

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KEGAN REICHERT, on behalf of
himself and those similarly
situated,

CASE NO.:

Plaintiff,

vs.

HOOVER FOODS, INC., a
Georgia Corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, KEGAN REICHERT, by and through the undersigned attorney, sues the Defendant, HOOVER FOODS, INC., a Georgia Corporation, and alleges:

1. Plaintiff brings this action on behalf of himself and all other similarly situated assistant managers who worked for Defendant at their Wendy's locations throughout the Southeastern United States. For years Defendant has classified these employees as exempt from overtime under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) ("FLSA") and paid them no extra overtime compensation for the numerous overtime hours worked

by them. As further explained below, Defendant categorically misclassified these employees as exempt when they should have been classified as non-exempt employees. As such, Plaintiff and these similarly situated employees are entitled to years' worth of overtime compensation, liquidated damages, and other relief under the FLSA.

GENERAL ALLEGATIONS

2. Plaintiff worked for Defendant from approximately January 2015 to 2016 as an assistant manager.

3. Plaintiff worked for Defendant at its Wendy's location in Alpharetta, Georgia.

4. Defendant is a Georgia Corporation that operates numerous Wendy's franchises throughout the Southeastern United States, including in Fulton County, Georgia and is therefore, within the jurisdiction of this Court.

5. Based on information and belief, Defendant at times establishes a new corporate subsidiary name for a Wendy's location it operates.

6. However, all human resources, central accounting and other central functions are operated by Defendant out of its headquarters in the greater Atlanta area.

7. Defendant employed all assistant managers, including Plaintiff, at

each of its subsidiaries which operated a Wendy's under Defendant's purview.

8. This action is brought under the FLSA to recover from Defendant overtime compensation, liquidated damages, and reasonable attorneys' fees and costs. This action is intended to include each and every assistant manager who was classified as exempt and who worked for Defendant at any time within the past three (3) years.

9. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §1331 and the FLSA and the authority to grant declaratory relief under the FLSA pursuant to 28 U.S.C. §2201 et seq.

10. During Plaintiff's employment with Defendant, Defendant earned more than \$500,000.00 per year in gross sales.

11. During Plaintiff's employment with Defendant, Defendant employed two or more employees which handled goods, materials and supplies which had travelled in interstate commerce.

12. Included in such goods, materials and supplies were computers, cash registers, telephones, restaurant equipment, marketing materials, food, drink, office equipment and furniture, as well as numerous other goods, materials and supplies which had been carried in interstate commerce.

13. Therefore, Defendant is considered an enterprise covered by the

FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

FLSA VIOLATIONS

14. At all times relevant to this action, Defendant failed to comply with the FLSA by misclassifying Plaintiff and all other similarly situated employees as exempt from overtime.

15. During their employment with Defendant, these employees, including Plaintiff, worked numerous overtime hours for Defendant.

16. Even though Plaintiff and these similarly situated employees worked overtime hours, they were not paid any additional compensation in addition to their weekly salary by Defendant.

17. However, these employees should not have been classified as exempt for several reasons.

18. First, even though these employees were called “managers,”¹ they had no ability to hire or fire employees, were not involved in interviewing or other aspects of firing/hiring.

19. Additionally, Defendant failed to pay its assistant managers on a salary basis because Defendant had no sick policy available for its employees and would dock their pay for any such absences. *See* 29 C.F.R. § 541.602(b)(2).

¹ Under the FLSA, job titles are insufficient to establish whether an employee is exempt or not. *See* 29 C.F.R. § 541.2.

20. As such, Defendant cannot meet its burden to prove that these employees are exempt from overtime compensation under the FLSA.

21. The additional persons who may become plaintiffs in this action are employees who held positions similarly to Plaintiff and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one and one-half times their regular rate for their hours worked in excess of forty (40) hours.

22. Upon information and belief, the records, to the extent any exist and are accurate, concerning the number of hours worked and amounts paid to Plaintiff and other similarly situated employees are in the possession and custody of Defendant.

RECOVERY OF OVERTIME COMPENSATION

23. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-22 above.

