

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS**

**SYNTHIA G. ROSS** )  
9820 S. Sangamon )  
Chicago, Illinois 60643 )

**JURY TRIAL DEMANDED**

**JAMES E. KAPSA** )  
1401 Cospers Ave. )  
Rockford, Illinois 61107 )

**SHARON R. WELLS** )  
354 Knollwood Trail )  
Richmond Hts., Ohio 44143 )

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

Plaintiffs, )

vs. )

Case no.: 1:09-CV-5695

**RBS CITIZENS, N.A.** )  
**d/b/a CHARTER ONE** )  
Please Serve: )  
Chairman and CEO of Citizens Financial )  
Group Inc. )  
Ellen Alemany )  
One Citizens Plaza )  
Providence, Rhode Island 02903 )

-and- )

**CITIZENS FINANCIAL GROUP, INC.** )  
Please Serve: )  
Chairman and CEO of Citizens Financial )  
Group Inc. )  
Ellen Alemany )  
One Citizens Plaza )  
Providence, Rhode Island 02903 )

Defendants. )

**FIRST AMENDED COMPLAINT**  
**Collective Action under §216(b) of FLSA**

**Class Action under FED.R.CIV.P. 23 for ILLINOIS WAGE & HOUR LAW**

COMES NOW the Plaintiffs Synthia G. Ross, James Kapsa, and Sharon Wells on behalf of themselves, and all others similarly situated, by and through counsel, and hereby set forth this representative action for violation of the FAIR LABOR STANDARDS ACT (FLSA) under 29 U.S.C. §216(b) and the ILLINOIS MINIMUM WAGE LAW (IMWL) 820 ILCS §105/1 *et seq.* as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs Synthia Ross, James Kapsa, and Sharon Wells bring this collective class action under §216(b) of the FLSA against Defendants RBS Citizens, N.A., doing business as Charter One Bank (“Charter One”), and Citizens Financial Group, Inc. for unpaid overtime compensation and related penalties and damages on behalf of all nonexempt employees and Assistant Branch Managers working at Defendants’ retail branch locations. Defendants’ practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiffs, and all other similarly situated employees, who work in nonexempt positions and as Branch Managers at their retail branch locations. In particular, Defendants require the nonexempt branch employees to be present at work and perform work, including both before, during, and after their scheduled shifts, but fails to pay them overtime accordingly. Also, Defendants require such persons to perform work tasks during unpaid break times. Defendants have also failed to pay any overtime compensation to individuals working as Assistant Managers at their retail branching locations. The Defendants’ conduct denies such persons overtime pay and is a direct violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA).
2. Plaintiffs Synthia Ross and James Kapsa bring a class action under FED.R.CIV.P. 23 against Defendants RBS Citizens, N.A., doing business as Charter One Bank (“Charter

One”), and Citizens Financial Group, Inc. for unpaid overtime compensation and related penalties and damages on behalf of all nonexempt employees and Assistant Branch Managers working at Defendants’ retail branch locations in Illinois pursuant to the ILLINOIS MINIMUM WAGE LAW (IMWL) 820 ILCS §105/1 *et seq.* 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 nonexempt positions and Assistant Branch Manager Positions at their retail branch locations in Illinois. In particular, Defendants require the nonexempt employees to be present at work and perform work, including both before, during, and after their scheduled shifts, but fails to pay them overtime accordingly. Also, Defendants require such persons to perform work tasks during unpaid break times. Defendants have also failed to pay any overtime compensation to individuals working as Assistant Branch Managers at their retail branching locations. Doing so denies such persons overtime pay and is a direct violation of the IMWL, 820 ILCS §105/1 *et seq.*

**PARTIES**

3. Plaintiff Synthia G. Ross currently resides at 9820 S. Sangamon, Chicago, Illinois. Plaintiff was employed as a bank teller for the Defendants. Plaintiff worked at Defendants’ Charter One Beverly branch located in Chicago, Illinois.
4. Plaintiff James E. Kapsa currently resides at Cospers Avenue, Rockford, Illinois. Plaintiff was employed as personal banker and assistant branch manager for the Defendants. Plaintiff worked at Defendants’ Charter One St. Charles, Naperville, and Plainfield branches located in St. Charles, Naperville and Plainfield, Illinois.

