

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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MINNEAPOLIS MN

Thomas Hale and Justin Schreckenstein,
on behalf of themselves
and those similarly situated,

Plaintiffs,

v.

ABRA Auto Body and Glass, Inc.,

Defendant.

07cv3367 PAM/JSM
COLLECTIVE ACTION AND
CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL

Thomas Hale and Justin Schreckenstein ("Plaintiffs"), on behalf of themselves and all others similarly situated, bring this action against ABRA Auto Body and Glass, Inc. ("Defendant" or "ABRA"). Based upon personal knowledge, information and belief, and the investigation and research of their counsel, Plaintiffs allege:

I. INTRODUCTION

1. Plaintiffs bring this action under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, and applicable state wage and hour laws and/or regulations.

II. NATURE OF THE ACTION

2. Based upon information and belief that the violations of federal and state wage and hour employment laws as described more fully hereinafter have occurred and are continuing, Plaintiffs bring this collective action and class action lawsuit on behalf of themselves and all others who are or have been employed by ABRA, its subsidiaries and affiliates at any time within the three years prior to this action's filing date through the date of the final disposition of this action (the "Federal FLSA Period") or limitations periods as provided for in the applicable state wage and hour laws and/or regulations (the "State Periods") that exceed the federal FLSA

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U.S. DISTRICT COURT MPLS

Period in duration in positions of Customer Service Managers (“CSMs” or “Managers”) and/or Customer Service Representatives (“CSRs” or “Representatives”) in the following states: Minnesota, Utah, Colorado, North Dakota, South Dakota, Iowa, Missouri, Indiana, Mississippi, Georgia, Tennessee and North Carolina (“the “Class”). Plaintiffs herein reserve the right to amend this Complaint for damages to reflect a different Federal FLSA Period or different State Periods as discovery in this matter proceeds.

3. During the Class Period, Plaintiffs allege that Defendant instituted a plan in which it:

- a. Required members of the Class to carry a workload that could not be completed without working substantial amounts of overtime;
- b. Required members of the Class to perform more than 50% of their jobs performing non-managerial duties; and
- c. Failed to pay overtime compensation to members of the Class in violation of the federal FLSA and applicable state laws and/or regulations.

4. Plaintiffs seek damages for the Class to remedy ABRA’s willful refusal and failure to pay overtime compensation in violation of the federal FLSA and applicable state laws and/or regulations. Plaintiffs also seek equitable remedies in the form of declaratory relief, injunctive relief and for an accounting.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to 29 U.S.C. §216(b).

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1319(b) and 1319(c) because ABRA may be found in this District, maintains an office in this District, conducts business in this District, and the causes of action arose, in part, in this District.

IV. THE PARTIES

7. Plaintiff Thomas Hale (“Mr. Hale” or “Plaintiff Hale”) resides in, and is a citizen of, the State of Georgia. Mr. Hale was employed by ABRA as a Customer Service Manager

from or about February, 2005 through approximately February, 2006, and once again from or about July, 2006 through November, 2006. Mr. Hale consistently worked more than 50 hours per week while employed by ABRA, which failed to compensate Mr. Hale accordingly.

8. Plaintiff Justin Schreckenstein ("Mr. Schreckenstein" or "Plaintiff Schreckenstein") resides in, and is a citizen of, the State of Georgia. Mr. Schreckenstein was employed by ABRA as a Customer Service Manager during the relevant time period from or about June, 2004 through approximately July 4, 2005, and once again in or about October and November, 2005. Mr. Schreckenstein consistently worked more than 50 hours per week while employed by ABRA, which failed to compensate Mr. Schreckenstein accordingly.

9. Plaintiffs Hale and Schreckenstein have been employed during the relevant time period in ABRA stores in the State of Georgia. The practices and policies that are complained of by way of this Complaint were enforced throughout the District of Minnesota where the Defendant conducts business.

10. Upon information and belief, ABRA is a corporation organized under the laws of the State of Minnesota, with its principal place of business in Minnesota and operating facilities throughout the state.

V. FACTUAL ALLEGATIONS

11. ABRA is a national damaged vehicle repair company specializing in collision repair, paintless dent removal, and auto glass repair and replacement. ABRA has grown from one repair center in 1984 to ninety-two facilities in twelve states. On its website, ABRA touts its business mission and objectives as follows:

Our Mission

To be the best auto body and glass company in America. Best means our customers receive quality repairs, in a timely manner, with friendly, helpful service.

Our Goal

To earn the confidence and loyalty of our customers, employees and community.

Our Guiding Principles

- Treat others as you would like to be treated yourself.
- Make a personal commitment to excellence.
- Always do the right thing.

12. Each ABRA shop is overseen by a General Manager who is responsible for all staffing, profitability, cleanliness and customer service.

