

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BRIANNE GALE, individually and
on Behalf of All Others Similarly Situated,

Case No.:

Plaintiff,

v.

THE HERTZ CORPORATION,

Defendant.

COLLECTIVE ACTION COMPLAINT UNDER THE FAIR LABOR STANDARDS ACT

Plaintiff, BRIANNE GALE, (hereinafter referred to as “Plaintiff” or “GALE”) brings suit individually and on behalf of all others similarly situated, by and through the undersigned counsel, to recover money damages for unpaid overtime wages against Defendant, THE HERTZ CORPORATION, stating as follows:

INTRODUCTION

1. Defendant employed Plaintiff as an hourly, non-exempt “Manager Associate”, working from several locations throughout her employment.
2. Defendant willfully refused to pay overtime wages yet placing Plaintiff in the position of being forced to perform work off the clock in order to complete her job duties and satisfy her superiors, as well as to keep her job.
3. Each office location was given a labor budget, and managers were given bonuses based in part on profits and keeping expenses low, such as labor costs. Further, when Plaintiff worked alone, she was warned that the work had to get done or she would be reprimanded, disciplined, and terminated but that labor costs could not exceed 40 hours per week generally.

4. Defendant treated Plaintiff and all other Manager associates like salaried exempt employees, forcing, coercing, and permitting Plaintiff and all others similarly situated to routinely work overtime hours without pay, turning a “blind eye” to it, or at other times, coercing, requesting, and intimidating Plaintiff to work extra hours without pay and through lunch breaks.

5. This is an action to recover an employee’s unpaid overtime wages and liquidated damages under the Fair Labor Standards Act (“FLSA”), as amended, 29 U.S.C. §201, *et seq.* for a period going back not less than three years from the date of the filing of this lawsuit.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §1331 because this action involves a federal question under FLSA.

7. This Court has personal jurisdiction over this action because Defendant maintains permanent business operations in this district, and the damages and violations of the FLSA occurred in Pinellas County, Florida within this District.

8. GALE is a resident of Pinellas County, Florida within the jurisdiction of this Court.

9. Defendant, HERTZ Corporation is a Foreign, for Profit Corporation with its principal place of business located in Estero, Florida. Defendant may be served through its registered agent: CT Corp System, 1200 S. Pine Island Road, Plantation, Florida 33324.

10. Defendant at all times material hereto owned and operated from an office in Jacksonville, Florida located at 11818 High desert Court, Jacksonville, FL from where Plaintiff reported and was assigned work from.

11. Plaintiff is a covered employee for purposes of the FLSA, and was employed with Defendant from August, 2014 through December 7, 2015 as a staff accountant.

12. Venue is proper in this Court pursuant to 28. U.S.C. §1391(b) as all parties reside

in this district and the events giving rise to this claim occurred within this district.

13. Defendant is a covered employer within the definition of the FLSA and subject to the FLSA as upon information and belief it has revenues greater than \$500,000.00 and employs over 100 people.

14. Defendant is subject to the personal jurisdiction of this Court as per Florida's Long Arm Statute, F.S. 48.193(1)(a), and 48.193(2).

FLSA ALLEGATIONS

15. The FLSA provides that, with certain exceptions, employers must pay employees a minimum hourly wage for all compensable hours worked and overtime of at least one and one-half times their regular hourly rate of pay for any hours worked over forty in a week. *See* 29 U.S.C. §§ 206, 207(a)(1). The Act exempts certain employees from the minimum wage and overtime requirements. However, an "employer who claims an exemption from the FLSA has the burden of showing that the exemption applies" *See Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151 (9th Cir. 1983).

16. Hertz operates of approximately 3,210 staffed locations in the U.S. as of 2014, and upon information and belief, has now or had at one time, 1000 Manager Associates or Associate Managers employed. Given turnover in the position, Plaintiff estimates that the putative class is upwards of 1,500 present and former employees.

17. Plaintiff was hired as an hourly, non-exempt employee on or about September 24, 2014, and after a short few weeks of training which was completed in Clearwater, Florida she commenced with her duties as a Manager Associate in the Clearwater office.

18. Plaintiff's primary work duties involved customer service, paperwork, picking up customers, washing vehicles, running the office and assisting the other managers with the day to

day business operations.

19. Plaintiff did not supervise and direct the work of two or more full time employees or the equivalent.

20. From the very beginning, Plaintiff discovered that Defendant maintained a policy and practice of requiring her to work off the clock, along with others.

21. Plaintiff was asked routinely to work through lunches and the branch manager expected her to work through lunches.

22. Plaintiff was made aware from the Branch Managers at each of her locations that each location operated under a strict labor budget which affected the bonuses of managers, meaning that overshooting labor costs negatively impacted bonuses such that Plaintiff and other employees were asked, coerced, encouraged and required to work “off the clock” including though punched out lunches.

23. Further, Plaintiff discovered that managers would edit and “shave off” overtime hours from databases and time records to reduce labor costs and to avoid scrutiny by higher ups or their superiors. Each location had a strict limitation on labor costs.

24. Plaintiff routinely came in early and stayed late after the scheduled shift, and worked off the clock either because she was requested at times by managers to do so, or because in order to complete her job duties she had to put in the overtime hours.

25. Plaintiff was also warned not to record more than 40 hours by managers for the same reason that doing so, would negatively affect their bonuses and evaluations.

26. In May, 2015 Plaintiff was transferred to the Clearwater Beach location.

27. Again while in this location, she was told by management, her superiors, not to record or clock in more than 40 hours per week.

