

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

<b>Stacy Collins, individually and on behalf of other similarly situated individuals</b>	:	<b>CIVIL ACTION NO.:</b>
<b>Plaintiffs</b>	:	
<b>V.</b>	:	
<b>Kohl's Department Stores, Inc. and Kohl's Corporation</b>	:	<b>January 11, 2018</b>
<b>Defendant</b>	:	

**COLLECTIVE AND CLASS ACTION COMPLAINT**

**I. INTRODUCTION**

1. This action is brought by Plaintiff for herself and on behalf of all Assistant Store Managers employed by Defendant's, Kohl's Department Stores, Inc. and Kohl's Corporation. Defendants have misclassified Plaintiff, and other similarly situated employees, as exempt under federal and state overtime laws and failed to pay them overtime pay for hours worked beyond forty (40) in a workweek.

2. Plaintiff alleges on behalf of herself and other similarly situated current and former assistant store managers of Defendants who elect to opt into this action (the "Collective Action Class"), that they are entitled to: unpaid wages from Defendants for all overtime hours worked by them, as required by law, liquidated damages, attorneys' fees and costs, pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*

3. Plaintiff further complains, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and a class of other similarly situated current

and former assistant store managers of Defendants employed within the State of Connecticut (the “Connecticut Class”) that they are entitled to back wages from the Defendants for all overtime work for which they did not receive overtime premium pay and an award of penalty damages, attorneys’ fees and costs, pursuant to the Connecticut Wage Act (“CWA”), Conn. Gen. Stat. §§ 31-58, *et seq.*

## **II. JURISDICTION AND VENUE**

4. This Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

5. This Court has jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367 since they are so related to her FLSA claims that they form part of the same case or controversy.

6. This Court also has jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act (“CAFA”). The parties are diverse and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

7. At least one member of the proposed class is a citizen of a state different from that of at least one defendant. Plaintiff’s claims involve matters of national or interstate interest.

8. Citizenship of the members of the proposed class is dispersed among a substantial number of states.

9. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) because the acts or omissions giving rise to claims in this Complaint took place in this judicial district.

11. This Court has personal jurisdiction over Defendants pursuant to Connecticut's long-arm statute because it transacts business in the State of Connecticut, it enters into employment contracts with the a-Assistant Store Managers, including Plaintiff, and its conduct in violating the Fair Labor Standards Act and the Connecticut Wage Act is tortious as that term is defined under the long arm statute.

### **III. THE PARTIES**

12. Plaintiff is an individual residing within this judicial district. She worked as Children, Footwear and Home Assistant Store Manager (CFH ASM) or Assistant Store Manager of Human Resources and Operations (ASM HRO) for Defendant from approximately June 2008 to October 19, 2017, at Defendant's Enfield, Connecticut and Manchester, Connecticut stores.

13. Defendant Kohl's Department Stores, Inc. is a corporation organized and existing under the laws of the state of Delaware. Its principal place of business is located at N56 W17000 Ridgewood Drive, Menomonee Falls, Wisconsin.

14. Defendant Kohl's Corporation is a corporation organized and existing under the laws of the state of Delaware. Its principal place of business is located at N56 W1700 Ridgewood Drive, Menomonee Falls, Wisconsin.

15. Defendants own and operate retail department stores throughout the United States, including Connecticut.

16. Defendants are employers within the meaning of the FLSA, the CWA and the wage laws of the other states in which it operates. Defendants were the employer of Plaintiff and all other Assistant Store Managers in the states in which they work.

### **STATEMENT OF FACTS**

17. Defendants hired Plaintiff to work in its Enfield, Connecticut store in June 2008. Defendant provided Plaintiff with management training and then assigned her to be a Children, Footwear and Home Assistant Store Manager (CFH ASM). Defendant transferred her to its Manchester store in 2014. She held the CFH ASM position until approximately July 2015. In August 2015, Defendants assigned Plaintiff to be an Assistant Store Manager of Human Resources and Operations (HR-Ops ASM) at Defendant's Manchester, Connecticut store, where she worked until October 19, 2017.

18. Defendants have approximately 1,155 stores in forty-nine (49) states.

19. Defendants employ Assistant Store Managers (ASMs) in all of these stores.

20. Defendants designate four types of ASMs: (i) Assistant Store Manager of Human Resources and Operations (HR-Ops ASM), (ii) Children, Footwear, and Home Assistant Store Managers (CFH ASM) , (iii) Apparel and Accessories Assistant Store Managers (AA ASM), (iv) Overnight Freight and Replenishment Assistant Store Managers (OFR ASM).

