

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SHAWN LENAHAN and JOSEPH KAPCSOS,
On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

Case No. 02-00045/MLC

v.

SEARS, ROEBUCK and CO.,

Defendant.

ANSWER TO CLASS AND COLLECTIVE ACTION COMPLAINT

NOW COMES Defendant Sears, Roebuck and Co., by and through its undersigned attorneys Vedder, Price, Kaufman & Kammholz, and as its Answer to the Class and Collective Action Complaint filed herein, states as follows:

ALLEGATION NO. 1:

Plaintiffs Shawn Lenahan and Joseph Kapcsos (collectively, "Plaintiffs") bring this action against Defendant Sears Roebuck and Co. ("Sears" or the "Company"). The Plaintiffs are current Sears hourly employees who have worked as Sears Product Repair Service Associates ("repair associates"). Repair Associates are not exempt from the overtime provisions of the FLSA and/or the respective wage and hour laws of the states in they have been employed ("non-exempt employees"). Plaintiffs allege on behalf of themselves and all similarly situated persons that Sears has willfully engaged in a pattern and practice of unlawful conduct by failing to record, credit or compensate Sears' non-exempt repair associates, including the Plaintiffs and members of the prospective Class and Subclass, for all of the time Sears requires or permits such employees to perform work.

ANSWER:

Defendant admits that Plaintiffs are current, non-exempt hourly employees who are employed as "Service Technicians" but denies the remaining allegations of Allegation No. 1.

ALLEGATION NO. 2:

Defendants' practices are in direct violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, *et seq.*, and the Wage and Hour Law of the State of New Jersey, N.J.S.A., 34:11-5A, *et seq.* Plaintiffs seek injunctive and declaratory relief, and compensation and credit for all unrecorded and uncompensated work required or permitted by Sears, liquidated and/or other damages as permitted by law, and attorneys' fees and costs.

ANSWER:

Defendant admits that Plaintiffs purport to seek relief under the cited statutes but denies that they are proper plaintiffs, denies any liability thereunder and denies the remaining allegations of Allegation No. 2.

ALLEGATION NO. 3:

Sears has engaged in the practice of requiring or permitting its hourly non-exempt repair associates – including the Plaintiffs and prospective Class members (hereinafter "Plaintiff Class" or "Class") – to perform work for the benefit of Sears, and which is required or permitted by Sears, but for which Sears does not record, credit or compensate its non-exempt hourly employees. This practice is referred to as requiring employees to work "off-the-clock."

ANSWER:

Defendant denies the allegations contained in Allegation No. 3.

ALLEGATION NO. 4:

Sears' practice of requiring or permitting its hourly non-exempt employees to work off-the-clock is in violation of the FLSA because members of the Plaintiff Class (hereinafter "FLSA Class") perform work in excess of 40 hours per week without receiving compensation at one and one-half times the regular hourly rate (hereinafter "overtime compensation").

ANSWER:

Defendant denies the allegations contained in Allegation No. 4.

ALLEGATION NO. 5:

Sears' practice of requiring or permitting its hourly non-exempt employees to work off-the-clock is in violation of the New Jersey Wage and Hour Law, N.J.S.A., §§34:11-56a, *et seq.*, because members of the Plaintiff Class who have

