

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

REBECCA L. SCHADT, individually and
on behalf of all others similarly situated,

CASE NO.:

Plaintiffs,

v.

BURGER KING CORPORATION,

Defendants.

PLAINTIFF'S COLLECTIVE ACTION COMPLAINT

COLLECTIVE ACTION | DEMAND FOR JURY TRIAL

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SUMMARY OF THE ALLEGATIONS

Defendant has willfully chosen to uniformly misclassify a group of employees training to become Operation Coaches as exempt from the overtime wage provisions of the Fair Labor Standards Act ("FLSA"). This was done so the Defendant would not have to pay their employees overtime. This decision was made at the highest corporate level, was wrong, and the actors knew it. The policy saves millions of dollars in labor

costs. In fact, years of litigation (even if unsuccessful), is more cost effective than complying with the law due to its rolling statute of limitations. Said simply, this was a business decision to purposefully evade our country's national wage and hour law - the FLSA.

The employees here are enrolled in Burger King's corporate Leadership Development Program training to become Coaches and other types of Managers and don't partake in a traditional training program on a day to day basis. They spend only one day a week at Burger King Headquarters formally training for their future position. Rather, these trainees are forced to work 10 – 13 hour days cooking french-fries and flipping hamburgers at local Burger King Restaurants 4 days per week, and sometimes longer. Plaintiff, and the class of similarly situated employees, were all paid a base salary and treated as exempt employees while they performed nonexempt job duties throughout their training to become Operation Coaches and other Managers. However, these employees fail the Executive Exemption as they do not supervise other employees; and likewise fail the administrative exemption as their primary job duty does not involve the use of discretion and independent judgment related to management of the company. Indeed, they lack discretion to make meaningful decisions, they do not promulgate or carry out corporate policy, and they do not supervise employees. Although the titles of Operations Coach or other Managers may itself lead to a salary exempt position when actually working in that capacity, here, these employees while training, primarily are working as restaurant, non-exempt employees performing menial laborious tasks, including, operating cash registers, cleaning bathrooms, greeting and serving customers, and cooking food.

The primary job duty of the Operation Coach and other employees in the Leadership Development Program is to fill in where needed at restaurants for the benefit of the company, not the employees. After cooking food for a few days, that should be all that is necessary for the benefit of the employees to understand how things are done, rather than the numerous months in which they toil away working long hours as a restaurant employee.

They are mandated to work overtime, and even prevented from taking reasonable lunch breaks. There simply is no reason they are forced to work over 8 hours in a day cooking food. As a result, the class has been grossly underpaid and overworked. Defendant knows the workings of the FLSA and has likely faced challenges before. Defendant closely supervises this class of employees and is well aware of the overtime hours worked by the class. Plaintiff and the class of similarly situated employees seeks a declaratory judgment that that the Defendant has violated the FLSA, and they seek to be paid for all hours worked in excess of 40 per workweek, within the statute of limitations, an equal amount in liquidated damages, plus attorneys' fees and costs.

INTRODUCTION

Plaintiff, Rebecca L. Schadt (herein after referred to as "Ms. Schadt" or "Plaintiff") individually, and on behalf of all others (similarly situated who consent to their inclusion in a collective action within the preceding three years of this action, to and through the date of the final disposition of this action), along with all others who were within the 3 years preceding the filing of this complaint, or who are now employed by the Defendant as trainees in the Burger King Leadership Development Program, including all Operations Coaches and other Managers in training, at any time within the FLSA's

applicable statute of limitations, sues Defendant, Burger King Corporation (herein after referred to as “Burger King” or “Defendant”), pursuant to *29 U.S.C. 216(b)*, the FLSA, and states as follows:

1. Plaintiff brings this action for violation of federal and wage and hour laws by and on behalf of all similarly situated current and former employees of Defendant.

2. Pursuant to policy and plan, the Plaintiff and similarly situated current and former employees have been given the title of trainees, and/or Operations Coach trainees, or other Manager trainees, and unlawfully misclassified by Defendant as exempt employees to avoid compensating them for time worked in excess of forty (40) hours per week.

3. Defendant failed to pay Plaintiff and similarly situated employees in accordance with the FLSA. Specifically, Plaintiff and similarly situated employees were not paid time and a half of their regular rate pay for all hours worked in excess of forty (40) hours per week. Plaintiff and similarly situated employees did not and currently do not perform work that meets the definition of exempt under the FLSA.

