

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TAMARA BARRUS, CAROLYN CAULKINS,
JEFFREY LITTLE, and MICHAEL D'AGOSTINO
*on behalf of themselves and all other employees similarly
situated,*

Plaintiffs,

v.

DICK'S SPORTING GOODS, INC., AND
GALYAN'S TRADING COMPANY, INC.,

Defendants.

AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL

Civil Action No.

05-CV-6253CJS

NATURE OF CLAIM

1. This is a proceeding for declaratory relief and monetary damages to redress the deprivation of rights secured to Plaintiffs, Tamara Barrus, Carolyn Caulkins, Jeffrey Little and Michael D'Agostino ("Named Plaintiffs") individually, as well as all other employees similarly situated, under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA"); under the New York Labor Law; and under the laws of the various States in which Defendants do business; for failure to pay promised wages and other violations to Named Plaintiffs, as well as all other employees similarly situated.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331, 28 U.S.C. §1343 (3) and (4) conferring original jurisdiction upon this Court of any civil action to recover damages or to secure equitable relief under any Act of Congress providing for the protection of civil rights; under 28 U.S.C. § 1337 conferring jurisdiction of any civil action arising under any Act of Congress regulating interstate commerce; and under the Declaratory

Judgment Statute, 28 U.S.C. § 2201.

3. This Court's supplementary jurisdiction of claims arising under New York State Labor Law is also invoked.

4. Venue is appropriate in the Western District of New York since the allegations arose in this district and the Plaintiffs reside in this district.

CLASS ACTION ALLEGATIONS

5. The claims arising under New York State Labor Law are properly maintainable as a class action under Federal Rule of Civil Procedure 23.

6. The class action is maintainable under subsections (1), (2) and (3) of Rule 23(b).

7. The class size is believed to be over 50 employees.

8. The Named Plaintiffs will adequately represent the interests of the class members because they are similarly situated to the class members and their claims are typical of, and concurrent to, the claims of the other class members.

9. There are no known conflicts of interest between the Named Plaintiffs and the other class members.

10. The class counsel, Dolin, Thomas & Solomon LLP, is qualified and able to litigate the class members' claims.

11. The class counsel concentrates its practice in employment litigation, and its attorneys are experienced in class action litigation, including class actions arising under federal and state wage and hour laws.

12. Common questions of law and fact predominate in this action because the claims of all class members are based on whether the Defendants' practice of not paying

nonexempt employees for all hours worked and/or statutory overtime for hours worked over 40 per week violates New York State Labor Law.

13. The class action is maintainable under subsections (2) and (3) of Rule 23(b) because the Plaintiffs seek injunctive relief, common questions of law and fact predominate among the class members and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

PARTIES

A. Defendants

14. Defendant Dick's Sporting Goods, Inc.'s ("Dick's") and Defendant Galyan's Trading Company, Inc.'s ("Galyan's"; and collectively with Dick's, "Defendants") are joint employers.

15. Upon information and belief, the Defendants employ or employed the Named Plaintiffs and putative class members in this action.

16. The Defendants are an enterprise engaged in the operation of clothing and sporting goods stores.

B. Plaintiffs

Named Plaintiffs

17. Named Plaintiff Tamara Barrus is a resident of the State of New York, residing at [REDACTED].

18. At all relevant times, Named Plaintiff Barrus was an employee under the FLSA and the New York Labor Law.

19. Named Plaintiff Carolyn Caulkins is a resident of the State of New York, residing at [REDACTED].

20. At all relevant times, Named Plaintiff Caulkins was an employee under the FLSA and the New York Labor Law.

21. Named Plaintiff Jeffrey Little is a resident of the state of Pennsylvania, residing at [REDACTED].

22. At all relevant times, Named Plaintiff Little was an employee under the FLSA and the New York Labor Law.

23. Named Plaintiff Michael D'Agostino is a resident of the State of New York, residing at [REDACTED].

24. At all relevant times, Named Plaintiff D'Agostino was an employee under the FLSA and the New York Labor Law.

Class Members

25. The Class Members are those employees of Defendants who were suffered or permitted to work by Defendants and not paid their regular or statutorily required rate of pay for all hours worked.

26. The class (hereinafter referred to as those individuals "similarly situated" or "class members") is defined as those employees who fall within one of the following classes:

CLASS I: Current and former hourly employees of Defendants whose pay was subject to an automatic deduction for a lunch break even when such employees worked through their lunch.