21. Despite Defendants' use of four separate job descriptions – one for each



type of ASM – the basic duties of an ASM are the same. Defendants provide that each of the ASMs' primary duty is to perform mostly the non-exempt labor of the stores in which they work, including unloading trucks, unpacking merchandise, filling on-line orders, stocking shelves, customer service and operating cash registers.

22. Defendants classify all four types of ASMs as exempt from overtime. It pays them a flat weekly salary and does not pay them overtime compensation for the hours they work over 40 in a week.

23. Defendants require that all ASMs report directly to a Store Manager, who is the real management authority of the store. Defendants schedules ASMs for 45 hours per week but they frequently work more, and often as much as 50 or more hours per week.

24. During the holiday time of year (the week before Thanksgiving through the second week in January), Defendants schedule ASMs for six days and 54 hours per week.

25. Defendants also schedule ASMs to do inventory once per year. During the week before and the week of inventory, Defendants assign ASMs approximately 60 hours of work.

26. Defendants closely monitors the work performed by ASMs to ensure compliance with corporate directives. ASMs are uniformly trained through training materials prepared by Defendants.

27. Defendants use common performance measurement standards to measure the performance of the work of ASMs.

28. Defendants classify all ASMs as exempt from the overtime requirements of FLSA, regardless of store location, volume, or size.

29. Defendants' corporate officers decided to classify ASMs as exempt based on the general job description of ASM position.

30. While Defendants assign some management duties to them, those duties are routine, and are closely and directly supervised by their superiors. ASMs are not given significant discretion to manage and their management work is not more important than their non-management work.

31. ASMs do not spend most of their time on exempt tasks. Instead, most of their time is spent performing non-exempt duties, such as unloading freight, stocking shelves, filling on-line orders, ensuring that the merchandise was arranged according to company standards, counting inventory, and organizing the store.

30. The non-exempt duties that ASMs perform are more important to the Defendants' business model than the exempt duties that they are required to perform.

31. Defendants closely and directly supervises ASMs through periodic inspections, audits and annual reviews. Store Managers also inspect ASM work on a daily basis.

32. Defendants pay ASMs a salary comparable to that of non-exempt store associates, especially when the overtime that ASMs spend on the job is considered.

33. Defendants classify its ASMs as exempt executives in conscious

disregard for the facts and the law. Defendants have at all times been fully aware that the primary duty of the ASMs is not management and that the law does not permit employers to classify employees as exempt executives unless their primary duty is management. Defendants also have been aware that ASMs work more than 40 hours per week without overtime pay.

34. Notwithstanding this knowledge, Defendants classify its ASMs as exempt executives in conscious disregard of their right to be paid overtime pay.

35. As a result of Defendants' willful violations of the FLSA, Plaintiff and all other similarly situated ASMs have suffered damages in that they have not received proper compensation.

#### **THE NATIONWIDE COLLECTIVE ACTION**

36. Plaintiff brings the first cause of action on behalf of herself and all other ASMs who have worked for Defendants around the country during the period beginning three (3) years prior to the filing of this lawsuit until the date of final judgment in this matter.

37. Plaintiff brings this count under 29 U.S.C. § 216(b) of the Fair Labor Standards Act. Plaintiff and the other ASMs are similarly situated in that they are all subject to Defendants' common plan or practice of designating them as exempt from the overtime requirements of FLSA, when in fact their work is not exempt.

#### **THE CONNECTICUT RULE 23 CLASS**

38. Plaintiff brings the second cause of action under the Connecticut Wage Act, C.G.S. §§ 31-58 *et seq.*, and Rule 23 of the Federal Rules of Civil

Procedure, for herself and on behalf of a class consisting of all ASMs in Connecticut during the period beginning two (2) years prior to the filing of this lawsuit until the date of final judgment in this matter.

39. Class certification for these Connecticut law claims is appropriate under Fed. R. Civ. P. 23 (a) and Fed. R. Civ. P. 23 (b)(3) because all the requirements of the Rules are met.

40. The class is so numerous that joinder of all members is impracticable. Upon information and belief, Defendants' employed approximately 100 ASMs in Connecticut during the past two (2) years.

