

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED: APRIL 30, 2009

SHAYNE A. SHINER, on behalf of)
himself and all others similarly situated,)
Plaintiff,)
v.)
SELECT COMFORT CORPORATION,)
and SELECT COMFORT RETAIL CORP.)
Defendant.)

Case No. 09CV2630
JUDGE NORGLE SR.
MAGISTRATE JUDGE MASON
BR

Jury Demanded

COMPLAINT - COLLECTIVE AND CLASS ACTION

Plaintiff, Shayne A. Shiner, on behalf of himself and all others similarly situated, bring this action against defendants Select Comfort Corporation and Select Comfort Retail Corporation (“Select Comfort Corporation”), for violations of federal and state laws concerning compensation for work performed.

JURISDICTION AND VENUE

1. This Court has original federal jurisdiction over the Fair Labor Standards Act (the “FLSA”), 29 U.S.C. §201, *et seq.* claims pursuant to 29 U.S.C. § 1331, because they are civil actions arising under laws of the United States, specifically, 29 U.S.C. §216(b). This Court also has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

2. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b)(2), because a substantial portion of the events that gave rise to this action occurred in this District.

PARTIES

3. This law suit arises under the Fair Labor Standards Act and the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq.* (the “IMWL”), for defendant’s failure to pay

minimum and overtime wages to plaintiffs. Plaintiff brings this case as a representative action under the FLSA, 29 U.S.C. § 216(b). A copy of plaintiff's consent under §216(b) to act as representative plaintiff is attached hereto as Exhibit A.

4. Plaintiff, Shayne A. Shiner ("Shiner"), resides in and is domiciled in Bolingbrook, Illinois. At all material times hereto, Shiner was employed by Select Comfort within this judicial district.

5. Select Comfort Corporation and Select Comfort Retail Corporation are Minnesota corporations with 449 Select Comfort retail stores nationwide and 21 stores located throughout Illinois and many of them within this judicial district.

6. Shiner was employed by Select Comfort as a store manager from May 2006 through February 2009 at first the Bloomingdale Illinois location and Lombard, Illinois location.

7. Plaintiff was a Select Comfort' employees as defined by the IMWL, 820 ILCS 105/3(c)and the FLSA, 29 U.S.C. §203(d).

8. Shiner worked in excess of 40 hours a week and received the same amount of wages per week regardless of the amount of hours worked.

9. Plaintiff was required to punch in and out of a time clock.

10. Although plaintiff was titled a store manager, he had little to no authority to hire or fire employees; little to no authority to establish salaries; little to no authority to give promotions or demotions; followed standard, company-wide policies and procedures in performing duties and responsibilities and was not permitted to make relatively important decisions about how to do their job without direct supervision or approval from supervisors

11. Plaintiff was not exempt from the overtime wage provisions of the IMWL,

820 ILCS 105/1 *et seq.*, or the FLSA, 29 U.S.C. §203(d).

12. Select Comfort is the plaintiff's employer as defined in the IMWL, 820 ILCS 105/3(c), and the FLSA, 29 U.S.C. §206 and §207.

13. Select Comfort is an enterprise as defined by the FLSA. 29 U.S.C. §203(r)(l).

14. Select Comfort employs other persons who perform the same or substantially similar job duties and responsibilities in the 449 Select Comfort stores nationwide and in Illinois.

15. All persons employed by Select Comfort who perform(ed) the same or substantially similar job duties and responsibilities as plaintiffs are, or were compensated by Select Comfort under the same compensation plan.

16. Prior to May 2008, Select Comfort paid its store managers a higher salary with a lower commission structure.

17. In April and May 2008, Select Comfort initiated a policy to reduce its exposure to overtime wage costs.

18. As part of Select Comfort's policy to reduce its exposure to overtime wage costs, it changed the sales professionals schedule to a 37.5 hour work week starting April 27, 2008.

19. Around the same time, Select Comfort lowered its store managers' base pay and increased their commission structure.

20. On information and belief, Select Comfort's May 2008 change in pay for its store managers resulted in a zero sum change in take home pay for the majority of store managers.

21. On information and belief, Select Comfort's May 2008 change in pay for its store managers was a result of its policy to reduce its exposure to overtime wage costs by attempting to make store managers exempt from overtime wages.

22. Defendants pay store managers located in California overtime.

COUNT I

Violation of the FLSA - Overtime Wages

(Plaintiff on behalf of himself and other persons similarly situated)

23. Plaintiff repeats and re-alleges the above paragraphs as if fully set forth herein.

24. This count arises from Select Comfort's violation of the FLSA, 29 U.S.C. §207, for its failure to pay overtime wages to plaintiffs for all time worked.

25. Plaintiff performed job duties and responsibilities for Select Comfort. During the course of their employment by Select Comfort, plaintiff was not exempt from the overtime wage provision of the FLSA, 29 U.S.C. §207.

26. Select Comfort did not compensate plaintiff at a rate of one and one-half times their regular hourly rate of pay for time he worked in excess of forty (40) hours in individual work weeks.

27. On numerous occasions, plaintiff worked in excess of forty five (45) hours per week. Plaintiff was not paid at all for working any of this excess time.

28. Select Comfort's failure and refusal to pay plaintiff overtime wages for time working in excess of forty (40) hours per week was a violation of the FLSA.