Subclass IA: Current and former hourly employees of Dick's:

1. during the weeks in which they were not notified of the automatic lunch break deduction and whose pay was subject to that deduction;
2. whose pay was subject to an automatic lunch break deduction even if such employees were aware of the deduction because Dick's policies did not accurately record the actual hours

worked.

Subclass IB: Current and former hourly employees of Galyan's:

1. during the weeks in which they were not notified of the automatic lunch break deduction and whose pay was subject to that deduction;
2. whose pay was subject to an automatic lunch break deduction even if such employees were aware of the deduction because Defendants' policies did not accurately record the actual hours worked;

CLASS II: Current and former hourly employees of Defendants who were interrupted during their lunch breaks and not compensated for working during their lunch.

Subclass IIA: Current and former hourly employees of Dick's who were interrupted during their lunch breaks, and thus did not take one half-hour of uninterrupted lunch, and were not compensated for working during their lunch;

Subclass IIB: Former hourly employees of Galyan's who were interrupted during their lunch breaks, and thus did not take one half-hour of uninterrupted lunch, and were not compensated for working during their lunch;

CLASS III: Current and former hourly employees of Dick's who were suffered or permitted to work more than 40 hours in one week and then permitted to take time off in another week or receive "retro pay" in the following week at straight time rates, thus depriving employees of overtime compensation in the week it was earned.

FACTUAL BACKGROUND

27. The Defendants' automatic lunch break deduction is a payroll policy, practice and/or system which deducts from Class Members' compensable time scheduled "non-working" break periods.

28. However, individuals often work through their scheduled breaks or are interrupted during their breaks so that they do not take the full time allowed for the break

and deducted in accordance with the policy.

29. Named Plaintiffs were subject to the policy.

30. Named Plaintiffs worked through their breaks.

31. Nevertheless, by operation of the policy, Named Plaintiffs' compensable time was impermissibly reduced under the policy.

32. All class members are subject to the policy and are not fully compensated for work they perform during breaks.

33. If Plaintiffs' hours had been properly calculated, the time spent working through the breaks would have resulted in the Plaintiffs' qualifying for overtime compensation.

34. Among the relief sought, Plaintiffs seek injunctive relief to prevent the Defendants from continuing the illegal policy and practice perpetuated pursuant to the policy.

35. Throughout their tenure with Dick's, class members of Class III and all other employees similarly situated frequently worked in excess of forty hours in a week.

36. Class members of Class III and all other employees similarly situated were not compensated at the statutory overtime rate for hours they worked in excess of forty.

37. For example, class members of Class III and all other employees similarly situated were suffered or permitted to work more than 40 hours in one week and then permitted to take time off in another week or receive "retro pay" in the following week at straight time rates, thus depriving employees of overtime compensation in the week it was earned.

38. Defendants suffered and permitted class members to work those hours and

Defendants were aware that such employees did in fact work over forty hours in a week.

39. Defendants however, refused to pay class members overtime for those hours in excess of forty.

40. It is Defendants' policy and practice to not compensate class members at a rate of one-and-a-half times their regular rate of pay for all hours worked in excess of forty.

41. Defendants' policy and practice is not to ensure that it pays overtime according to the law.

42. The Defendants' practice is to be deliberately indifferent to these violations of the statutory overtime requirements.

43. This failure to pay overtime as required by the FLSA and the New York Labor Law was willful.

FIRST CAUSE OF ACTION
FLSA

44. Plaintiffs reallege the above paragraphs as if fully restated herein.

45. Defendants willfully violated their obligations under the FLSA and are liable to Plaintiffs.

SECOND CAUSE OF ACTION
New York Labor Law

46. Plaintiffs reallege the above paragraphs as if fully restated herein.

47. Defendants willfully violated their obligations under the New York Labor Law and are liable to Plaintiffs.

WHEREFORE, Plaintiffs demand judgment against Defendants in their favor and that they be given the following relief:

- (a) an order preliminarily and permanently restraining Defendants from engaging in the aforementioned pay violations;
- (b) an award of the value of Plaintiffs' unpaid wages, including fringe benefits;
- (c) liquidated damages under the FLSA equal to the sum of the amount of wages and overtime which were not properly paid to Plaintiffs;
- (d) an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Plaintiffs' rights;
- (e) an award of pre- and post-judgment interest; and
- (f) such other and further legal or equitable relief as this Court deems to be just and appropriate.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact.

Dated: November 10, 2006

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