

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

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| Eric Hawkins, individually and on behalf of all others similarly situated, | § | |
| | § | |
| | § | |
| Plaintiffs, | § | CIVIL ACTION NO. 3:18-cv-01196 |
| | § | |
| v. | § | |
| | § | |
| Compass Group USA, Inc., | § | COLLECTIVE ACTION PURSUANT TO 29 U.S.C. § 216(b) |
| | § | |
| Defendants. | § | JURY DEMANDED |
| | § | |

ORIGINAL COMPLAINT AND JURY DEMAND

I. INTRODUCTION

1. Plaintiff Eric Hawkins, former employee of Defendant Compass Group USA, Inc, brings this action for overtime compensation and other relief under the Fair Labor Standards Act, as amended, through 29 U.S.C. §216(b), on behalf of himself and on behalf of all other similarly situated current and former employees of Defendant.

II. PARTIES

2. Plaintiff Eric Hawkins is an individual residing in Dallas County, Texas.

3. Plaintiff Hawkins sues on behalf of himself and on behalf of all similarly situated current and former employees (“Class Members”) of Defendant who worked as Route Drivers or Delivery Drivers in Texas for Defendant, and who were not paid overtime premium pay by Defendant for work hours over 40 in each workweek of the relevant statutory time period.

4. Defendant Compass Group USA, Inc. is a Delaware-formed for-profit corporation, that is registered with and doing business in the state of Texas. According to the Texas Secretary of State records, its registered agent for purposes of service of summons is Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701-3136 USA.

III. JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1337 and by Title 29 U.S.C. §216(b). Defendant as an “employer” under the Fair Labor Standards Act is subject to the overtime provisions of the FLSA with respect to Plaintiff and the similarly situated employees. At all times pertinent to this Complaint, Defendant conducted an enterprise engaged in interstate commerce. At all times pertinent to this Complaint, Defendant regularly owned and operated a business engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s). Additionally, Plaintiff and Class Members were individually engaged in commerce and their work was essential to Defendant’s business. Venue is proper in this district under 28 U.S.C. § 1391, as all or a substantial portion of events giving rise to the claim occurred within the Dallas Division of the Northern District of Texas, which includes the worksite of Plaintiff and many of the Class Members.

IV. STATEMENT OF FACTS

6. Plaintiff Hawkins worked for Defendant from around February 2016 through around July 2016, as a Route Driver.

7. As one of Defendant’s business operations, Defendant operates throughout Texas and other states under the assumed name Canteen Vending Services.

8. Defendant, in relevant part, provides product, and services, vending machines at various commercial and residential third-party locations.

9. Hawkins worked for Defendant as a Route Driver, refilling vending machines with snack products and drinks. In addition to stocking his assigned vehicle with product for his routes at Defendant's warehouse, Hawkins drove a daily route in Dallas County and adjacent counties to the various vending machines.

10. Hawkins typically worked a work shift of 12-13 hours per day, 5 days per week. He therefore worked over 40 hours in one more workweeks during his employment with Defendant and in the 3 years prior to the date of filing of this suit.

11. Hawkins was paid with a combination of a set weekly wage amount (of \$600 per week, increasing to \$650 during his employment) and a commission based on drink and snack sales from the vending machines that he serviced.

12. Defendant did not pay him any overtime compensation for hours worked over 40 in each workweek in which he so worked for Defendant.

13. Hawkins also brings suit on behalf of Class Members, who can be described as follows:

Current and former employees of Compass Group USA, Inc., who worked as a Route Driver or Delivery Driver in Texas for Compass Group USA, Inc. at any time in the 3 years prior to _____, who worked over 40 hours in at least one workweek of such employment, and who were not paid an overtime premium for hours worked over 40 in such workweeks.

14. Upon knowledge and belief, like Hawkins, Class Members were also paid by a mixture of a flat weekly rate (similar to a "salary") and a commission based on the performance of the machines and sites that they serviced. Although the weekly rate and commission rate might vary from driver-to-driver based on the size of a driver's route and that driver's tenure with Defendant, the compensation structure for these drivers is materially similar in essential terms to

such a degree that it justifies allowing such Class Members to receive notice of this suit and opportunity to join this suit to assert their claims for unpaid overtime wages and other damages under the Fair Labor Standards Act. What is important is that Plaintiff and Class Members were not exempt from the overtime provisions of the FLSA, but they were not paid a time-and-one-half premium rate for hours worked over 40 in each workweek to which this lawsuit applies.

V. COUNT ONE - VIOLATION OF FAIR LABOR STANDARDS ACT

15. The acts described in the preceding paragraphs violate the Fair Labor Standards Act of 1938, which prohibits the denial of overtime compensation for hours worked in excess of forty (40) per workweek.

16. The violations committed by Defendant against Plaintiff and Class Members were committed willfully within the meaning of the Fair Labor Standards Act.

17. Defendants are liable for the unpaid overtime wages, liquidated damages in an amount equal to the unpaid overtime wages, expert witness fees, attorney fees, costs, and pre- and post-judgment interest at the highest rates allowed by law.

VII. JURY DEMAND

18. Plaintiff hereby demands a jury for all issues triable by jury.

PRAYER FOR RELIEF

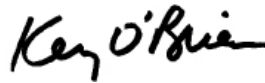
WHEREFORE, Plaintiffs and Class Members request that this Court:

- a. Cite Defendant and summons Defendant to appear;
- b. Certify a FLSA collective, similar to the following:

Current and former employees of Compass Group USA, Inc., who worked as a Route Driver or Delivery Driver in Texas for Compass Group USA, Inc. at any time in the 3 years prior to _____, who worked over 40 hours in at least one workweek of such employment, and who were not paid an overtime premium for hours worked over 40 in such workweeks.

- c. Order issuance of notice to join this suit, and issue all related orders necessary to effectuate proper notice to join this suit;
- d. Declare that Defendant's violations of the FLSA were willful;
- e. Grant judgment to all Plaintiffs, including opt-in Plaintiffs, for their claims of unpaid overtime wages as secured by the Fair Labor Standards Act, as well as liquidated damages in an amount equal to those unpaid overtime wages, as well as other damages under the FLSA;
- f. Award Plaintiffs, including opt-in Plaintiffs, their costs and reasonable attorney's fees;
- g. Award Plaintiffs, including opt-in Plaintiffs, pre- and post-judgment interest at the highest rates allowed by law; and
- h. Grant such further relief as the Court finds just and to which all Plaintiffs are entitled.

Respectfully submitted,



Kerry V. O'Brien

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Board Certified in Labor & Employment Law by the TBLS



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LOCAL COUNSEL FOR 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 THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Eric Hawkins, indiv. and on behalf of all others similarly situated

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

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

Kerry O'Brien - O'Brien Law Firm (lead counsel) 1011 Westlake Drive, Austin, TX 78746; ph (512) 410-1960

DEFENDANTS

Compass Group USA, Inc.

County of Residence of First Listed Defendant (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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): 29 U.S.C. §216(b)

Brief description of cause: overtime compensation and other relief under FLSA (collective action)

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, SIGNATURE OF ATTORNEY OF RECORD

05/10/2018 /s/ Kerry V. O'Brien

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT, APPLYING IFP, JUDGE, MAG. JUDGE

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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: [Former Delivery Driver Claims Compass Group USA Owes Unpaid Overtime](#)
