

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ANGELA SCHENBURN., Individually,
and on behalf of All Others
Similarly Situated Who Consent to Their
Inclusion in a Collective Action;

Plaintiff,

vs.

BIG LOTS STORES, INC.

Defendant.

CASE NUMBER:

2: 11 -CV- 98 -FTM-36 DNF

2011 MAR - 1 PM 1:34
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

RECEIVED

**COLLECTIVE ACTION COMPLAINT, DEMAND FOR JURY TRIAL, AND
REQUEST FOR INJUNCTIVE RELIEF**

Plaintiff, ANGELA SCHENBURN (hereafter "Ms. Schenburn") individually, and on behalf of all others similarly situated who consent to their inclusion in a collective action, by and through their undersigned counsel, sues, Defendant, Big Lots Stores, Inc. ("BIG LOTS"), pursuant to 29 U.S.C. 216(b), the Fair Labor Standards Act (the "FLSA"), and states as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, because this action involves a Federal Statute, 29 U.S.C. § 216 (b).
2. This Court has personal jurisdiction over this action, because BIG LOTS operates substantial business in Lee County, Florida and the damages at issue occurred in Lee County, Florida.
3. Venue is proper to this Court pursuant to 29 U.S.C. § 216(b).

THE PARTIES

The Representative Plaintiff

4. Ms. Schenburn resides in Brevard County, Florida. Ms. Schenburn worked for BIG LOTS from February 26, 2009 until September 7, 2009 as an Assistant Manager.

The Defendant

5. Defendant, BIG LOTS, is a foreign corporation with its principle place of business at 300 Phillipi Road, Columbus, Ohio 43228-0512. BIG LOTS is a publically-traded company that is a nationwide broadline closeout retailer transacting substantial business in Lee County, Florida.

NATURE OF THE ACTION AND THE CLASS

6. This collective action arises from an ongoing wrongful scheme by BIG LOTS, to deny certain employees overtime benefits due under the FLSA.

7. Ms. Schenburn, on behalf of herself individually and on behalf of all others similarly situated, hereby alleges that BIG LOTS routinely denied her, and those similarly situated, their statutorily mandated rights to overtime compensation under the FLSA.

8. The Plaintiff Class is comprised of Assistant Managers currently or at any time within the past three years employed with BIG LOTS nationwide.

9. Ms. Schenburn believes she can adequately represent the other class members and consents to doing so.

FACTUAL BACKGROUND

10. BIG LOTS operates a chain of retailer stores offering various categories of "closeout" merchandise at more than 1,300 stores nationwide.

11. The overtime wage provisions set forth in FLSA §207 apply to BIG LOTS, who

engages in commerce under the definition of the FLSA.

12. The position of Assistant Manager is not a position that falls within any exemptions within FLSA §213.

13. Ms. Schenburn and other similarly situated employees are currently or have previously been covered under FLSA §207.

14. Pursuant to FLSA §207, BIG LOTS, as the employer of Ms. Schenburn and other similarly situated employees, was and is required to pay one and one-half times each employee's hourly rate for hours worked in excess of forty (40) hours per week.

Ms. Schenburn

15. Ms. Schenburn worked for BIG LOTS from February 26 until September 7, 2009, as an Assistant Manager.

16. Ms. Schenburn's duties as an Assistant Manager included making sure certain areas of the store were properly stocked, unloading new shipments, stock room maintenance, stocking shelves, pricing, working registers and cleaning the store. She did not have the ability to supervise, hire or fire other employees. Only the store manager, who was in a superior position to Ms. Schenburn, could supervise, hire and fire employees.

17. Ms. Schenburn was paid a salary of Thirty-Three Thousand Dollars (\$33,000.00) per year, which was based on working forty (40) hours per week.

18. However, Ms. Schenburn typically averaged sixty (60) hours of work per week, frequently working six days per week.

19. Ms. Schenburn worked these hours throughout her employment with BIG LOTS.

20. The Defendant willfully violated FLSA §207 by failing to pay Ms. Schenburn

and others similarly situated the proper overtime compensation for all hours worked in excess of forty (40) per week.

