

FILED

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF FLORIDA

2016 DEC 19 PM 4:43

CASE NO.

6:16-cv-2171-ORL-31-KRS

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

COLLECTIVE ACTION

CHRISTINA DEJKUNCHORN, JESSICA
SAMUEL, TIA COLLINS, VINCENT
JOHNSTON, AND OTHERS SIMILARLY
SITUATED,

Plaintiffs,

v.

TRUSTCO BANK, A FEDERAL SAVINGS
BANK,

Defendant.

_____ /

COMPLAINT

Plaintiffs, Christina Dejkunchorn (“Dejkunchorn”), Jessica Samuel (“Samuel”), Tia Collins (“Collins”), and Vincent Johnston (“Johnston”) (sometimes collectively referred to as “Plaintiffs”), on behalf of themselves and others similarly situated, sue the Defendant, Trustco Bank, a Federal Savings Bank, (hereinafter referred to as “Trustco Bank”) in this collective action pursuant to 29 U.S.C. §216(b) and state as follows:

The Parties

1. The Plaintiff, Dejkunchorn, is *sui juris*, a resident of Volusia County, Florida and a citizen of the United States of America.
2. The Plaintiff, Samuel, is *sui juris*, a resident of Orange County, Florida, and a citizen of the United States of America.

Dejkunchorn, et al. v. Trustco Bank

3. The Plaintiff, Collins, is *sui juris* and a resident of Orange County, Florida, and a citizen of the United States of America.

4. The Plaintiff, Johnston, is *sui juris* and a resident of Orange County, Florida, and a citizen of the United States of America.

5. The Defendant, Trustco Bank, is a federal savings bank maintaining approximately fifty-one (51) branches in the State of Florida.

Jurisdiction And Venue Allegations

6. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, inasmuch as this action seeks damages, interest, attorney's fees and costs pursuant to Title 29 of the United States Code, the "Fair Labor Standards Act of 1938" (hereinafter referred to as the "FLSA").

7. Venue is proper in this Court in that virtually every branch where Trustco Bank conducts business in the State of Florida is located in the Middle District of Florida.

General Allegations

8. Trustco Bank is an "employer" as that term is defined in 29 U.S.C. §203(d).

9. Dejkunchorn was an "employee" of Trustco Bank, as that term is defined in 29 U.S.C. §203(e)(1). Dejkunchorn worked for Trustco Bank from November 4, 2013 until May 16, 2016 in various capacities, including but not limited to teller, floating teller, and permanent head teller.

10. Samuel was an "employee" of Trustco Bank, as that term is defined in 29 U.S.C. §203(e)(1). Samuel worked for Trustco Bank from December 11, 2011 until May 16, 2016 in various capacities, including but not limited to part-time teller, full-time traveling teller, and teller manager.

Dejkunchorn, et al. v. Trustco Bank

11. Collins was an “employee” of Trustco Bank, as that term is defined in 29 U.S.C. §203(e)(1). Collins worked for Trustco Bank from November 19, 2012 until February 18, 2016 in various capacities, including but not limited to teller, floating teller, and permanent head teller.

12. Johnston was an “employee” of Trustco Bank, as that term is defined in 29 U.S.C. §203(e)(1). Johnston worked for Trustco Bank from November 2014 until March 2016 in various capacities, including but not limited to teller, assistant manager, floating manager, and covering manager.

13. The Plaintiffs were “employed” by Trustco Bank as that term is defined in 29 U.S.C. §203(g).

14. The Plaintiffs, as employees of Trustco Bank, are not included in any of the exemptions set forth in 29 U.S.C. §213.

Violation Of 29 U.S.C. §207(a)(1)

15. 29 U.S.C. §207(a)(1) states:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

16. Trustco Bank, through its employment of the Plaintiffs and by virtue of the duties they were required to carry out under their respective job descriptions, effectively caused the Plaintiffs to be employed for workweeks longer than forty hours, without providing compensation at a rate not less than one and one-half times the regular rate at which they were employed.