5. Plaintiff Sharon R. Wells currently resides at 354 Knollwood Trl., Richmond Heights, Ohio. Plaintiff was employed as a bank teller for the Defendants. Plaintiff worked at Defendants' Charter One branch located in Euclid, Ohio.
6. Defendant RBS Citizens, N.A. acquired Charter One Bank, N.A. in late 2004 including its retail bank locations. Defendant continued to operate and do business at these locations as "Charter One." RBS Citizens, N.A. is a nationally chartered bank conducting business in the state of Illinois and operates its Charter One retail branch locations throughout the states of Illinois, Indiana, Michigan, and Ohio. Defendant, at its Charter One retail branch locations, employs nonexempt employees and assistant branch managers throughout the states of Illinois, Indiana, Michigan, and Ohio. Defendant identifies Charter One's principle place of business as 1215 Superior Avenue, Cleveland, Ohio. Defendant RBS Citizens, N.A.'s principle place of business is One Citizens Plaza, Providence, Rhode Island.
7. Defendant Citizens Financial Group, Inc. ("CFG") is a Delaware Corporation doing business in the state of Illinois. CFG is a financial holding company, and Defendant RBS Citizens, N.A., and in turn Charter One, are wholly owned subsidiaries of CFG. CFG's principal place of business is located at One Citizens Plaza, Providence, Rhode Island.

#### **JURISDICTION AND VENUE**

8. 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.*
9. This Court has supplemental jurisdiction for all claims asserted under the ILLINOIS MINIMUM WAGE LAW in that the claims under this law is part of the same case and controversy as the FLSA claims, the state and federal claims derive from a common

nucleus of operative fact, the state claim would not substantially dominate over the FLSA claims, and exercising supplemental jurisdiction would be in the interests of judicial economy, convenience, fairness, and comity. Independently, this Court has original jurisdiction for the state law claim pursuant to the CLASS ACTION FAIRNESS ACT, 28 U.S.C. § 1332, in that the estimated damages involved in the Illinois claim will exceed \$5,000,000 and the parties to this action are residents of different states.

10. The United States District Court for the Northern District of Illinois has personal jurisdiction because Defendants conduct business within this District.
11. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendants have offices, conduct business and can be found in the Northern District of Illinois, and the cause of action set forth herein has arisen and occurred in part in the Northern District of Illinois. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendants have substantial business contacts within the state of Illinois.
12. At all relevant times, Defendants have been, and continue to be, “employers” 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, Defendants have employed, and/or continue to employ, “employee[s],” including the Plaintiff and all similarly situated employees. At all times relevant herein, Defendants have had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).
13. At all relevant times, Defendants have been, and continue to be, “employers” as defined under IMWL 820 ILCS § 105/3(c). At all relevant times, Defendants have employed, and/or continue to employ, “employee[s],” including the Plaintiffs and all similarly situated employees as defined under IMWL 820 ILCS § 105/3(d).

**COUNT I**  
**Collective Action under §216(b) of the FAIR LABOR STANDARDS ACT**  
**Nonexempt Branch Employees**

14. The Plaintiffs hereby incorporate by reference paragraphs 1 through 14 of this First Amended Complaint into this count.
15. Plaintiff Synthia G. Ross was employed as a Bank Teller and Teller Supervisor by the Defendants from 2000 through 2007 at the Defendants' Charter One Beverly Branch located at 1357 W. 103<sup>rd</sup> Street, Chicago, Illinois.
16. Plaintiff James E. Kapsa was employed as a Personal Banker by the Defendants from approximately February 2007 through September 2009 at the Defendants' Charter One branches located at 1290 East Chicago Avenue, Naperville, Illinois 60540, 3115 111<sup>th</sup> Street, Naperville, Illinois 60544, 12690 S. State Route 59, Plainfield, Illinois 60544, and 2732 East Main Street, St. Charles, Illinois 60174.
17. Plaintiff Sharon R. Wells was employed as a Bank Teller by the Defendants from October 2007 through March 2008 at the Defendants' Charter One branch located at 25000 Euclid Avenue, Euclid, Ohio.
18. Like the Plaintiffs, the Defendants employ numerous other nonexempt employees at all their Charter One branch locations throughout Illinois, Indiana, Michigan, and Ohio. This includes, but is not limited to, the following positions: Bank Teller (a/k/a Customer Service Representative), Teller Manager, Teller Supervisor, Senior Teller, Head Teller or Lead Teller, Financial Representative, Personal Banker, and Banker. All nonexempt bank branch positions are hereby referred to as the "putative representative action plaintiffs."