41. There are questions of law and fact common to the class, including whether the putative class members worked overtime but were not paid overtime in violation of Connecticut law.

42. The named Plaintiff's claims are typical of those of the class members. Plaintiff's claims encompass the challenged practices and course of conduct of Defendants. Furthermore, Plaintiff's legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to which federal and state laws are violated by such conduct apply equally to Plaintiff and to the class.

43. The named Plaintiff will fairly and adequately protect the interests of the class. The Plaintiff's claims are not antagonistic to those of the putative class and she has hired counsel skilled in the prosecution of class actions.

44. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the



fair and efficient adjudication of this controversy. This proposed class action under Fed. R. Civ. P. 23 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

### **LEGAL CLAIMS**

**COUNT ONE: VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. Section 201, *et seq.***

45. Based on the foregoing, Defendants' conduct in this regard was a willful violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*

46. Plaintiff and all other similarly situated ASMs who opt into this litigation are entitled to compensation for all overtime hours worked, liquidated damages, attorneys' fees and court costs.

**COUNT TWO: VIOLATION OF THE CONNECTICUT WAGE ACT, C.G.S. Section 31-58, *et seq.***

47. Based on the foregoing, Defendants' conduct in this regard was a violation of the Connecticut Wage Act, C.G.S. §§ 31-58, *et seq.*

48. Accordingly, Plaintiff and all other similarly situated ASMs in Connecticut are entitled to compensation for all overtime hours worked, penalty damages, attorneys' fees and court costs.

49.

### **DEMAND FOR RELIEF**

Plaintiff claims:

- a. Designation of this action as a collective action pursuant to the FLSA and prompt issuance of notice pursuant to 29 U.S.C. § 216(b);
- b. Certification of the Connecticut class action pursuant to Fed. R. Civ. P. 23(b)(3) and the appointment of Plaintiff and her counsel to represent those classes;
- c. An award of unpaid overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 216(b);
- d. An award of unpaid overtime wages under the Connecticut Wage Act, C.G.S. § 31-68;
- e. An award of liquidated damages under the Fair Labor Standards Act, 29 U.S.C. § 216(b);
- f. An award of penalty damages under Connecticut Wage Act, C.G.S. § 31-68;;
- g. Attorneys' fees under the Fair Labor Standards Act, 29 U.S.C. § 216(b);
- h. Attorneys' fees under the Connecticut Wage Act, C.G.S. § 31-68;
- i. Interests and costs;
- j. Injunctive relief in the form of an order directing Defendant to comply with the Connecticut Wage Act; and
- k. Such other relief as in law or equity may pertain.

### **JURY DEMAND**

Plaintiff demands a trial by jury by all issues so triable.

Stacy Collins, individually and on  
behalf of other similarly situated  
individuals

By: 

Richard E. Hayber  
Hayber Law Firm, LLC  
221 Main Street, Suite 502  
Hartford, CT 06106  
Fed Bar No.: ct11629  
(860) 522-8888 telephone  
(860) 218-9555 facsimile  
[rhayber@hayberlawfirm.com](mailto:rhayber@hayberlawfirm.com)

/s/ Gary Phelan

Gary Phelan  
Mitchell & Sheahan, P.C.  
80 Ferry Boulevard  
Stratford, CT 06615  
Fed Bar No.: ct03670  
Ph: (203) 873-0240  
F: (203) 873-0235  
[gphelan@mitchellandsheahan.com](mailto:gphelan@mitchellandsheahan.com)  
Attorney for the Plaintiffs



## 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**

Stacy Collins, individually and on behalf of others similarly situated individuals

(b) County of Residence of First Listed Plaintiff Windham

(EXCEPT IN U.S. PLAINTIFF CASES)

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

Richard E. Hayber, The Hayber Law Firm, LLC  
221 Main Street, Suite 502  
Hartford, CT 06106 Tel: (860) 522-8888

**DEFENDANTS**

Kohl's Department Stores, Inc. and Kohl's 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)

Click here for: [Nature of Suit Code Descriptions.](#)

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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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"/> 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
<b>REAL PROPERTY</b> <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	<b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <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 <b>Other:</b> <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 - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. §§ 202 et seq

Brief description of cause:

unpaid minimum wages

**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

SIGNATURE OF ATTORNEY OF RECORD

01/11/2018

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 Against Kohl's Claims Assistant Managers Should Receive Overtime](#)

---