28. The offices were always short staffed, and when employees left or were terminated they were not replaced. As such, Plaintiff had to put in extra work hours to handle all the work that needed to be performed at the office, and which was expected by her superiors and managers.

29. If the work was not done and completed to HERTZ standards and satisfaction and customers not served, vehicles not ready etc., Plaintiff would be subject to discipline and termination and loss of bonus as well.

30. In the Clearwater Beach location, Plaintiff was again instructed to clock out and work.

31. She was asked to come in early and work but not clock in.

32. The Branch Manager in Clearwater was fired and never replaced, and Plaintiff found herself having to pick up much of the responsibilities and duties of the Branch Manager which again required her to put in substantially greater than 40 hours on a routine basis to keep the office running to HERTZ standards and satisfactions.

33. Plaintiff discovered and realized that she could not complete all the job duties and responsibilities especially in the Clearwater beach office with limited staff without working substantially more than 40 hours each week.

34. Plaintiff brings this action individually and on behalf of a putative class of similarly situated, present and former Manager Associates working for HERTZ Corp throughout the U.S., and defines the class as follows:

All persons who presently work for Hertz Corp anywhere in the U.S. under the titles of Manager Associate or Associate Manager, or who were employed in the 3 year period preceding the filing of this complaint, and who worked over 40 hours in any work week without being paid for all hours worked.

35. Plaintiff is willing and able to represent the interests of the putative class of similar situated employees.

36. As a former Manager associate, Plaintiff is qualified to represent the interests of the putative class.

37. The size of the class is so numerous such that proceeding on a collective basis is in the best interests of all parties and the court.

COUNT I
UNPAID OVERTIME DUE UNDER THE FLSA 29 U.S.C. SECTION 207

38. Plaintiff adopts and re-alleges paragraphs one (1) through thirty-seven (37) as if fully set forth herein.

39. At all relevant times, Defendant employed Plaintiff as an employee within the meaning of the FLSA.

40. Defendant willfully failed to pay overtime compensation due to Plaintiff for hours worked in excess of forty (40) hours per week.

41. Defendant maintained a de facto policy of requiring Manager Associates to work off the clock.

42. During some weeks, Plaintiff worked upwards of 60 hours without being paid any overtime.

43. Defendant's superiors knew she was working overtime without being paid and without being on the clock.

44. Plaintiff complained about the long hours and the shortage of staff to support her in the offices she worked.

45. Plaintiff found herself working alone in the office, without support staff and having

to completely run an office and handle all the responsibilities and customers.

46. Her superiors made it clear that she was expected to get the job done, whatever it takes to do it, but to not incur overtime labor costs. If she did not completed the job duties and keep up, and make the office ready for the next work day, she would be reprimanded, disciplined and ultimately lose her job.

47. Even when Plaintiff was told not to overtime, when the work needed to be done, which was routinely, management would turn a blind eye to the work hours, acquiescing in it the hours as long as she did not record more than 40 hours.

48. In the beginning, Plaintiff discovered that her manager would edit or shave overtime hours off.

49. Defendant's actions and conduct here were willful, knowing and conducted with a reckless disregard as to their obligations under the FLSA.

50. Defendant, through its managers, knew and were aware that Plaintiff was working off the clock overtime hours without pay.

51. The foregoing conduct constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(A), and 29 CFR Section 541.118, *et seq.*, such that a three (3) year statute of limitations applies.

52. Defendants acted with reckless disregard to the FLSA's overtime wage requirements, and in permitting, encouraging and requiring Plaintiff to work off the clock without being paid time and one half for all overtime hours worked.

53. Defendant did not and does not have a good faith basis under the FLSA for its unlawful pay practices, including its de facto off the clock work policy, such that Plaintiff and the class of similarly situated should be paid liquidated damages for all wages awarded in this case.

54. Due to the Defendant's FLSA violations, Plaintiff has suffered damages and is entitled to recover from Defendant the unpaid overtime compensation, an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b). Further, a three (3) year Statute of limitations applies due to Defendant's willful conduct.

WHEREFORE, Plaintiff requests from this Court the following relief;

- a. Award Plaintiff and all others who consent to their inclusion in this case, overtime compensation for all hours worked over forty (40) for in each work week at rates of one and one half times her regular rate of pay during the past three years;
- b. Appoint Claimant as the designated representative of the putative class and conditionally certify this action as a collective action under Section 216b of the FLSA;
- c. Award Plaintiff and all those who join this action, liquidated damages for a sum equal to that awarded for unpaid overtime;
- d. An award of interest on all unpaid sums;
- e. An order awarding attorneys' fees and costs and expenses of litigation pursuant to §216 of the FLSA; and,
- f. 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 and on all other issues so triable.

Dated this 2nd day of December, 2016.

/s/ Mitchell L. Feldman, Esq.
Mitchell L. Feldman, Esq.
Florida Bar No.: 0080349
MLF@feldmanlegal.us
18801 N. Dale Mabry Hwy #563
Lutz, FL 33548

Tel: (813) 639-9366 / Fax (813) 639-9376
Attorney for Plaintiff

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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BRIANNE GALE, Individually and on Behalf of All Others Similarly Situated,

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Mitchell L. Feldman, Esq., P.A., 18801 N. Dale Mabry Hwy., #563, Lutz, FL 33548; Tel: (813) 639-9366

DEFENDANTS

THE HERTZ CORPORATION,

County of Residence of First Listed Defendant Lee County (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

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, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act ("FLSA"), as amended, 29 U.S.C. §201, et seq. Brief description of cause: Violation of the FLSA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/02/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Mitchell L. Feldman, Esq.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Hertz Manager Associate Misclassified, Suit Says](#)