21. Upon information and belief, for the three-year period before this filing, (the "Class Period"), the continued violations of FLSA §207 that are complained of herein have been practiced and imposed upon all Assistant Managers of BIG LOTS nationwide, who have regularly worked in excess of forty hours per week. There are more than 1,300 stores nationwide, each modeled with uniformity and each with Assistant Managers.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

22. Ms. Schenburn brings this FLSA claim on behalf of all Assistant Managers who work or who have worked for BIG LOTS at any time during the Class Period.

23. BIG LOTS has willfully misclassified Assistant Managers as salaried, exempt employees for the purpose of avoiding the overtime pay provision of the FLSA. BIG LOTS has done so uniformly throughout its stores nationwide by not compensating Assistant Managers with overtime wages. The job duties of the Assistant Manager position is uniform throughout all BIG LOTS stores nationwide with regard to the intentional and willful misclassification of this class of employees.

24. BIG LOTS has intentionally and repeatedly engaged in the practice of misclassifying non-exempt Assistant Managers as salaried exempt employees under the FLSA for the purpose of minimizing payroll and increasing profitability.

25. The primary job duty and function of the Assistant Manager is not management of the store or enterprise.

26. The store manager Plaintiff worked for told all other employees that Plaintiff is not their boss and cannot tell them what to do.

27. BIG LOTS is liable under the FLSA for failing to properly compensate Assistant Managers who worked over forty (40) hours per week, and as such, notice should be sent to past and current employees of BIG LOTS. It is estimated that there are at least 10,000 current or past similarly situated Assistant Managers who have worked over 40 hours per week without overtime pay in violation of the FLSA. These similarly situated employees would benefit from the issuance of a court supervised notice regarding the present lawsuit and the opportunity to join in the present lawsuit pursuant to FLSA §216(b). These similarly situated employees are known to BIG LOTS, are readily identifiable, and can be located only through BIG LOTS' records.

CLAIM FOR RELIEF FOR VIOLATION OF FLSA §207

28. Plaintiff alleges and incorporates by reference paragraphs 4 through 27 of this Complaint and fully restates and re-alleges all facts and claims herein.

29. BIG LOTS has willfully and intentionally engaged in a nationwide pattern and practice of violating the provisions of the FLSA, by misclassifying Assistant Managers as exempt under the FLSA overtime wage provision, thereby improperly failing and/or refusing to pay Ms. Schenburn and the Plaintiff Class, comprised of all current and former similarly situated employees who work or have worked over 40 hours per week, overtime compensation pursuant to FLSA §207.

30. BIG LOTS has been operating its business since 1967, and is well aware of the FLSA, its provisions and exemptions, and knew or should have known that job title alone (i.e. Assistant Manager) is not controlling of the overtime exemption status of employment under the FLSA.

31. BIG LOTS knowingly and willfully misclassified Ms. Schenburn and other

employees similarly situated, comprised of the Plaintiff Class, as exempt for the purposes of decreasing costs and maximizing profitability.

32. BIG LOTS knowingly and willfully failed to track the hours worked by most, if not all of the Assistant Managers, including Ms. Schenburn and other employees similarly situated, comprised of the Plaintiff Class.

33. BIG LOTS knew or should have known that the act of paying Ms. Schenburn and other employees similarly situated, comprised of the Plaintiff Class, on a salary basis, without more, is insufficient to evade the wage and hour requirements of the FLSA.

34. The widespread nature of BIG LOTS' failure to pay overtime under the FLSA is demonstrative of BIG LOTS' willful plan and scheme to evade and avoid paying overtime to all of their Assistant Managers.

35. As a result of BIG LOTS' violations of the FLSA, Ms. Schenburn and the Plaintiff Class, comprised of all other employees similarly situated, have suffered damages by BIG LOTS' failure to pay overtime compensation in accordance with FLSA §207.

