

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 DEC 28 AM 11:49

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

JERRY CASTILLO,
on behalf of himself and
others similarly situated;

Plaintiff,

CASE NO.: 6:17-cv-2200-ORL-28-GJK

FLSA COLLECTIVE ACTION

v.

TUESDAY MORNING, INC.,
a Foreign Profit Corporation,

DEFENDANT.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JERRY CASTILLO, on behalf of himself and others similarly situated, by and through his undersigned counsel, sues Defendant, TUESDAY MORNING, INC., and in support thereof states as follows:

Jurisdiction and Venue

1. This is an action for damages by Plaintiff, on behalf of himself and others similarly situated, against his employer for violations of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, *et seq.* ("FLSA"). This Court has jurisdiction over Plaintiff's claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to Local Rule 1.02(c) of the Local Rules of the Middle District of Florida. Venue is proper in this District because a substantial part of the events giving rise to the instant action occurred in Orange County, Florida. At all times material to the instant action, Defendant has conducted substantial, continuous, and systematic commercial activities in Orange County, Florida.

Parties and Factual Allegations

3. Plaintiff is an individual *sui juris*, residing in Orange County, Florida.
4. Plaintiff is an employee of Defendant as defined by 29 U.S.C. 203(e).
5. Plaintiff has been employed by Defendant from 2011, through the present.
6. Plaintiff's job title is Store Manager.
7. As Store Manager, Plaintiff is severely limited in the number of labor hours he may use to staff the store, and as a result spends a majority of his time performing the work of lower-level employees such as cashiers and customer service associates.
8. Upon information and belief, all Store Managers employed by Defendant are subject to the policy outlined in paragraph 7, and as such, spend a majority of their time performing the work of lower-level employees such as cashiers and customer service associates.
9. Plaintiff's primary job duties and responsibilities require Plaintiff to spend a majority of his time performing manual labor and/or non-managerial duties such as stocking shelves, unloading deliveries, cleaning, operating the cash register, and other customer service related tasks.
10. Plaintiff's and other Store Managers' job duties and responsibilities do not qualify Plaintiff or other Store Managers for any exemption from overtime compensation under the FLSA.
11. Plaintiff's and other Store Managers' job duties and responsibilities require Plaintiff and other Store Managers to engage in commerce and/or use the tools of commerce.
12. Defendant is a Foreign Profit Corporation operating a business, among other locations, in Orange County, Florida.
13. Defendant is an employer of Plaintiff and other Store Managers as defined by 29 U.S.C. 203(d).

14. At all relevant times Defendant directly, or through its agents or other persons, employed Plaintiff and other Store Managers, and exercised control over the wages, hours, and working conditions of the same.

15. Defendant is an enterprise engaged in commerce as defined by 29 U.S.C. 203(s), who upon information and belief has annual gross business done of not less than \$500,000.

16. Throughout his employment, Plaintiff has regularly worked hours in excess of forty (40) hours in a week.

17. Upon information and belief, all Store Managers employed by Defendant regularly work hours in excess of forty (40) hours in a week.

18. Defendant has failed to pay Plaintiff and other Store Managers for all hours worked in excess of forty (40) hours per week at a rate of not less than one-and-one-half times Plaintiff's and Store Managers' regular rate, but has instead paid Plaintiff and other Store Managers only their salary.

19. Plaintiff and other Store Managers have suffered substantial losses due to Defendant's failure to pay overtime compensation in violation of the FLSA.

20. Upon information and belief, for the three-year period preceding the filing of the instant action, Defendant has willfully violated the FLSA in regard to all its employees employed as Store Managers, Plaintiff included, by misclassifying Store Managers as exempt from overtime compensation under the FLSA, and by failing to pay Store Managers at a rate of not less than one-and-one-half times their regular rate for all hours worked in excess of forty (40) hours per week.

21. Plaintiff has retained LYTLE & BARSZCZ to represent him in this matter and has agreed to pay said firm reasonable attorney's fees for its services.

COUNT I
Failure to Pay Overtime
Compensation in Violation of the FLSA

22. Plaintiff repeats and incorporates by reference the allegations set forth in Paragraphs 1 through 21 above, as if fully set forth herein.

23. Plaintiff is an employee of Defendant.

24. Plaintiff's job duties and responsibilities do not qualify Plaintiff for any exemption from overtime compensation under the FLSA.

25. Plaintiff's job duties and responsibilities require Plaintiff to engage in commerce and/or use the tools of commerce.