13. In each ABRA shop there is at least one CSM and one or more CSRs. Neither of the positions require the employee to perform any type of “management” responsibilities nor are the CSMs and CSRs responsible for the performance of duties that would require any significant judgment or independent decision making. Most of the duties of the exempt-salaried employees involve sales, estimates and customer service.

14. ABRA CSMs and CSRs are required to work overtime without pay. Each CSM and CSR is often required to work more than 50 hours per week, including nights and weekends. Plaintiffs often worked in excess of 50 hours per week without pay.

15. ABRA takes the position that these store managers are exempt from legal requirements to pay them overtime because they are “managers” or “representatives.”

16. ABRA CSMs are not really “managers” at all, but, like CSRs, are regular employees who engage in customer service-type responsibilities which qualifies them to overtime. ABRA intentionally fails to pay CSMs and CSRs overtime in order to save on labor costs while getting free work for no pay. At all times relevant hereto, various state laws and regulations required payment of overtime wages equal to one and one-half times an employee’s regular rate of pay for all hours worked more than between forty (40) to forty-eight (48) hours in

a work week and federal law required payment of overtime wages equal to one and one-half times an employee's regular rate of pay for all hours worked over forty (40) in a work week.

17. Plaintiffs allege that Defendant, in order to generate millions of dollars of net profits, has intentionally and improperly designated ABRA CSMs and CSRs, including Plaintiffs and the members of the Class, as "exempt" employees in order to avoid payment of overtime wages in violation of applicable federal, state and common law.

VI. FLSA COLLECTIVE ACTION ALLEGATIONS

18. Plaintiffs bring the First Cause of Action for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all nationwide FLSA collective action Plaintiffs, defined in paragraph 2.

19. Plaintiffs and the nationwide FLSA collective action Plaintiffs are similarly situated, have substantially similar job requirements and pay provisions, and are subject to Defendant ABRA's common practice, policy, or plan of refusing to pay overtime in violation of the FLSA and unlawfully characterizing nationwide FLSA collective action Plaintiffs as exempt employees.

20. Plaintiffs' First Cause of Action for violations of the FLSA may be brought and maintained as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), for all claims asserted by Plaintiffs under the FLSA, since Plaintiffs' claims are similar to the claims of the members of the nationwide FLSA collective action Plaintiffs.

21. The names and addresses of the nationwide FLSA collective action Plaintiffs are available from Defendant ABRA. Notice will be provided to the nationwide FLSA collective action Plaintiffs via first class mail to the last address known to their employer and/or other reasonable means.

FIRST CAUSE OF ACTION

**FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION
OF THE FLSA, 29 U.S.C. § 201, *ET SEQ.***

22. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

23. Upon information and belief, Defendant employs and has employed Plaintiffs and those similarly situated in Minnesota, Utah, Colorado, North Dakota, South Dakota, Iowa, Missouri, Indiana, Mississippi, Georgia, Tennessee and North Carolina. From at least three years prior to the filing of this action until the present time, Defendant willfully engaged in a regular practice of requiring Plaintiffs and those similarly situated to work hours considerably in excess of 40 hours per week.

24. Upon information and belief, Defendant had and continues to have a regular practice of requiring Plaintiffs and those similarly situated to work a minimum of 55-60 hours in any given work week.

25. Any workweek during which Plaintiffs and those similarly situated worked at least 40 hours, Defendant's failure to pay Plaintiffs and those similarly situated at one and one half times their regular rate of pay, for all hours in excess of 40, violated the Fair Labor Standards Act, 29 U.S.C. § 206, 207, 215, 216. As a result of such violations, Plaintiffs and those similarly situated are entitled to the damages, fees and expenses as set out in the Fair Labor Standards Act, 29 U.S.C. § 216.

26. Defendant has knowingly and willfully failed and continues to fail and refuse to pay Plaintiffs and those similarly situated overtime compensation owed to Plaintiffs and those similarly situated for overtime hours worked as required by federal wage and hour laws.

27. As a result of the actions and inactions of Defendant in failing and refusing to pay overtime compensation, Plaintiffs and those similarly situated were damaged by not receiving overtime compensation that they should have received, but did not receive. Plaintiffs and those similarly situated are entitled to compensation for unpaid overtime together with pre-judgment interest, and liquidated damages.

SECOND CAUSE OF ACTION

QUANTUM MERUIT AND UNJUST ENRICHMENT

28. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

29. Plaintiffs and members of the Class have performed work for Defendant. Such work was requested by Defendant, and benefited Defendant. Defendant was and is aware that such work was performed, and that Defendant received benefits from such work.

30. Because some of the work was performed as overtime, Plaintiffs and members of the Class have not been fully compensated or paid for performing such work.