36. BIG LOTS has not made a good faith effort to comply with the FLSA, and the overtime compensation requirements with respect to Ms. Schenburn and the Plaintiff Class, comprised of all other employees similarly situated.

37. Due to BIG LOTS' willful violation of the FLSA, a three-year statute of limitations applies to the FLSA violations pursuant to *29 U.S.C. §255(a)*.

38. As a result of BIG LOTS' unlawful acts, Ms. Schenburn and the Plaintiff Class, comprised of all other similarly situated employees, have been deprived of overtime compensation in amounts to be determined at trial; and are entitled to recovery of such amounts, liquidated damages in amount equal to the overtime wages due, prejudgment interest,

attorneys' fees, costs and other compensation pursuant to *29 U.S.C. §216(b)*, as well as injunctive relief pursuant to *29 U.S.C. §217*.

PRAYER FOR RELIEF

WHEREFORE, Ms. Schenburn individually, and on behalf of other past and present Assistant Managers of BIG LOTS, requests the following relief:

- a) That Ms. Schenburn 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 Executive Assistant Managers employed by the Defendant at any time during the three (3) year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice;
- b) That all past and present Assistant Managers be informed of the nature of this collective action, and similarly situated employee's right to join this lawsuit if they believe that they were or are misclassified as an exempt employee;
- c) That the Court find BIG LOTS in violation of the overtime compensation provisions of the FLSA;
- d) That the Court find BIG LOTS' violation of the FLSA was and is willful;
- e) That the Court enjoin BIG LOTS, pursuant to *29 U.S.C. §217*, from withholding future payment of overtime compensation owed to members of the Plaintiff Class.
- f) That the Court award to Ms. Schenburn, and the Plaintiff Class, comprised of all similarly situated employees, overtime compensation for previous hours worked in excess of 40 for any given week during the past three years AND liquidated damages of an equal amount of the overtime compensation, in addition to penalties and interest on said award pursuant to FLSA §216;

g) That the Court award Ms. Schenburn and the Plaintiff Class reasonable attorneys' fees and costs pursuant to FLSA §216; and

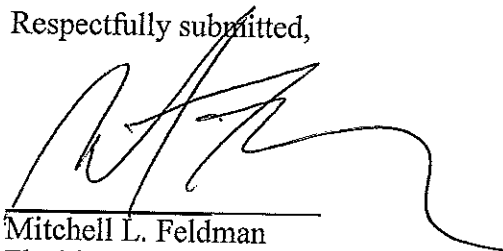
h) That the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint.

Dated this 28 day of February, 2011.

Respectfully submitted,



Mitchell L. Feldman
Florida Bar No. 0080349
Feldman, Fox, Morgado, P.A.
2701 N. Rocky Point Dr., Suite 1000
Tampa, Florida 33607
Telephone: (813) 639-9366
Fax: (813) 639-9376
E-mail: MFeldman@ffmlawgroup.com
Attorney for Plaintiff

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CHARLENE E. HONEYWELL
U.S. DISTRICT JUDGE

DOUGLAS B. FRASER
U.S. MAGISTRATE JUDGE

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g) That the Court award Ms. Schenburn and the Plaintiff Class reasonable attorneys' fees and costs pursuant to FLSA §216; and

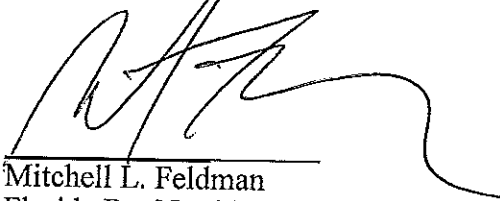
h) That the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint.

Dated this 28 day of February, 2011.

Respectfully submitted,



Mitchell L. Feldman
Florida Bar No. 0080349
Feldman, Fox, Morgado, P.A.
2701 N. Rocky Point Dr., Suite 1000
Tampa, Florida 33607
Telephone: (813) 639-9366
Fax: (813) 639-9376
E-mail: MFeldman@ffmlawgroup.com
Attorney for Plaintiff