4. In this pleading, the term “Trainee” means all employees enrolled in Defendant’s Leadership Development Program training to become Operation Coaches or other Managers, and any other titles in which the employees were placed at restaurants/stores working 4 plus days per week performing restaurant duties, or those employees assigned any other title where employees were subjected to the same work conditions as Plaintiff.

5. In this pleading, “Defendant” means the named Defendant: Burger King Corporation, and any other corporation, organization or entity responsible for the

employment practices complained of herein (discovery may reveal additional Defendants that should be included).

6. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proof, or persuasion. Plaintiff reserves all rights to plead in the alternative.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, because this action involves federal questions under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216 (b).

8. This Court is empowered to issue a declaratory judgment under 28 U.S.C. Secs. 2201 and 2202.

9. This Court has personal jurisdiction over this action, because the Defendant operates substantial business in Broward County, Florida, and some of the damages at issue occurred in Broward County, Florida.

10. Venue is proper to this Court pursuant to 28 U.S.C. Sec. 1391(b) because the Defendant resides in this district and because a substantial part of the events giving rise to the claims occurred in this District.

THE PARTIES

The Representative Plaintiff

11. Rebecca L. Schadt resides in Broward County, Florida. She worked for Burger King Corporation from April 14, 2014 until September 29, 2014 training to become an Operation Coach and performed nonexempt duties at various Burger King

Restaurants throughout south Florida.

12. She was an employee of Burger King during this time as contemplated by 29 USC Sec. 203.

The Defendant

13. Defendant, Burger King Corporation, is a Florida For Profit Corporation with its principal place of business at 5505 Blue Lagoon Drive, Miami, Florida 33126. Defendant, Burger King Corporation, may be served through its registered agent for service of process, CT Corporation System, at 1200 S Pine Island Road, Plantation, Florida 33324. Upon information and belief, Defendant controls all Burger King Restaurants in the US.

NATURE OF THE ACTION
AND THE NATIONAL CLASS OF ASSISTANT MANAGERS

14. This collective action arises from an ongoing wrongful scheme by Burger King to willfully misclassify its Operation Coaches in training as exempt from the overtime benefits due under the FLSA.

15. Plaintiff brings this suit on behalf of a collective class of similarly situated persons composed of:

All persons currently employed by Burger King or previously employed by Burger King within the past 3 years preceding the filing of this lawsuit who were classified as a “trainee” and enrolled in the Burger King Leadership Development Training program, Operational Management Program, or other Management Program, for position such as Coaches or Managers who elect to opt-in to this action pursuant to FLSA 29 U.S.C. Section §216(b).

Herein (the “Collective Class”)

16. Ms. Schadt believes that she can adequately represent the Collective Class

and consents to doing so.

17. Ms. Schadt is a proper Class representative as she was employed by Defendant as an Operation Coach in training, and classified as a Trainee in the Burger King Leadership Development Program.

18. Plaintiff alleges for herself, and on behalf of the class who elect to opt-in to this action that she is entitled to unpaid wages from Defendant for overtime work for which she did not receive overtime premium pay, as required by law.

FACTUAL BACKGROUND

19. Burger King operates more than 10,000 fast food restaurants nationwide.

20. Upon information and belief, all restaurants are uniform in management, and the restaurants are mirror images of each other.

21. Upon information and belief, all or substantially all restaurants operate with the same training models for employees, career paths, job titles, hierarchy, and employee policies and procedures.

22. Upon information and belief, all employees enrolled in the Burger King Leadership Development Program or Operation Coach training program must work at restaurant locations performing nonexempt duties for several months at a time if not longer.

23. The overtime wage provisions set forth in FLSA §207 apply to Burger King, who engages in commerce under the definition of the FLSA. Indeed, at all relevant times, Defendant engaged in interstate commerce and/or in the production of goods for commerce within the meaning of FLSA Sec. 203.

24. Defendant has, at all relevant times herein, grossed more than \$500,000 in

operating revenues during each of the last 10 fiscal years.

25. The position of Trainee for those still in training, is not a position that falls within any exemptions within FLSA §213.

26. The Operation Coach Position job description is the same for all states and the training procedures are the same for all states.

