009 at the Defendant’s De Soto, Kansas facility. At this facility, Plaintiff Shockey was required to perform work both before and after her work shift as an integral and indispensable part of the principle activities of performing her job.

13. Plaintiff Shockey was treated as non-exempt employee by the Defendant under the FLSA.
14. Like the Plaintiff, the Defendant Huhtamaki Packaging employs other non-exempt employees at its facilities in Fulton, New York and Los Angeles, California who are required to perform work both before and after their work shifts as an integral and indispensable part of the principle activities of performing their job. All such employees are hereby referred to as the “similarly situated facility employees” or the “putative representative action plaintiffs.”
15. All similarly situated facility employees are similarly situated in that they are all subject to Defendant Huhtamaki Packaging’s same policy, plan or procedure that requires these employees to perform work both before and after their shifts as an integral and indispensable part of the principle activities of performing their job without compensation. In turn, this denies similarly situated facility employees their overtime compensation under the FLSA.
16. Defendant Huhtamaki Packaging maintains a similar time keeping system/software at its three facilities.
17. In order to implement and assist its pay policy, plan, or procedure of failing to compensate the similarly situated facility employees for work performed both before and after their shifts, Defendant Huhtamaki Packaging maintains a time keeping system at its three facilities that rounds away the time worked by these employees in Defendant’s favor.
18. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less

19. Plaintiff brings this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as similarly situated facility employees within three years from the commencement of this action who have not been compensated for at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
20. This Complaint is being brought and maintained as an “opt-in” collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Plaintiff because her claims are similar to the claims of the putative representative action plaintiffs.
21. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.
22. The Defendant failed to compensate Plaintiff and the putative representative action plaintiffs at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
23. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
24. The Plaintiff, on behalf of herself and all similarly situated facility employees of Defendant who compose the putative representative action plaintiffs, seek damages in the

25. The Plaintiff, on behalf of herself and all similarly situated facility employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

WHEREFORE, Plaintiff, on behalf of herself and all proposed putative representative action plaintiffs, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiff Shockey as Representative Plaintiff of the putative representative action plaintiffs and the law offices of Donelon, P.C. and Brown & Associates, L.L.C. as class counsel;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, *et seq.*;
- d. An injunction against Defendant Huhtamaki Consumer Packaging, Inc. and their officers, agents, successors, employees, representatives, and any and all persons acting in concert

- e. An award of damages for overtime compensation due for the Plaintiff and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendant;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

COUNT II – FLSA CLAIM
Huhtamaki Americas, Inc.

- 26. Plaintiff hereby incorporates paragraphs 1-25 of this Complaint.
- 27. Plaintiff Dawn Shockey was employed by the Defendant Huhtamaki Americas, Inc. from on or about September 2008 through March 30, 2009 at the Defendant's De Soto, Kansas facility. At this facility, Plaintiff Shockey was required to perform work both before and after her work shift as an integral and indispensable part of the principle activities of performing her job.
- 28. Plaintiff Shockey was treated as non-exempt employee by the Defendant under the FSLA.
- 29. Like the Plaintiff, the Defendant Huhtamaki Americas, Inc. employs other non-exempt employees at its twelve facilities located in (i) De Soto, Kansas (d/b/a Huhtamaki Consumer Packaging, Inc.); (ii) Fulton, New York (d/b/a Huhtamaki Consumer Packaging, Inc.); (iii) Los Angeles, California (d/b/a Huhtamaki Consumer Packaging, Inc.); (iv) Albertville, Alabama (d/b/a Huhtamaki Company Manufacturing, Inc.); (v)

30. All similarly situated facility employees are similarly situated in that they are all subject to Defendant Huhtamaki Americas, Inc.'s same policy, plan or procedure that requires these employees to perform work both before and after their shifts as an integral and indispensable part of the principle activities of performing their job without compensation. In turn, this denies similarly situated facility employees their overtime compensation under the FLSA.
31. Defendant Huhtamaki Americas, Inc. maintains a similar time keeping system/software at its twelve facilities and Huhtamaki Americas, Inc. and is responsible for maintaining time keeping records and providing compensation in compliance with the FLSA at all twelve facilities.
32. In order to implement and assist its pay policy, plan, or procedure of failing to compensate the similarly situated facility employees for work performed both before and after their shifts, Defendant Huhtamaki Americas, Inc. maintains a time keeping system

33. The FLSA requires each covered employer, such as Defendant, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
34. Plaintiff brings this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by the Defendant as similarly situated facility employees within three years from the commencement of this action who have not been compensated for at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
35. This Complaint is being brought and maintained as an “opt-in” collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Plaintiff because her claims are similar to the claims of the putative representative action plaintiffs.
36. The names and addresses of the putative representative action plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.
37. The Defendant failed to compensate Plaintiff and the putative representative action plaintiffs at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, Defendant has violated, and continue to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).

38. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
39. The Plaintiff, on behalf of herself and all similarly situated facility employees of Defendant who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
40. The Plaintiff, on behalf of herself and all similarly situated facility employees of Defendant who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

WHEREFORE, Plaintiff, on behalf of herself and all proposed putative representative action plaintiffs, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiff Shockey as Representative Plaintiff of the putative representative action plaintiffs and the law office of Donelon, P.C. and Brown & Associates, L.L.C. as class counsel;

- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, *et seq.*;
- d. An injunction against Defendant Huhtamaki Americas, Inc. and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- e. An award of damages for overtime compensation due for the Plaintiff and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendant;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Demand for Jury Trial

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury trial.

Designated Place of Trial

COMES NOW the Plaintiffs by and through their counsel of record and hereby designate the place of trial as follows: **Kansas City, Kansas.**

Respectfully submitted,



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