24. During their employment with Defendant, Plaintiff and those similarly situated employees worked overtime hours but did not receive overtime compensation for such hours worked.

25. Plaintiff and those similarly situated employees were misclassified as exempt employees by Defendant. *See* ¶¶ 14-20.

26. Defendant did not have a good faith basis for its decision to classify Plaintiff and other similarly situated employees as exempt from overtime compensation.

27. As a result of Defendant's intentional, willful and unlawful acts in refusing to pay Plaintiff and those similarly situated employees overtime compensation, Plaintiff and those similarly situated employees have suffered damages plus incurring reasonable attorneys' fees and costs.

28. As a result of Defendant's willful violation of the FLSA, Plaintiff and those similarly situated employees are entitled to liquidated damages.

29. Plaintiff demands a trial by jury.

WHEREFORE, Plaintiff, KEGAN REICHERT, on behalf of himself and those similarly situated, demands judgment against Defendant for unpaid overtime compensation the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by them for which Defendant did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, declaratory relief, and any and all further relief that this Court determines to be just and appropriate.

Dated this 13th day of December, 2016.

/s/ C. RYAN MORGAN

C. Ryan Morgan, Esq.

Georgia Bar No. 711884

Morgan & Morgan, P.A.

20 N. Orange Ave., 14th Floor

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KEGAN REICHERT, on behalf of
himself and those similarly
situated,

Plaintiff,

CASE NO.:

vs.

HOOVER FOODS, INC., a
Georgia Corporation,

Defendant. _____ /

NOTICE OF FILING NOTICE OF CONSENT TO JOIN

Plaintiff, KEGAN REICHERT, on behalf of himself and those similarly
situated, gives notice of filing the attached Notice of Consent to Join.

I HEREBY CERTIFY that the above and foregoing Notice of
Filing Notice of Consent to Join has been served along with the Summons
and a copy of the Complaint.

/s/ C. RYAN MORGAN

C. Ryan Morgan, Esquire

Georgia Bar No.: 711884

MORGAN & MORGAN, P.A.

20 N. Orange Avenue

Suite 1600

Orlando, FL 32801

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Facsimile: (407) 245-3401

E-mail: RMorgan@forthepeople.com

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA
CASE NO.:

Kegan Reichert
Individually, and on behalf of
others similarly situated,

Plaintiff,

Hoover Foods, Inc.
Defendants.

CONSENT TO JOIN COLLECTIVE ACTION AND BE REPRESENTED
BY MORGAN & MORGAN, P.A.[®]

- I Kegan Vaughn Reichert, consent to join the above styled lawsuit seeking damages for unpaid wages under the FLSA;
- I am similarly situated to the named Plaintiff in this matter because I performed similar duties for the Defendant and was paid in the same regard as the named Plaintiff;
- I authorized the named Plaintiff to file and prosecute the above referenced matter in my name, and on my behalf, and designate the named Plaintiff to make decisions on my behalf concerning the litigation, including negotiating a resolution of my claims;
- I agree to be represented by Morgan & Morgan, P.A.[®], counsel for the named Plaintiff;
- In the event this action gets conditionally certified and then decertified, I authorize Plaintiff's counsel to reuse this Consent Form to re-file my claims in a separate or related action against Defendant.

Date: September 4th, 2016

Signature: [Handwritten Signature]

JS 44 (Rev. 12/12)

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

KEGAN REICHERT, on behalf of himself and those similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Morgan & Morgan, P.A., 20 North Orange Avenue, Suite 1400, Orlando, Florida 32801; Telephone (407) 420-1414

DEFENDANTS

HOOVER FOODS, INC., a Georgia 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 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 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark 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)) 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"/> 375 False Claims Act <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 |
| REAL PROPERTY | CIVIL RIGHTS | PRISONER PETITIONS | | | |
| <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 | <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 | 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 | | | |

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):
U.S.C. Section 216(b)

Brief description of cause:
Overtime Compensation

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 12/13/2016 SIGNATURE OF ATTORNEY OF RECORD
/s/ C. Ryan Morgan

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: [Hoover Foods Flame-Broiled with Unpaid Overtime Suit](#)
