

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

KEVIN PHILLIPS and,)	
DASLYN HINTON)	
on behalf of themselves)	
all similarly situated persons,)	
)	CIVIL ACTION
)	FILE NO. _____
Plaintiff,)	
)	
v.)	
)	JURY TRIAL DEMANDED
)	
THE COCA-COLA COMPANY;)	
)	
Defendant)	
_____)	

COLLECTIVE ACTION COMPLAINT

Plaintiffs Kevin Phillips and Daslyn Hinton bring this action under the Fair Labor Standards Act (“FLSA”) on their own behalf and on behalf of all persons similarly situated to them. They respectfully seek collective action certification, unpaid overtime wages, liquidated damages, attorneys’ fees and costs, and other relief.

NATURE OF THE ACTION

1. This is a collective action for unpaid overtime wages under the FLSA. Plaintiffs bring the action on behalf of themselves and other current and former Talent Acquisition Specialists (including otherwise similarly situated persons who may have had other job titles, such as Talent Acquisition Partner) whom Defendant designated “non-employee workers” or similar terms, and who worked more than 40 hours during at least one work week within the three years prior to the filing of this Complaint. This group of individuals similarly situated to Plaintiffs is referred to collectively as “Specialists” or “the Collective” throughout the remainder of this Complaint.

2. Plaintiffs and other Specialists who choose to opt into this action pursuant to the FLSA, 29 U.S.C. § 216(b) (the “Collective Action”) are entitled to recover: (i) unpaid wages overtime wages, (ii) liquidated damages, and (iii) their attorneys’ fees and costs.

JURISDICTION AND VENUE

3. This is an action for unpaid overtime wages under the FLSA. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over this Complaint.

4. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this Complaint occurred within the Northern District of Georgia.

PARTIES

5. Phillips was employed as a Specialist with Defendant from on or about December 15, 2016 through April 25, 2018. Phillips was Defendant’s “employee” within the definition of the FLSA at all times relevant to this Complaint. Phillips’ Consent to Become a Party-Plaintiff to this action is Exhibit A to this Complaint.

6. Hinton was employed as a Specialist with Defendant from on or about December 5, 2015 through on or about March 17, 2017. Hinton was Defendant’s “employee” within the definition of the FLSA at all times relevant to this Complaint. Hinton’s Consent to Become a Party-Plaintiff to this action is Exhibit B to this Complaint.

7. Defendant The Coca-Cola Company (“TCCC”) is a Delaware corporation that is licensed to conduct business in Georgia and transacts business within the Northern District of Georgia. TCCC may be served with process via its registered agent: CT Corporation System, 289 Culver Street, Lawrenceville, Georgia 30046-4805.

8. TCCC was Plaintiffs' "employer," and the Collective's "employer," under the FLSA at all times relevant to this Complaint.

COLLECTIVE ACTION ALLEGATIONS

9. Plaintiffs bring this action on behalf of themselves and all other similarly situated employees pursuant to 29 U.S.C. § 216(b).

10. Plaintiffs and similarly situated individuals:

- a) are or were employed by Defendant as Specialists (titled Talent Acquisition Specialist, Talent Acquisition Partner, or other titles but all having materially similar jobs) at any time within the period beginning three years prior to filing this Complaint (the "relevant period");
- b) were classified by Defendant as "non-employee workers," "contractors," or other terms purporting to disclaim an employer-employee relationship; and
- c) worked more than 40 hours per week during some or all weeks within the relevant time period but did not receive overtime premium pay at one and one-half times their regular hourly rate as required by the FLSA.

11. Plaintiffs and similarly situated individuals fitting the above-described criteria are the proposed Collective for purposes of this Complaint.

12. Collective members were referred to by Defendant as Talent Acquisition Specialists, Talent Acquisition Partner, or similar titles and, in certain contexts, as “contractors” or “non-employee workers.” The term Specialist is used in this Complaint to describe all Collective members and does not exclude from Collective membership persons who are similarly situated to Plaintiffs and other Collective members except in regard to having a difference in job title.

13. Collective members were compensated by the hour.

14. The Collective is so numerous that individual joinder of all members is impracticable and would not further the intent of 29 U.S.C. § 216(b). The precise number of persons within the Collective is unknown, and the information permitting a determination of the number of Collective members lies within the sole possession of Defendant. However, there are, upon information and belief, at least 50 members of the Collective, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys, and/or knowledge of their claims.

15. Plaintiffs will fairly and adequately protect the interests of the members of the Collective and have retained counsel experienced and competent in wage and hour law and collective action litigation.

16. Questions of law and fact common to the members of the Collective predominate over questions that may affect only individual members because Defendant have acted on grounds generally applicable to all members of the Collective.

17. Members of the Collective are similarly situated under the FLSA because, *inter alia*:

- a) They held the same or materially similar positions with Defendant during the relevant period;
- b) They had the same or materially similar job duties during the relevant time period;
- c) Defendant classified them as “non-employee workers,” “contractors,” or similar terms purporting to disclaim and employer-employee relationship during the relevant time period;
- d) They worked more than 40 hours per week during one or more weeks within the relevant time period;

- e) Defendant failed to pay them overtime compensation at a rate of one and one-half times their regular rate of pay.