19. Defendants compensate the putative representative action plaintiffs as non-exempt employees under the FLSA entitled to receive overtime. Defendants compensate their putative representative action plaintiffs by paying them an hourly wage based upon a forty hour work week.
20. The FLSA requires each covered employer, such as Defendants, 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.
21. All putative representative action plaintiffs working for Defendants are similarly situated in that they all perform essentially the same respective job functions.
22. All putative representative action plaintiffs are similarly situated in that they are all subject to Defendants' same compensation policy, plan, or procedure that requires them to perform work and/or requires them to be present at work while not compensating them for their services. In turn, this denies the putative representative action plaintiffs' compensation for services performed, and denies them their overtime compensation. Defendants' conduct is in violation of the FLSA.
23. The Defendants implement this policy under the following methods: (a) Defendants do not allow the putative representative action plaintiffs to record all time worked in excess of forty per work week, (b) Defendants erase or modify the putative representative action plaintiffs' recorded time in order to eliminate or reduce overtime hours, (c) Defendants provide "comp time" to the putative representative action plaintiffs in subsequent weeks in lieu of paying overtime for hours worked in excess of forty per work week, and/or (d)

Defendants require the putative representative action plaintiffs to perform work during unpaid breaks. Defendants' conduct is in violation of the FLSA.

24. Plaintiff brings this First Amended 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 Defendants as nonexempt employees at their Charter One retail branches within three years from the commencement of this action who have not been compensated at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
25. This First Amended 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.
26. The names and addresses of the putative representative action plaintiffs are available from Defendants. 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.
27. The Defendants failed to compensate Plaintiffs 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, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
28. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).

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

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed putative representative action plaintiffs, pray for relief as follows for Count I of this First Amended Complaint:

- 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 Synthia G. Ross, James E. Kapsa, and Sharon R. Wells as Representative Plaintiffs of the putative representative action plaintiffs;
- c. Designation of Donelon, P.C. as the attorneys representing the putative representative action plaintiffs;

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

**COUNT II**

**FED.R.CIV.P. 23 Class Action under the ILLINOIS MINIMUM WAGE LAW  
Nonexempt Branch Employees**

- 31. The Plaintiffs hereby incorporate by reference paragraphs 1 through 30 of this First Amended Complaint into this count.
- 32. Plaintiff Synthia G. Ross was employed as a Bank Teller and Teller Supervisor by the Defendants from 2000 through 2007 at the Defendants' Charter One Beverly Branch located at 1357 W. 103<sup>rd</sup> Street, Chicago, Illinois.
- 33. Plaintiff James E. Kapsa was employed as a Personal Banker by the Defendants from approximately February 2007 through September 2009 at the Defendants' Charter One branches located at 1290 East Chicago Avenue, Naperville, Illinois 60540, 3115 111<sup>th</sup>

Street, Naperville, Illinois 60544, 12690 S. State Route 59, Plainfield, Illinois 60544, and 2732 East Main Street, St. Charles, Illinois 60174.

34. The Illinois Named Plaintiffs Ross and Kapsa bring this Count as a class action pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of themselves and the following class of persons:

All current and former non-exempt employees of Defendants who have worked at their Charter One retail branch locations in Illinois at any time during the last three years, who were subject to Defendants' unlawful compensation policies of failing to pay overtime compensation for all hours worked in excess of forty per work week.