29. Select Comfort also did not compensate other similarly-situated persons overtime wages for all time they worked in excess of forty (40) hours in individual work weeks.

30. Select Comfort's failure to pay overtime wages to other similarly situated employees for time worked in excess of forty (40) hours per week was a violation of the FLSA, 29 U.S.C. §207.

31. Select Comfort willfully violated the FLSA by refusing to pay plaintiff and

other similarly situated persons overtime wages for time worked in excess of forty (40) hours per week.

Wherefore, plaintiff prays for a judgment against Select Comfort as follows:

- A. A judgment in the amount of one and one-half times plaintiff's regular rate of pay or the applicable minimum wage for all time plaintiff worked in excess of forty (40) hours per week;
- B. Liquidated damages in an amount equal to the amount of unpaid overtime compensation found due;
- C. Reasonable attorneys' fees and costs incurred in filing this action; and
- D. Such other and further relief as this Court deems appropriate and just.

COUNT II

Violation of the IMWL - Overtime Wages

(Plaintiff on behalf of themselves and other similarly situated persons)

32. Plaintiff repeats and realleges the above paragraphs as if fully set forth herein.

33. This court has supplemental jurisdiction over matters alleged herein pursuant to 28 U.S.C. §1367.

34. The matters set forth in this count arise from Select Comfort's violation of the overtime compensation provision of the IMWL, 820 ILCS 105/4a. Plaintiff bring this action pursuant to 820 ILCS 105/12(a).

35. Pursuant to 820 ILCS 105/4a, for all weeks during which plaintiff worked in excess of forty (40) hours, plaintiff was entitled to be compensated at one and one-half times their regular rate of pay for time worked in excess of forty (40) hours per week.

36. On numerous occasions, plaintiff worked in excess of forty (40) hours per

week.

37. Select Comfort did not pay plaintiffs overtime wages for all time they worked in individual work weeks.

38. Select Comfort violated the IMWL by failing to compensate plaintiff at one and one-half times their regular rate of pay for time he worked in excess of forty (40) hours per week.

39. Pursuant to 820 ILCS 105/12(a), plaintiffs are entitled to recover their unpaid wages for three years prior to the filing of this suit, plus punitive damages in the amount of two percent (2%) per month of the amount of under payments.

Wherefore, plaintiff prays for a judgment against Select Comfort as follows:

A. Judgment in the amount of one and one-half times the greater of plaintiff's regular or the applicable minimum wage for all time plaintiff worked in excess of forty (40) hours per week;

B. Punitive damages pursuant to the formula set forth in 820 ILCS 105/12(a);

C. Reasonable attorneys' fees and costs incurred in filing this action; and

D. Such other and further relief as this Court deems appropriate and just.

CLASS ALLEGATIONS

40. Plaintiff brings the FLSA claims as a *collective action* pursuant to 29 U.S.C. §201 *et seq.*, and the Illinois wage and hour claims as a *class action* pursuant to Rule 23 of the Federal Rules of Civil Procedure. In regards to his IMWL actions, the persons plaintiff seeks to represent for all claims are defined as:

All persons who have (a) been and are employed as store managers for Select Comfort in the State of Illinois; (b) who worked for Select Comfort at any time on a date beginning three years before this action was filed.

41. Upon information and belief, there are more than 50 members of the proposed class, sufficient to satisfy the numerosity requirement.

42. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting any individual member of the Class, including plaintiff. Such questions common to the Class include, but are not limited to:

a. Whether Select Comfort properly compensated plaintiffs and the Class for all work performed;

b. The nature, extent, and measure of damages for the losses suffered by plaintiffs and the class.

43. Plaintiff's claims are typical of the class members' claims. All class members' claims arise from Select Comfort's pattern and practice of widespread wage abuses against its store managers.

44. Plaintiff will fairly and adequately protect the interests of the class. Plaintiff has no interests that might conflict with the interests of the class. Plaintiff is interested in pursuing the claims against Select Comfort vigorously, and has retained counsel competent and experienced in class and complex litigation.

45. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would

entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

46. Select Comfort has acted on grounds generally applicable to the class, thereby making relief appropriate with respect to the class as a whole. Prosecution of separate actions by individual members of the class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Select Comfort.

47. The identity of the class is likely readily identifiable from Select Comfort's records, which records it is obligated to keep as a matter of law.

48. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

49. Without a class action, Select Comfort will likely retain the benefit of its wrongdoing and will continue a course of conduct that will result in further damages to its employees.

Respectfully submitted,

/s/ Keith J. Keogh
Plaintiff's attorney

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JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted,

/s/ Keith J. Keogh

NOTICE OF ATTORNEY'S LIEN

PLEASE TAKE NOTICE that plaintiff has assigned to their attorneys all rights conferred by statute or rule to recover attorneys' fees from Defendants.

By: /s/Keith J. Keogh
Attorney for Claimant

EXHIBIT A

CONSENT TO PARTICIPATE AS A PLAINTIFF

I have reviewed the Complaint in this action against Select Comfort Corporation and Select Comfort Retail Corporation, my employer and, pursuant to 29 U.S.C. § 216(b), hereby consent to participate as a Plaintiff in such action to seek relief under the Fair Labor Standards Act.

This 21 day of April, 2009.

Signed 

Printed Name: Shayne A. Shiner