26. Defendant is an employer of Plaintiff.

27. Defendant is an enterprise engaged in commerce, who upon information and belief has annual gross business done of not less than \$500,000.

28. Since beginning employment with Defendant, Plaintiff has regularly worked hours in excess of forty (40) hours per week.

29. Defendant has failed to pay Plaintiff for all hours worked in excess of forty (40) hours per week at a rate of not less than one-and-one-half times Plaintiff's regular rate, but has instead paid Plaintiff only his salary.

30. Plaintiff has suffered substantial losses due to Defendant's failure to pay overtime compensation in violation of the FLSA.

31. Upon information and belief, for the three-year period preceding the filing of the instant action, Defendant has willfully violated the FLSA in regard to all its employees employed as Store Managers, Plaintiff included, by misclassifying Store Managers as exempt from overtime

compensation under the FLSA, and by failing to pay Store Managers at a rate of not less than one-and-one-half times their regular rate for all hours worked in excess of forty (40) hours per week.

WHEREFORE, Plaintiff, on behalf of himself and others similarly situated, demands judgment against Defendant for the following:

- a. Certification of this action as a collective action brought pursuant to 29 U.S.C. § 216(b);
- b. Designation of Plaintiffs as representatives of the FLSA Collective Action;
- c. That the Plaintiff be allowed to give notice of this collective action, or that this Court issue such notice at the earliest possible time; to all past and present Store Managers employed by the Defendant at any time during the three (3) year period immediately preceding the filing of this Complaint, through and including the date of this Court's issuance of the Court Supervised Notice;
- d. That all past and present members of the Plaintiff Collective Class be informed of the nature of this collective action, and similarly situated employees' rights to join this lawsuit if they believe that they were or are misclassified as exempt employees;
- e. Equitable tolling of the statute of limitations for all potential opt-in Plaintiffs from the date of filing this Complaint until the expiration of the deadline for filing consent to sue forms pursuant to 29 U.S.C. § 216(b);
- f. Unpaid overtime proven to be due and owing;
- g. An additional amount equal to unpaid overtime proven to be due and owing in liquidated damages;
- h. Prejudgment interest in the event liquidated damages are not awarded;
- i. Reasonable attorneys' fees and costs; and
- j. Such other relief as this Court finds just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted this 28th day of December 2017.



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Florida Bar No. 0007950
David V. Barszcz, Esq.
Florida Bar No. 0750581
Robert N. Sutton, Esq.
Florida Bar No. 0121688
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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

JERRY CASTILLO,
on behalf of himself and
others similarly situated;

Plaintiff,

CASE NO.:

FLSA COLLECTIVE ACTION

v.

TUESDAY MORNING, INC.,
a Foreign Profit Corporation.

DEFENDANT.

CONSENT TO SUE AND OPT-IN

Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b)

I, Jerry Castillo Sr., hereby state my consent to be a Plaintiff in this Fair Labor Standards Act case against Defendant, TUESDAY MORNING, INC., and any other associated parties. I consent to the bringing of any claims I may have under the Fair Labor Standards Act (for unpaid overtime, liquidated damages, attorneys' fees and costs, and other relief) against TUESDAY MORNING, INC., and opt in to this action.

Signature:

Jerry Castillo Sr.

Date:

12-21-17

Name:

Jerry Castillo Sr.

1. I am currently and/or have been employed as a "Store Manager," for Defendant, and was not paid overtime when I worked more than forty (40) hours in any workweek, and I consent and agree to join this action to pursue my claims in connection with the above-referenced lawsuit arising out of my employment.

2. I understand that this lawsuit is brought under the FLSA, 29 U.S.C. § 201, et seq. I hereby consent, agree, and "opt in" to become a plaintiff herein and to be bound by any judgment by the Court or any settlement of this action. I hereby designate Mary E. Lytle, Esquire and David V. Barszcz, Esquire of LYTTLE & BARSZCZ, 543 N. Wymore Road, Suite 103, Maitland, Florida 32751, to represent me for all purposes in this action.

JS 44 (Rev. 11/15)

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
JERRY CASTILLO
 on behalf of himself and others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Lytle & Barszcz, 543 North Wymore Road Suite 103 Maitland, FL 32751,
 (407) 622-6544

DEFENDANTS
TUESDAY MORNING, INC.,
 a Foreign Profit Corporation

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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):

Brief description of cause:
 Failure to pay overtime under Fair Labor Standards Act

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: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/28/2017 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Argues Tuesday Morning Store Managers Should Not Be Exempt from Overtime Pay](#)