35. The state law claims, if certified for class wide treatment, may be pursued by all similarly situated persons who do not opt-out of the class.
36. The Illinois Named Plaintiffs Ross and Kapsa, individually and on behalf of the above Illinois Class Members, brings a class action based on the ILLINOIS MINIMUM WAGE LAW 820 ILCS §105/1 *et seq.*, in particular, §105/4a (1).
37. The Illinois Named Plaintiffs Ross and Kapsa and the Illinois Class Members are all similarly situated in that they were all subject to Defendants' policy to not properly record all hours worked, to not properly calculate and pay these employees straight time compensation and overtime compensation for hours worked in excess of forty hours per work week, and/or to require the Illinois Named Plaintiffs Ross and Kapsa and the Illinois Class Members to work during unpaid breaks, all of which violates the ILLINOIS MINIMUM WAGE LAW 820 ILCS §105/1 *et seq.*, in particular, §105/4a (1).
38. Class certification of this Count for violations of the ILLINOIS MINIMUM WAGE LAW is appropriate pursuant to Fed. R. Civ. P. 23(a) in that:
- a. The members of the Illinois Class are so numerous that joinder of all members is impracticable. The exact number of class members is unknown to the

Illinois Named Plaintiffs at the present time but the number should easily be over one thousand;

- b. There are questions of law and fact arising in this action which are common to the Illinois Named Plaintiffs and the Illinois Class Members, including:
  - (i) Whether Defendants' policies and practices described within this Complaint were illegal;
  - (ii) Whether Illinois Class Members are paid for all of the time they work;
  - (iii) Whether Defendants maintain accurate records of the time the Illinois Class Members work;
  - (iv) Whether Defendants' policies and practices regarding the recording and modifying of time is lawful; and
  - (v) Whether Defendants failed to pay appropriate overtime premiums to the Illinois Class Members in violation of ILLINOIS MINIMUM WAGE LAW §105/4a(1).
39. Illinois Named Plaintiffs' claims are typical of the claims of the Illinois Class Members. The Illinois Named Plaintiffs were paid under the same policy and procedure as all members of the class. The Illinois Named Plaintiffs and all members of the class were victims of the same wrongful conduct engaged by Defendants in violation of ILLINOIS MINIMUM WAGE LAW.
40. The Illinois Named Plaintiffs will fairly and adequately protect the interests of the members of the class.
41. The Illinois Named Plaintiffs have retained counsel who is competent and experienced in class action and complex litigation involving compensation claims.

42. The Illinois Named Plaintiffs have no interests which are adverse to or in conflict with other Illinois Class Members.
43. Class certification of the respective class is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to class members predominate over any questions affecting only individual members and a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that: (a) there is minimal interest of members of this class in individually controlling their prosecution of claims under the ILLINOIS MINIMUM WAGE LAW; (b) it is desirable to concentrate all the litigation of these claims in this forum; and, (c) there are no unusual difficulties likely to be encountered in the management of this case as a class action.
44. In the absences of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of the wrongful violation of the ILLINOIS MINIMUM WAGE LAW.
45. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of this cause of action. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which plaintiffs can effectively litigate against a large, well-represented corporate defendants. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and over again.

46. Defendants failed to pay the Illinois Named Plaintiffs and the Illinois Class Members the overtime required by Illinois law.
47. Defendants' failure to pay the correct amount of overtime violates the ILLINOIS MINIMUM WAGE LAW, 820 ILCS §105/4a(1).
48. Because Defendants failed to properly pay overtime as required by law, the Illinois Named Plaintiffs and the Illinois Class Members are entitled under the Illinois Minimum Wage Law, 820 ILCS §105/4a(1) and §105/12 to all overtime compensation due to them at a rate of 1 and ½ times the regular rate of pay for all overtime hours worked in the past three years, and under §105/12 to recover liquidated damages, costs, and reasonable attorneys fees.

**WHEREFORE**, the Illinois Named Plaintiffs Ross and Kapsa, on behalf of themselves and the Illinois Class Members, pray for relief as follows for Count II of this First Amended Complaint:

- a. Designation of this action as a class action under FED.R.CIV.P. 23 on behalf of the Illinois Class Members and issuance of notice pursuant to all Illinois Class Members, apprising them of the pendency of this action;
- b. Designation of Illinois Named Plaintiffs Synthia Ross and James E. Kapsa as Representative Plaintiffs of the Illinois Class Members;
- c. Designation of Donelon, P.C. as the attorneys representing the Illinois Class Members;
- d. A declaratory judgment that the practices complained of herein are unlawful under the ILLINOIS MINIMUM WAGE LAW;
- e. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided

