

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION at LEXINGTON  
CASE No. 5:14-CV-\_\_\_\_\_

_____	)	
HOWARD DeCORS,	)	
ARTHUR WATKINS,	)	
	)	
Plaintiffs	)	<b>Complaint</b>
	)	
vs.	)	
	)	
S & S FIRESTONE, INC.,	)	
	)	
Defendant	)	
_____	)	

Plaintiffs Howard DeCORS and Arthur Watkins for their complaint against S & S Firestone, Inc. states as follows:

**I**

**Nature of the Action**

1. This is an action pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), as amended, and KRS Chapter 337 seeking recovery of unpaid overtime compensation, liquidated damages, attorney’s fees, costs, litigation expenses and prejudgment interest.

**II**

**Jurisdiction and Venue**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because plaintiffs’ claims raise questions of federal law. The Court’s supplemental jurisdiction is properly exercised pursuant to 28 U.S.C. § 1367, because plaintiff’s federal and state law claims arise from and relate to a

common nucleus of operative and material fact. Venue is proper in this because plaintiffs were employed by defendant in Fayette County, Kentucky, defendant maintains its principal place of business in Fayette County, Kentucky and plaintiffs' causes of action accrued in Fayette County, Kentucky.

### **III**

#### **Parties**

3. Plaintiff Howard DeCors is a resident of Fayette County, Kentucky. He has been, at all times pertinent to this case, and is employed by defendant in Fayette County, Kentucky.

4. Plaintiff Arthur Watkins is a resident of Montgomery County, Kentucky. He has been, at all times pertinent to this case, and is employed by defendant in Fayette County, Kentucky.

5. Defendant S & S Firestone, Inc. is a Kentucky corporation and has its principal place of business in Fayette County, Kentucky. Its agent for service of process is Paul Swentzel, 1475 Jingle Bell Lane, Lexington, KY 40509.

### **IV**

#### **Facts Giving Rise to the Lawsuit**

6. Defendant is a tire wholesaler whose business is materially and integrally involved and engaged in activities affecting interstate commerce.

7. Defendant was, at all times pertinent to this case, and is the employer of plaintiffs within the meaning of 29 U.S.C. § 203(d) and KRS 337.010(1)(d).

8. Plaintiffs were, at all times pertinent to this case, and are, each of them, an “employee” of defendant within the meaning of 29 U.S.C. § 203(e) and KRS 337.010(1)(e).

9. At all times pertinent to this case and at present, DeCors and Watkins have been and are employed by defendant in the capacity of internal salespersons.

10. As internal salespersons, the job duties of DeCors and Watkins consisted of the wholesale sales of tires to individual and specific customers.

11. As internal salespersons, the job duties of DeCors and Watkins did not include the retail sales of tires or any other product on behalf of defendant.

12. As internal salespersons, the job duties of DeCors and Watkins did not include matters or tasks directly related to management policies of general business operations of defendant and/or any of its customers.

13. As internal salespersons, the job duties of DeCors and Watkins did not include responsibilities for general sales promotion or marketing activities aimed at promoting customer sales generally.

14. Throughout their employment by defendant, both DeCors and Watkins have been required to and have regularly worked in excess of forty (40) hours per workweek.

15. At all times pertinent to this case, defendant knew, required, approved and/or suffered both DeCors and Watkins to work in excess of forty (40) hours per workweek.

16. Up to June 2014 and for a period of time exceeding five (5) years beforehand, DeCors was paid a base salary regardless of the hours worked. Defendant identified on DeCors' payroll records an hourly rate of \$ 21.25.

17. Up to June 2014 and for a period of time exceeding five (5) years beforehand, Watkins was paid a base salary regardless of the hours worked. Defendant identified on Watkins' payroll records an hourly rate of \$22.50.

18. At all times pertinent to this case and for a time period exceeding five (5) years prior to the filing of this lawsuit, both DeCors and Watkins were employed by and performed work for defendant in positions that were not exempt from the overtime pay requirements established by the FLSA and/or KRS Chapter 337.

19. In June 2014, defendant acknowledged that neither DeCors nor Watkins were exempt from the overtime pay requirements established by the FLSA and KRS Chapter 337.

20. Defendant required DeCors and Watkins to work more than forty (40) hours per workweek without paying them overtime compensation even though both were employed in non-exempt positions.

21. Defendant willfully and intentionally required, approved and/or suffered both DeCors and Watkins to work more than forty (40) hours per workweek, while willfully and unlawfully designating their positions as exempt from the overtime compensation requirements established by the FLSA and KRS Chapter 337.

## V

### Causes of Action

#### Count 1 – Failure to Pay Overtime In Violation of FLSA

22. Plaintiffs incorporate and reallege herein the preceding paragraphs 1 – 21 as if fully set forth herein.

23. Under the FLSA, 29 U.S.C. § 207, *et seq.*, defendant was and is required to compensate both DeCors and Watkins for all hours worked in excess of forty (40) hours per workweek.

24. The FLSA requires that overtime compensation be paid at a rate not less than one and one-half (1.5) the regular rate of pay of DeCors and/or Watkins.

25. For purposes of calculating overtime compensation, the FLSA provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

26. Up to June 2014 and for a time period exceeding the prior five (5) years, defendant required, suffered and/or permitted both DeCors and Watkins to work in excess of forty (40) hours per workweek but did not compensate either for such overtime work.

27. As a result of defendant's policy and practice of failing to pay overtime compensation, both DeCors and Watkins have been damaged in that neither has been paid by defendant the overtime compensation that each has earned.

28. Defendant's failure to pay DeCors and Watkins the overtime compensation each earned was a willful and intentional violation of the FLSA.

**Count 2 – Failure to Pay Overtime In Violation of KRS Chapter 337**

29. Plaintiffs incorporate and reallege herein the preceding paragraphs 1 – 28 as if fully set forth herein.

30. Under KRS Chapter 337, defendant was and is required to compensate both DeCors and Watkins for all hours worked in excess of forty (40) hours per workweek.

31. KRS Chapter 337 requires that overtime compensation be paid at a rate not less than one and one-half (1.5) the regular rate of pay of DeCors and/or Watkins.

32. For purposes of calculating overtime compensation, KRS Chapter 337 provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

33. Up to June 2014 and for a time period exceeding the prior five (5) years, defendant required, suffered and/or permitted both DeCors and Watkins to work in excess of forty (40) hours per workweek but did not compensate either for such overtime work.

34. As a result of defendant's policy and practice of failing to pay overtime compensation, both DeCors and Watkins have been damaged in that neither has been paid by defendant the overtime compensation that each has earned.

35. Defendant's failure to pay DeCors and Watkins the overtime compensation each earned was a willful and intentional violation of KRS Chapter 337.

## **VI**

### **Demand for Judgment**

Wherefore, plaintiffs Howard DeCors and Arthur Watkins demand judgment against defendant as follows:

(1) entry of a judgment in their favor and against defendant requiring defendant to pay each of them the overtime compensation due and owing each of them along with an additional equal amount as liquidated damages as shown by the evidence at trial;

(2) entry of a judgment awarding each of them prejudgment interest on his unpaid overtime compensation along with the costs, litigation expenses and reasonable attorney's fees pursuant to the FLSA, KRS 337.385 and Fed.R.Civ. Pro. 54; and,

(3) the grant of all other relief to which each of them is shown to be entitled.

**Demand for Jury Trial**

Plaintiffs demand trial by jury on all issues herein so triable.

Respectfully submitted,

By: /s/ Robert L. Abell

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