

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

CARRIE FUNKHOUSER, individually and on behalf of
All others similarly situated,

Plaintiff,

CASE NO:

v.

JURY TRIAL DEMANDED

CAPTIVA MVP RESTAURANT PARTNERS, LLC
d/b/a PDQ,

Defendant.

_____ /

COLLECTIVE ACTION COMPLAINT

Plaintiff Carrie Funkhouser (“Plaintiff”), individually and on behalf of all others similarly situated, by her attorneys, Shavitz Law Group, P.A., upon personal knowledge as to herself and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation for Plaintiff and similarly situated individuals who have worked for Defendant as Assistant Managers (“AMs”) for Captiva MVP Restaurant Partners, LLC d/b/a PDQ (“Defendant” or “PDQ”), in the United States, pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*

2. Defendant is a Florida company operating under the trade name “PDQ” with its corporate headquarters and principal place of business located in Tampa, Florida. At times relevant to this action, PDQ operated over 25 restaurants Florida, and over 50 restaurants nationwide.

3. To serve its clients, PDQ employs AMs. Plaintiff alleges these AMs primarily perform customer service, preparing food, cooking, serving food, expediting orders, bussing tables, cleaning the restaurant and other related duties.

4. AMs' primary duties are the same non-exempt duties that hourly employees perform.

5. Plaintiff alleges that Defendant misclassifies AMs as exempt from the overtime requirements of the FLSA, and as a result AMs are not paid overtime due for all hours worked in excess of 40 hours in any workweek.

6. Throughout the relevant period (January 10, 2015 to the present), Plaintiff alleges that it has been Defendant's nationwide policy to classify AMs as exempt for overtime purposes.

7. Defendant has not paid AMs at a rate of one and a half times their regular hourly rate for all hours worked in excess of 40 in any workweek.

8. By the conduct alleged in this Collective Action Complaint, Defendant is violating the FLSA by failing to pay AMs, including Plaintiff, the overtime wages they have earned and to which they are entitled by law.

9. Plaintiff brings this action on behalf of herself and similarly situated current and former AMs of Defendant who work or worked at any United States location and elect to opt-in to this action pursuant to the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage and hour provisions of the FLSA.

THE PARTIES

10. Plaintiff Carrie Funkhouser is an adult individual who is a resident of Groveland, Florida.

11. Plaintiff was employed by PDQ from approximately November 2016 to July 2017 as an AM at a PDQ store located in Sanford, Florida. PDQ employed Plaintiff as a Manager in Training at various locations from approximately August 2016 to November 2016.

12. Plaintiff regularly worked more than 40 hours per workweek.

13. Plaintiff is a covered employee within the meaning of the FLSA.

14. A written consent form for Plaintiff is attached hereto as Exhibit A.

15. PDQ is a Florida limited liability company with its principal place of business in Tampa, Florida.

16. Throughout the relevant period, PDQ employed Plaintiff and similarly situated AMs within the meaning of the FLSA.

17. PDQ has had substantial control over Plaintiff's working conditions and the unlawful policies and practices alleged herein.

18. PDQ is a covered employer within the meaning of the FLSA.

19. At all times relevant, PDQ has maintained control, oversight and direction over Plaintiff and similarly situated AMs, including timekeeping, payroll and other employment practices that applied to them.

20. At all times relevant, PDQ has applied the same employment policies, practices, and procedures to all AMs nationwide.

21. At all times relevant, PDQ's annual gross volume of sales made or business done was not less than \$500,000.

JURISDICTION AND VENUE

22. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337.

23. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

24. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b)(2) because Defendant resides in the District and a substantial part of the events or omissions giving rise to the claims occurred in this District.

FLSA COLLECTIVE ALLEGATIONS

25. Plaintiff brings a collective action pursuant to FLSA, 29 U.S.C. § 216(b), on behalf of herself and all similarly situated persons who work or have worked for PDQ as AMs anywhere in the United States, for claims for the period beginning January 10, 2015 and continuing through the present.

26. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by PDQ and/or PDQ has been aware of all of the work that Plaintiff and the FLSA Collective have performed.

27. As part of its regular business practice, Plaintiff alleges that PDQ has intentionally, willfully, and repeatedly engaged in a violation of the FLSA with respect to Plaintiff and the FLSA Collective. Plaintiff alleges this violation includes, but is not limited to willfully misclassifying Plaintiff and the members of the FLSA Collective as exempt from the protections of the FLSA.

28. PDQ is aware or should have been aware that federal law required them to pay non-exempt AMs, including Plaintiff and members of the FLSA Collective, an overtime premium for hours worked in excess of 40 per workweek.

29. Plaintiff alleges that PDQ' conduct has been widespread, repeated, and consistent throughout the United States.

COMMON FACTUAL ALLEGATIONS

30. Throughout their employment with PDQ, Plaintiff and the members of the FLSA Collective consistently worked more than 40 hours per workweek.