by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

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

**COUNT III**  
**Collective Action under §216(b) of the FAIR LABOR STANDARDS ACT**  
**Assistant Branch Managers**

- 49. The Plaintiff Kapsa hereby incorporates by reference paragraphs 1 through 48 of this First Amended Complaint into this count.
- 50. Plaintiff James E. Kapsa was employed as an Assistant Branch Manger by the Defendants from approximately March 2006 through February 2007 at the Defendants' Charter One branch located at 2732 East Main Street, St. Charles, Illinois 60174.
- 51. Like the Plaintiff, the Defendants employ numerous Assistant Branch Managers at all their Charter One branch locations throughout Illinois, Indiana, Michigan, and Ohio, hereafter referred to as the "putative representative action plaintiffs" in this Court.
- 52. Defendants compensate the putative representative action plaintiffs as exempt employees under the FLSA who are not entitled to receive overtime.

53. The Plaintiff and putative representative action plaintiffs are do not perform job duties or tasks that permit them to be exempt from overtime compensation as required under the FLSA.
54. The Plaintiff and putative representative action plaintiffs regularly and routinely perform their job tasks on behalf of the Defendants in excess of forty hours per work week.
55. The FLSA requires each covered employer, such as Defendants, 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.
56. All putative representative action plaintiffs working for Defendants are similarly situated in that they all perform essentially the same respective job functions.
57. All putative representative action plaintiffs are similarly situated in that they are all subject to Defendants' same compensation policy that does not pay any overtime premium as required under the FLSA for hours worked in excess of forty per work week.
58. Plaintiff brings this First Amended 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 Defendants as Assistant Branch Managers at their Charter One retail branches within three years from the commencement of this action who have not been compensated at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
59. This First Amended 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 his claims are similar to the claims of the putative representative action plaintiffs.

60. The names and addresses of the putative representative action plaintiffs are available from Defendants. 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.
61. The Defendants 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, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).
62. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
63. The Plaintiff, on behalf of himself and all similarly situated employees of Defendants 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.
64. The Plaintiff, on behalf of himself and all similarly situated employees of Defendants who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendants, as provided by the FLSA, 29 U.S.C. §216(b).

**WHEREFORE**, Plaintiff, on behalf of himself and all proposed putative representative action plaintiffs, pray for relief as follows for Count III of this First Amended Complaint:

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

**COUNT IV**  
**FED.R.CIV.P. 23 Class Action under the ILLINOIS MINIMUM WAGE LAW**  
**Assistant Branch Managers**

65. The Plaintiffs hereby incorporate by reference paragraphs 1 through 64 of this First Amended Complaint into this count.
66. Plaintiff James E. Kapsa was employed as an Assistant Branch Manager by the Defendants from approximately March 2006 through February 2007 at the Defendants' Charter One branch located at 2732 East Main Street, St. Charles, Illinois 60174.
67. The Illinois Named Plaintiff Kapsa brings this Count as a class action pursuant to Fed. R. Civ. P. 23(b)(3), on behalf of himself and the following class of persons:
- All current and former Assistant Branch Manager employees of Defendants who have worked at their Charter One retail branch locations in Illinois at any time during the last three years, who were subject to Defendants' unlawful compensation policies of failing to pay overtime compensation for all hours worked in excess of forty per work week.
68. The state law claims, if certified for class wide treatment, may be pursued by all similarly situated persons who do not opt-out of the class.
69. The Illinois Named Plaintiff Kapsa, individually and on behalf of the above Illinois Class Members, brings a class action based on the ILLINOIS MINIMUM WAGE LAW 820 ILCS §105/1 *et seq.*, in particular, §105/4a (1).
70. The Illinois Named Plaintiff Kapsa and the Illinois Class Members are all similarly situated in that they were all subject to Defendants' policy to not pay these employees straight time compensation and overtime compensation for hours worked in excess of forty hours per work week, all of which violates the ILLINOIS MINIMUM WAGE LAW 820 ILCS §105/1 *et seq.*, in particular, §105/4a (1).