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

28. Pursuant to FLSA §207, Burger King, as the employer of Ms. Schadt 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. Schadt

29. Ms. Schadt worked for Burger King from April 14, 2014 until September 29, 2014 training to become an Operation Coach, and enrolled in the Burger King Leadership Development Program.

30. Ms. Schadt's duties while training to become an Operation Coach primarily involved menial, non-exempt tasks such as flipping hamburgers, cooking, cleaning, and assisting customers.

31. Ms. Schadt did not have the ability to supervise, hire, or fire other employees. Only the store/restaurant Manager(s), who was in a superior position to Ms. Schadt as a trainee, could supervise, hire, and fire employees. The Manager made all the decision whether to hire a candidate or not.

32. Ms. Schadt's work did not involve the exercise of discretion and independent judgment. She had no authority to make independent decisions on matters

that affected the business as a whole or any significant part of the business.

33. Ms. Schadt did not supervise any employees and did not have any subordinate employees she could or did delegate work to.

34. Ms. Schadt did not have the authority to promote employees, determine their pay rates or benefits, or give raises. Ms. Schadt was unable to make personnel decisions.

35. Ms. Schadt did not have the authority to decide whether or not an employee should be disciplined for an infraction or what the discipline would be. Disciplinary decisions were made by Ms. Schadt's superiors and/or dictated by Defendants' company policies.

36. Ms. Schadt was not in reality a Coach in any respect while training. The primary job duty of Ms. Schadt was to work as a low level cook, restaurant hourly employee.

37. Ms. Schadt was paid a salary which was based on working forty (40) hours per week upon the completion of her training program.

38. However, during the training program, Ms. Schadt averaged fifty-five (55) hours of work per week.

39. Ms. Schadt was required to work through lunches receiving no break and no pay for those hours.

40. Ms. Scahdt worked these hours throughout her employment training with Burger King.

41. Ms. Schadt worked at 3 different Burger King restaurants, forced to commute large distances to get to the work sites.

42. Ms. Schadt worked 4 days per week in the restaurant serving the capacity as a general restaurant worker, and not involved with the management of the restaurant.

43. Ms. Shadt would only attend training on Wednesdays at the corporate office. She also had exams and had to put in additional hours studying and preparing for that on her own time.

44. She spent upwards of 5 months toiling away as a restaurant laborer, performing non-exempt duties, and for the benefit of the Defendant.

45. Plaintiff received no benefit after having performed the various duties of the restaurant employees or stations for more than a few days, and Defendant continued to require that she and similar trainees toil away and work long hours until they found or created an opening for which she was being trained for.

46. Defendant, from the beginning of the employment, failed to inform Plaintiff and the class of similarly situated employees of the length of the training program and the details that she would be working in restaurants 4 days per week for many many months.

47. The Defendant has willfully violated FLSA §207 by failing to pay Ms. Schadt and others similarly situated the proper overtime compensation for all hours worked in excess of forty (40) per week.

48. 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 Operation Coach employees while in training or other employees of Burger King nationwide, who have regularly worked in excess of forty hours per week. There are more than 10,000 restaurants nationwide, each

modeled with uniformity.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

49. Ms. Schadt brings this FLSA claim on behalf of all employees enrolled in the Leadership Development Program as trainees, including those in the Operation Management Program or other Management program who are currently employed as a trainee or who have attended this training program at any time during the past 3 years, (the Class Period).

50. Burger King has willfully misclassified the employee trainees as salaried, exempt employees for the purpose of avoiding the overtime pay provision of the FLSA.

51. Burger King has intentionally and repeatedly engaged in the practice of misclassifying trainee Employees as salaried exempt employees under the FLSA for the purpose of minimizing payroll and increasing profitability.

52. The trainees received little if any benefit from working and toiling away for months in restaurants performing non-exempt duties such as cooking, cleaning, customer service. After a day or more or even a few days, they understood the position, and beyond that were no longer receiving any sort of benefit to be used in the positions to which they were training for.

53. However, Defendant did not have open positions for all the trainees, and therefore kept the trainees working in restaurants 4 days per week months longer than necessary to train for the position they were hired for.

54. Only the Manager exercises discretion and judgment and has the authority to make independent decisions on matters that affect the business as a whole.

55. Burger King is liable under the FLSA for failing to properly compensate

Operation Coach Employees in training who worked over forty (40) hours per week, and as such, notice should be sent to past and current employees of Burger King. 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 Burger King, are readily identifiable, and can be located only through Burger King's records.