31. PDQ was aware that Plaintiff and the members of the FLSA Collective work or worked more than 40 hours per workweek, yet PDQ failed to pay them overtime compensation for hours worked over 40 in a workweek.

32. Plaintiff alleges the primary duties of Plaintiff and the members of the FLSA Collective are non-exempt.

33. The primary duties of Plaintiff and the members of the FLSA Collective do not differ substantially from the duties of non-exempt hourly paid employees.

34. Plaintiff and the members of the FLSA Collective do not exercise a meaningful degree of independent discretion with respect to the exercise of their duties.

35. Plaintiff and the members of the FLSA Collective do not have the discretion or authority to make any decisions with respect to matters of significance and are required to follow the policies, practices, and procedures set by Defendant.

36. Plaintiff and the members of the FLSA Collective do not have any independent authority to deviate from these policies, practices, and procedures.

37. Operating Partners and Area Managers, not AMs, were responsible for the overall performance of the stores and for coaching and developing store employees.

FIRST CAUSE OF ACTION

**Fair Labor Standards Act: Unpaid Overtime Wages
Brought on Behalf of Plaintiff and FLSA Collective Action Members**

38. Plaintiff realleges and incorporates by reference all allegations in all preceding Paragraphs as if they have been set forth herein.

39. Plaintiff consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

40. At all relevant times, Plaintiff and members of the FLSA Collective were engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

41. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to PDQ.

42. PDQ is an employer engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

43. At all times relevant, Plaintiff and members of the FLSA Collective have been employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

44. PDQ has failed to pay Plaintiff and members of the FLSA Collective the overtime wages to which they were entitled under the FLSA.

45. PDQ's alleged violations of the FLSA, as described in this Collective Action Complaint, have been willful and intentional. PDQ has failed to make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff and the members of the FLSA Collective.

46. Because PDQ's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255, and as extended by the parties' Tolling Agreement.

47. As a result of PDQ's alleged violations of the FLSA, Plaintiff and members of the FLSA Collective have suffered damages by being denied full overtime wages in accordance with 29 U.S.C. §§ 201, *et seq.*

48. As a result of the alleged unlawful acts of PDQ, Plaintiff and members of the FLSA Collective have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated members of the FLSA Collective, prays for the following relief:

- A. Final certification of the FLSA Collective consisting of Plaintiff and all members of the FLSA Collective;
- B. Unpaid wages and liquidated damages in the amount allowed by 29 U.S.C. §§ 201 *et seq.* and the supporting United States Department of Labor regulations;
- C. Pre-judgment interest;
- D. Attorneys' fees and costs of the action, including expert fees; and
- E. Such other relief as this Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all questions of fact raised by the Complaint.

Dated: January 15, 2018

Respectfully submitted,

/s/ Gregg I. Shavitz

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Telephone: (561) 447-8888

Facsimile: (561) 447-8831

Attorneys for Plaintiff and the Putative Collective

Exhibit A

CONSENT TO JOIN FORM

1. I consent to be a party plaintiff in a lawsuit against Defendant(s), **PDQ/Captiva MVP Restaurants**, and/or related entities and individuals in order to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. § 216(b).

2. I hereby designate the Shavitz Law Group, P.A. to represent me in bringing such claim, and to make decisions on my behalf concerning the litigation and settlement. I agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable.

3. I also consent to join any other related action against Defendant(s) or other potentially responsible parties to assert my claim and for this Consent Form to be filed in any such action.

DocuSigned by:

Signature

Carrie Funkhouser

Print Name

JS 44 (Rev. 11/15) District of Colorado Form

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
 CARRIE FUNKHOUSER, individually and on behalf of All others similarly situated,

(b) County of Residence of First Listed Plaintiff Lake County
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Shavitz Law Group, P.A., 1515 South Federal Hwy, Suite 404, Boca Raton, Florida 33432, p:(561) 447-8888; f:(561) 447-8831.

DEFENDANTS
 CAPTIVA MVP RESTAURANT PARTNERS, LLC D/B/A PDQ,

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)

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	PERSONAL INJURY <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	PERSONAL INJURY <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 PERSONAL PROPERTY <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<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	
REAL PROPERTY <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	CIVIL RIGHTS <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	PRISONER PETITIONS Habeas Corpus: <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 Other: <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	LABOR <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	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <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))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

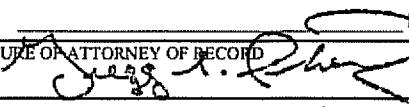
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 216(b) ACTION FOR UNPAID OVERTIME WAGES

Brief description of cause: _____

AP Docket

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: 01/15/2018 SIGNATURE OF ATTORNEY OF RECORD: 

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: [Former PDQ Employee Claims Assistant Managers Should Be Paid Overtime](#)