71. Class certification of this Court for violations of the ILLINOIS MINIMUM WAGE LAW is appropriate pursuant to Fed. R. Civ. P. 23(a) in that:

- a. The members of the Illinois Class are so numerous that joinder of all members is impracticable. The exact number of class members is unknown to the Illinois Named Plaintiff at the present time but the number should easily be over five hundred;
- b. There are questions of law and fact arising in this action which are common to the Illinois Named Plaintiff and the Illinois Class Members, including:
  - (i) Whether Defendants' policies and practices described within this Complaint were illegal;
  - (ii) Whether Illinois Class Members are paid any premium for hours worked in excess of forty per work week;
  - (iii) Whether Defendants maintain accurate records of the time the Illinois Class Members work;
  - (iv) Whether any exemptions for paying overtime to the Illinois Class Members applies under the ILLINOIS MINIMUM WAGE LAW 820 ILCS §105/1 *et seq.*; and
  - (v) Whether Defendants failed to pay appropriate overtime premiums to the Illinois Class Members in violation of ILLINOIS MINIMUM WAGE LAW §105/4a(1).

72. Illinois Named Plaintiff's claims are typical of the claims of the Illinois Class Members. The Illinois Named Plaintiff was paid under the same policy and procedure as all members of the class. The Illinois Named Plaintiff and all members of the class were

victims of the same wrongful conduct engaged by Defendants in violation of ILLINOIS MINIMUM WAGE LAW.

73. The Illinois Named Plaintiff will fairly and adequately protect the interests of the members of the class.
74. The Illinois Named Plaintiff has retained counsel who is competent and experienced in class action and complex litigation involving compensation claims.
75. The Illinois Named Plaintiff has no interest which are adverse to or in conflict with other Illinois Class Members.
76. Class certification of the respective class is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to class members predominate over any questions affecting only individual members and a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that: (a) there is minimal interest of members of this class in individually controlling their prosecution of claims under the ILLINOIS MINIMUM WAGE LAW; (b) it is desirable to concentrate all the litigation of these claims in this forum; and, (c) there are no unusual difficulties likely to be encountered in the management of this case as a class action.
77. In the absences of a class action, Defendants would be unjustly enriched because they would be able to retain the benefits and fruits of the wrongful violation of the ILLINOIS MINIMUM WAGE LAW.
78. The class action mechanism is superior to any alternatives that might exist for the fair and efficient adjudication of this cause of action. Proceeding as a class action would permit the large number of injured parties to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of evidence, effort, and

judicial resources. A class action is the only practical way to avoid the potentially inconsistent results that numerous individual trials are likely to generate. Moreover, class treatment is the only realistic means by which plaintiffs can effectively litigate against a large, well-represented corporate defendants. Numerous repetitive individual actions would also place an enormous burden on the courts as they are forced to take duplicative evidence and decide the same issues relating to Defendants' conduct over and over again.

79. Defendants failed to pay the Illinois Named Plaintiff and the Illinois Class Members the overtime required by Illinois law.
80. Defendants' failure to pay the correct amount of overtime violates the ILLINOIS MINIMUM WAGE LAW, 820 ILCS §105/4a(1).
81. Because Defendants failed to properly pay overtime as required by law, the Illinois Named Plaintiff and the Illinois Class Members are entitled under the Illinois Minimum Wage Law, 820 ILCS §105/4a(1) and §105/12 to all overtime compensation due to them at a rate of 1 and ½ times the regular rate of pay for all overtime hours worked in the past three years, and under §105/12 to recover liquidated damages, costs, and reasonable attorneys fees.

**WHEREFORE**, the Illinois Named Plaintiff Kapsa, on behalf of himself and the Illinois Class Members, pray for relief as follows for Count IV of this First Amended Complaint:

- a. Designation of this action as a class action under FED.R.CIV.P. 23 on behalf of the Illinois Class Members and issuance of notice pursuant to all Illinois Class Members, apprising them of the pendency of this action;
- b. Designation of Illinois Named Plaintiffs Synthia Ross and James E. Kapsa as Representative Plaintiffs of the Illinois Class Members;

- c. Designation of Donelon, P.C. as the attorneys representing the Illinois Class Members;
- d. A declaratory judgment that the practices complained of herein are unlawful under the ILLINOIS MINIMUM WAGE LAW;
- e. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- f. An award of damages for overtime compensation due for the Plaintiff and the putative representative action plaintiffs, including liquidated, or penalty damages allowed under Illinois law, to be paid by Defendants;
- g. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- h. Pre-Judgment and Post-Judgment interest, as provided by law; and
- i. 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.

Respectfully submitted,



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