31. It would be unjust for Defendant to retain the benefits conferred upon it by Plaintiffs and members of the Class.

32. Plaintiffs and members of the Class are entitled to compensation for the benefits conferred upon ABRA by them.

THIRD CAUSE OF ACTION

DECLARATORY RELIEF

33. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

34. An actual controversy has arisen between the Plaintiffs and members of the Class, on the one hand, and Defendant on the other hand, relating to the following matters:

- a. Whether Defendant has unlawfully failed to pay overtime compensation in violation of state and federal law to Plaintiffs and to members of the Class.
- b. Whether Defendant has unlawfully failed to pay overtime compensation owing in a timely manner to Plaintiffs and members of the Class whose employment with Defendant ended, as required by state and federal law.
- c. What amounts Plaintiffs and members of the Class are entitled to receive in overtime pay.
- d. What amounts Plaintiffs and members of the Class are entitled to receive in interest on unpaid compensation due and owing.
- e. What amounts Plaintiffs and members of the Class are entitled to receive from Defendant in liquidated damages and civil penalties.

35. Plaintiffs and members of the Class further seek entry of a declaratory judgment in their favor that declares Defendant's practices, as previously alleged, to be unlawful and that provides for recovery of all sums determined by this Court to be owed by Defendant to the Plaintiffs and members of the Class.

FOURTH CAUSE OF ACTION

ACCOUNTING

36. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

37. Plaintiffs and members of the Class are owed wages that equal the sum of overtime compensation not paid by Defendant to Plaintiffs and the members of the Class,

statutory interest on all such compensation and penalties owed to Plaintiffs and members of the Class whose employment terminated.

38. The Plaintiffs and members of the Class do not know the precise amount of compensation due to the Plaintiffs and to each member of the Class. Upon information and belief, Defendant possesses books and records from which the amount of compensation due and owing to each Plaintiff and to each member of the Class can be determined.

39. The amount of statutory interest and penalties owed to each Plaintiff and to each member of the Class is based on the amount of compensation owed to Plaintiffs and members of the Class by Defendant.

FIFTH CAUSE OF ACTION

INJUNCTIVE RELIEF

40. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

41. Defendant has assigned and allocated, and upon information and belief will continue to assign and allocate, the work load required of all members of the Class so that the work load cannot be processed without working overtime, and Defendant has applied policies as previously alleged, and threatens to apply said policies, to all members of the Class, including Defendant's failure to pay overtime compensation in violation of federal and state law.

42. Plaintiffs and the members of the Class have been injured and damaged, and are threatened with injury and damage, by Defendant's assignment and allocation of the workload so that each CSM's and CSR's workload cannot be completed without working overtime, and Defendant's unlawful refusal to pay overtime and other compensation. Plaintiffs and the members of the Class are threatened with irreparable harm by the continuation of Defendant's

workload allocation and assignment and Defendant's unlawful refusal to pay all compensation as heretofore alleged, and Plaintiffs and the members of the Class have no adequate remedy at law.

43. Defendant has acted, and threatened to act, on grounds generally applicable to the individual members of the Class, thereby making appropriate temporary and permanent injunctive relief enjoining Defendant and its agents from engaging in the unlawful practices heretofore alleged.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on their own behalf and on behalf of all others similarly situated and members of the Class, pray that the Court award the following relief:

- A. Designation of this action as a collective action under 29 U.S.C. § 216(b) for violations of the federal FLSA, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of 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 Consent to Sue forms pursuant to 29 U.S.C. § 216(b);
- B. Designation of Plaintiffs as Representatives of the Collective Action violations of the federal FLSA;
- C. A certification that this action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure for violations of Minnesota law;
- D. Actual damages, including but not limited to, past due overtime, together with pre-judgment and post-judgment interest shown at the maximum rate allowed by law;
- E. Liquidated damages pursuant to 29 U.S.C. § 216(b);
- F. An accounting;

G. Reasonable attorney's fees, costs and expenses incurred by Plaintiffs, all others similarly situated and class members pursuant to 29 U.S.C. § 216(b);

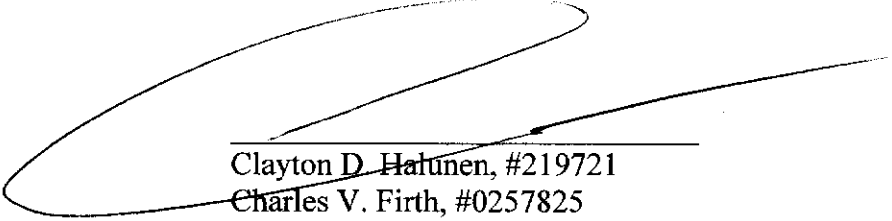
H. A declaratory judgment that the practices complained of herein are unlawful under applicable federal and/or state law;

I. An injunction against ABRA and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein; and

J. Such other and further legal and equitable relief as this Court deems just and proper.

Dated this 17th day of July, 2007.

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