56. Burger King required Ms. Schadt to work ten to thirteen hour days often and well over 40 hours each work week.

57. Upon information and belief, this policy is a corporate decision and is applied uniformly to all other similarly situated Operation Coach Employees in training.

COUNT 1 - VIOLATION OF FLSA §207

58. Plaintiff alleges and incorporates by reference paragraphs one (1) through (50) of this Complaint and fully restates and re-alleges all facts and claims herein.

59. Burger King has willfully and intentionally engaged in a nationwide pattern and practice of violating the provisions of the FLSA, by misclassifying trainee employees exempt under the FLSA overtime wage provision, thereby improperly failing and/or refusing to pay Ms. Schadt and the Plaintiff Class, comprised of all current and former similarly situated employees who work or have worked over forty (40) hours per week, overtime compensation pursuant to FLSA §207.

60. Burger King has been operating its business since 1954, and is well aware of the FLSA, its provisions and exemptions, and knew or should have known that just because an employee was training for an exempt position did not mean that they could be placed in non-exempt positions for many months without being paid overtime wages.

61. Burger King knowingly and willfully misclassified Ms. Schadt and other employees similarly situated, comprised of the Plaintiff Class, as exempt for the purposes of decreasing costs and maximizing profitability.

62. Burger King knew or should have known that the act of paying Ms. Schadt 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.

63. The widespread nature of Burger King's failure to pay overtime under the FLSA is demonstrative of Burger King's willful plan and scheme to evade and avoid paying overtime to all of their Operation Coach Employees in training who are used to perform menial tasks such as burger flipping.

64. As a result of Burger King's violations of the FLSA, Ms. Schadt and the Plaintiff Class, comprised of all other employees similarly situated, have suffered damages by Burger King's failure to pay overtime compensation in accordance with FLSA §207.

65. Burger King has not made a good faith effort to comply with the FLSA, and the overtime compensation requirements with respect to Ms. Schadt and the Plaintiff Class, comprised of all other employees similarly situated.

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

67. As a result of Burger King's unlawful acts, Ms. Schadt 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.

68. Additionally, Ms. Schadt seeks a declaratory judgment as to the above allegations; that the Defendant purposely and uniformly misclassified all trainees in the Leadership Development Programs as exempt under the FLSA, which has resulted in less than all of the compensation due to them.

WHEREFORE, Plaintiff, Rebecca L. Schadt, individually, and on behalf of other past and present trainees in the Burger King Leadership Development Program, requests the following relief:

- a. Designation of this action as a collective action.
- b. That Ms. Schadt 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 employees hired by Burger King as trainees in the Leadership Development Program 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 for each respective class;
- c. Designate the Named Plaintiff as a Representative of the Collective Class for purposes of engaging in mediation, with the authority to execute any Collective Class settlement agreement the parties might reach, which is subject to Court's approval before making any such agreement binding.
- d. That all past and present Employees training to become Operation Coaches 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;
- e. That the Court find Burger King in violation of the overtime compensation provisions of the FLSA;
- f. That the Court find Burger King's violation of the FLSA was and is willful;

- g. That the Court enjoin Burger King, pursuant to 29 U.S.C. §217, from withholding future payment of overtime compensation owed to members of the Plaintiff Class.
- h. That the Court award to Ms. Schadt, and the Plaintiff Class, comprised of all similarly situated employees, overtime compensation for previous hours worked in excess of forty (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 and all other related economic losses;
- i. That the Court award Ms. Schadt and the Plaintiff Class reasonable attorneys' fees and costs pursuant to FLSA §216, including expert fees;
- j. That the Court awards Ms. Schadt a Class Representative fee for the justice she sought out on for so many.
- k. That the Court issue a declaratory judgment under 29 U.S.C 216-17, 28 U.S.C. 2201 and 2202 for that practices complained of herein and that the Defendant violated the FLSA, and that such violation was purposely and uniformly misclassified all Employees hired as trainees in the Leadership Development Program as exempt, which has resulted in a loss of compensation due to them in wages;
- l. Pre-judgment and post-judgment interest, as provided by law: and
- m. 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.

Respectfully submitted by,



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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October 2014, a true and correct copy of the foregoing was filed using the Court's CM/ECF electronic filing system, which will send electronic Notices of this filing to all interested parties.



Mitchell L. Feldman, Esq.

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