ADDITIONAL FACTUAL ALLEGATIONS

- 18. Defendant deemed Collective members “non-employee workers,” “contractors,” or other terms purporting to disclaim an employment relationship.
- 19. Defendant employed Collective members as Specialists.
- 20. Collective Members’ job was to support Defendant’ recruitment process.
- 21. Collective members’ primary duties were, generally: to enter data into the software systems Defendant used in connection with their recruiting processes; to gather resumes from job candidates based on hiring criteria set by Defendant’ hiring managers; and to arrange job interviews between Defendant’ hiring managers and the job applicants those managers wanted to interview.
- 22. Collective members reported directly to supervisors employed by Defendant.
- 23. Collective members worked at Defendant’ facilities, or sometimes from home with Defendant’s authorization and under Defendant’s remote supervision.
- 24. Defendant provided Collective members training for their jobs.

25. Defendant directed Collective members' day to day job activities including, without limitation: setting their regular work schedules, setting their rates of pay, assigning their work, determining their work location, and determining the computer software they used to perform their jobs.

26. Defendant provided materially all the investment in the facilities and equipment Collective members used to perform their jobs, including: providing the work facilities at its corporate campus, providing the software systems Collective members used while working; providing computers and phones; providing training, providing email and messaging software Collective members used to communicate in the course of their jobs.

27. Collective members made little if any investment in Defendant' business enterprise.

28. Collective members were compensated by the hour.

29. Collective members' wages depended on the number of hours they worked. Managerial skill and individual initiative were not material factors in Collective members' compensation because, *inter alia*, Collective members did not supervise other employees, their job duties were assigned and controlled by Defendant, and they were compensated based on the number of hours they worked.

30. Collective members worked substantial overtime hours, despite having been nominally assigned to work 40-hour per week schedules.

31. Defendant knew or should have known Collective members worked substantial overtime hours because, *inter alia*, one or more Collective members complained about Defendant's failure to pay overtime, and Defendant's supervisors had actual knowledge of the Collective members' work hours via their communications with Collective members.

32. Defendant directed some or all Collective members not to accurately report their overtime hours.

33. Defendant did not compensate Collective members for all the hours they worked beyond 40 per week at the FLSA's required overtime premium rate of 1.5 times their regular hourly rates.

34. Phillips reported that he was working overtime hours for which he was not properly compensated.

35. Defendant did not compensate Phillips for his overtime hours, even after he reported same.

COUNT I
Willful Failure Pay Overtime in Violation of the FLSA

36. Plaintiffs incorporate by reference all preceding paragraphs of the Complaint as if fully restated here.

37. Defendant engaged in a widespread pattern, policy and practice of violating the FLSA by failing to pay members of the Collective overtime at a rate of one and one-half times their regular rate for hours worked in excess of 40 per week.

38. At all relevant times, members of the Collective were engaged in commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

39. The overtime wage provisions set forth in the FLSA apply to Defendant and protect the members of the Collective.

40. At all relevant times, Defendant was an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

41. At all relevant times, Defendant employed members of the Collective within the meaning of the FLSA.

42. At all relevant times, Defendant has had gross revenues in excess of \$500,000.00.

43. Plaintiffs consent in writing to be parties to this action, pursuant to 29 U.S.C. § 216(b). Their consents to join are filed herewith.

44. As a result of Defendant's willful failure to compensate members of the Collective at a rate of one and one-half times their regular rate for hours worked in excess of 40 per week, Defendant have violated the FLSA, 29 U.S.C. §§ 201 et seq., including 29 U.S.C. §§ 207(a)(1) and 215(a).

45. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Because Defendant's violations of the FLSA were willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

46. Defendant did not make a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and the members of the Collective.

47. Due to Defendant's FLSA violations, Plaintiffs and the members of the Collective are entitled to recover from Defendant their unpaid overtime wages for all of the hours they worked in excess of 40 per week, an additional and equal amount as liquidated damages for Defendant's willful violations of the FLSA, prejudgment interest, reasonable attorneys' fees, and costs of litigation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and all members of the Collective who join this action demand a **TRIAL BY JURY** and the following relief:

- a) Designation of this action as a collective action and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all Collective members, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual

Consents to Join pursuant to 29 U.S.C. § 216(b) and tolling of the statute of limitations;

- b) A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
- c) Application of the FLSA's three-year statute of limitations;
- d) An award of unpaid overtime compensation due under the FLSA;
- e) An award of liquidated damages;
- f) An award of prejudgment and post-judgment interest;
- g) An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- h) Such other and further relief as this Court deems just and proper.

Respectfully submitted November 1, 2018.

LEGARE, ATTWOOD & WOLFE, LLC

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Counsel 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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KEVIN PHILLIPS

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Steven E. Wolfe, Legare, Attwood & Wolfe, LLC, 125 Clairemont Avenue, Suite 380, Decatur, GA 30030 (470) 823-4000, sewolfe@law-llc.com

DEFENDANTS

THE COCA-COLA COMPANY and COCA-COLA REFRESHMENTS USA, INC.

County of Residence of First Listed Defendant FULTON (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, 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, CIVIL RIGHTS, TORTS, 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 - 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): FLSA, 29 U.S.C. § 201, et seq.

Brief description of cause: Failure to pay overtime

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 11/01/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Steven E. Wolfe, 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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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: [Collective Action Alleges Coca-Cola Failed to Pay Talent Acquisition Specialists Proper OT Wages](#)