17. Among the violations of the FLSA committed by Trustco Bank with respect to the Plaintiffs and other similarly situated employees were (i) failing to include “opening” and “closing”

Dejkunchorn, et al. v. Trustco Bank

time in the calculation of the forty hours contemplated in 29 U.S.C. § 207(a)(1); (ii) requiring employees to utilize their lunch break for the purpose of traveling from one branch location to a different branch location without including that time in the calculation of the forty hours contemplated in 29 U.S.C. § 207(a)(1); (iii) requiring employees to work through their lunch break without including that time in the calculation of the forty hours contemplated in 29 U.S.C. § 207(a)(1); (iv) manipulating Trustco Bank's time-keeping system to prevent employees from accruing in excess of forty hours in any given work week.

18. Trustco Bank violated 29 U.S.C. §207 by its failure to compensate Dejkunchorn and others for overtime in the form of "opening" time. Specifically, "opening" time is that time, preceding regular business hours at a Trustco Bank branch, where the employee is required to appear at the branch where he or she is employed for the purpose of preparing the branch for daily operations.

19. Trustco Bank violated 29 U.S.C. §207 by its failure to compensate Johnston and others for overtime in the form of "closing" time. Specifically, "closing" time is that time, following regular business hours at a Trustco Bank branch, where the employee is required to remain at the branch where he or she is employed for the purpose of shutting down from daily operations.

20. Trustco Bank violated 29 U.S.C. §207 by its failure to compensate Johnston and others for overtime in the form of the utilization of their lunch break for the express purpose of traveling between different branches of Trustco Bank. Specifically, Johnston and others were directed to travel from one branch location to another branch location during their lunch break. Notwithstanding that the lunch break was used for the purpose of their employment and not for their

Dejkunchorn, et al. v. Trustco Bank

lunch, the established lunch break time was deducted from the calculation of their weekly hours worked.

21. Trustco Bank violated 29 U.S.C. §207 by manually altering the time records of Johnston, Collins, Samuel, and others in such a manner as to avoid the accrual of more than forty hours of work time in any given week. The purpose of this manipulation of time records was for the express purpose of avoiding the payment of overtime.

22. Trustco Bank's violations of 29 U.S.C. §207, as detailed herein above, lacked the requisite good faith and were not based upon any reasonable grounds.

23. The actions of Trustco Bank are and were violative of 29 U.S.C. §207(a)(1) and entitle the Plaintiffs to be paid their proper overtime compensation and liquidated damages pursuant to the provisions of 29 U.S.C. §216(b).

24. The Plaintiffs have retained the undersigned attorneys to represent them in this matter and have agreed to pay said attorneys a reasonable fee for their services.

25. Trustco Bank is liable for the Plaintiffs' reasonable attorney's fees pursuant to 29 U.S.C. §216(b).

WHEREFORE, the Plaintiffs, on behalf of themselves and other similarly situated individuals who, after notice, elect to opt-into this proceeding, demand judgment against Trustco Bank for all unpaid overtime compensation, liquidated damages in an equal amount, together with the costs of this action and reasonable attorney's fees.

Demand for Jury Trial

Plaintiffs request a trial by jury on all issues raised in this action triable by jury as a matter of right.

Dated: December 13th, 2016.

Dejkunchorn, et al. v. Trustco Bank

CHARLIP LAW GROUP, LC

Counsel for Plaintiffs

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By: 

David H. Charlip, B.C.S.
Florida Bar No.: 329932

JS 44 (Rev. 11/15)

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.)

<p>I. (a) PLAINTIFFS Omayra Perez Erazo</p> <p>(b) County of Residence of First Listed Plaintiff Seminole <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Sheila A. Fugate 407-539-0123 P.O. Box 940989 Maitland, FL 32794</p>	<p>DEFENDANTS Commissioner of Social Security</p> <p>County of Residence of First Listed Defendant <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> <td></td> <td style="text-align: center;">PTF</td> <td style="text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		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
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input checked="" type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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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):*
42 U.S.C. Sec. 1383

Brief description of cause:
The decision of the Defendant is not supported by substantial evidence and applies an erroneous standard of law.

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: 12/16/16 SIGNATURE OF ATTORNEY OF RECORD: *Sheila A. Fugate*

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: [Trustco Bank Hit with FLSA Class Action](#)
