

FILED
JAMES N. CORBETT
CLERK SUPERIOR COURT
IN THE UNITED STATES DISTRICT COURT

96 OCT 11 PM 3:55
DISTRICT OF ARIZONA

DEC 11 10 14 AM '95

MYRNA HENLEY, KAREN SCHWAB, and
JOHN GIACOLETTI, on behalf of themselves
and others similarly situated,

Plaintiffs,

vs.

STATE OF ARIZONA, DEPARTMENT OF
REVENUE,

Defendant.

No. CIV-94-739-TUC-WDB

CONSENT OF INDIVIDUAL
EMPLOYEE TO BECOME PARTY
PLAINTIFF IN COLLECTIVE
ACTION UNDER 29 USC § 216
(B)

315126

The undersigned, Georgia Ann Hudak [printed or typed name] an employee or former
employee of the defendant State of Arizona, Department of Revenue, hereby consents to become
a party plaintiff in the above action.

DATED this 6th day of December 1995,

Georgia Ann Hudak
Signature

PO Box 5372, GLENDALE, AZ, 85312
Address, City, State, Zip

355-36-5004
Social Security Number

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M-A

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8 Attorney for Plaintiffs

FILED
JAMES N. CORBETT
CLERK SUPERIOR COURT

96 OCT 11 PM 3:50

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BY: E. BRADFORD,
DEPUTY

DISTRICT COURT
DISTRICT OF ARIZONA

BW

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

8 MYRNA HENLEY, KAREN SCHOLZ, and
9 JOHN GIACOLETTI, on behalf of themselves
and others similarly situated,

10 Plaintiffs,

11 vs.

12 STATE OF ARIZONA, DEPARTMENT OF
REVENUE,

13 Defendant.

No. CIV-94-739-TUC-WDB

315126

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT,
COMPENSATION UNDER THE FAIR
LABOR STANDARD ACT AND OTHER
RELIEF

Jury Trial Demanded

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16 1. The plaintiffs, MYRNA HENLEY, KAREN SCHOLZ, and JOHN
17 GIACOLETTI are employees or have been employees of the defendant State of
18 Arizona, Department of Revenue and they bring this action on behalf of themselves
19 and other employees similarly situated. This is an action for a declaratory judgment
20 under 28 U.S.C. §§ 2201 and 2202 and for compensation and other relief under the
21 Fair Labor Standards Act, as amended, 29 U.S.C. §§ 216(b).

22 JURISDICTION AND VENUE

23 2. Jurisdiction of this action is conferred on this Court by 29 U.S.C. §§
24 216(b), 28 U.S.C. §§ 1331 and 28 U.S.C. §§ 1337. Venue lies within this district
25 pursuant to 28 U.S.C. § 1391.

26 PARTIES

27 3. Plaintiffs are residents of the City of Tucson, County of Pima, State of
28 Arizona and are employed by the Defendant, State of Arizona, Department of

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(Handwritten signature)

(Handwritten signature)

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1 Revenue. The additional persons who may become plaintiffs in this action are also
2 employees or were employees of the defendant State of Arizona in the Department
3 of Revenue during the calendar year 1993 and earlier, and they each have or will
4 give his or her written consent to be a party plaintiff in this section pursuant to 29
5 U.S.C. §216(b).

6 4. Defendant State of Arizona, Department of Revenue, is a political
7 subdivision of the State of Arizona, which is a "state" within 29 U.S.C. § 203(c),
8 "public agency" within 29 U.S.C. § 203(x), and an "employer" within 29 U.S.C. §
9 203(d).

10 CLAIMS FOR RELIEF

11 5. At all times material herein, the plaintiffs have been entitled to the
12 rights, protections and benefits provided under the Fair Labor Standards Act, as
13 amended, 29 U.S.C. §201, *et seq.*, (hereafter referred to as "FLSA").

14 6. At all times material herein, being the calendar year 1993 and earlier,
15 the plaintiffs have worked hours in excess of the hourly levels specified in the
16 FLSA, 29 U.S.C. § 207. As a result, at all times material herein, plaintiffs have
17 been entitled to overtime compensation at a rate of not less than one and one-half
18 times their regular rate of pay for the hours of overtime they have worked.

19 7. Section 207(o)(2)(A)(i) of the FLSA provides that in a situation where
20 public agency employees have designated a representative, the public agency
21 employer may not award compensatory time off in lieu of paying cash for overtime
22 work unless it does so pursuant to an agreement with the employees' representative.
23 Pub. L. 99-150, § 2(a). The implementing regulations of the U.S. Department of
24 Labor contain the same requirements and restrictions. 29 C.F.R. § 553.20, *et seq.*

25 8. Plaintiffs have no designated Local representative under Section
26 207(o)(2)(A)(i) of the FLSA for the purpose of discussing and possibly entering into
27 an agreement regarding the assignment and use of FLSA compensatory time in lieu
28 of paying cash for overtime work. For the periods in questions, plaintiffs entered no

1 written agreement waiving the obligation under the FLSA to pay cash as opposed to
2 compensatory time for overtime hours worked by the plaintiffs.

3 9. Contrary to the requirements of Section 207 of the FLSA, particularly
4 Section 207(o)(2)(A) subsections (i) and (ii), the defendant has unilaterally imposed
5 a compensatory time arrangement on the plaintiffs. In engaging in these unilateral
6 actions, the defendant has willfully violated the FLSA and the applicable
7 regulations of the U.S. Department of Labor, and deprived the plaintiffs of the
8 rights, protections and entitlements granted to them under this federal statute and
9 the regulations.

10 10. The defendant has also willfully violated Section 207 of the FLSA,
11 including in particular Section 207(o)(2)(A)(ii), by insisting as a condition of
12 employment that all persons hired since April 16, 1986 must "agree" to waive their
13 rights to FLSA overtime pay and instead accept the defendant's imposition of
14 compensatory time in lieu of paying cash for overtime work. Such waivers, made
15 under duress and coercion, are void and without any force and effect. In engaging
16 in these actions, the defendant has willfully violated the FLSA and applicable
17 regulations of the U.S. Department of Labor, and deprived the plaintiffs of the
18 rights, protections and entitlements granted to them under this federal statute and
19 the regulations.

20 11. As a result of the defendant's violations of the FLSA and the
21 applicable regulations of the U.S. Department of Labor, there has become due and
22 owing to each of the plaintiffs amounts of overtime pay under the FLSA. The
23 employment and work records for each plaintiff are in the exclusive possession,
24 custody and control of the defendant, and the plaintiffs are unable to state at this
25 time the exact amounts owing to each of them. The defendant is under a duty
26 imposed by the FLSA, 29 U.S.C. §211(c), and the regulations of the U.S.
27 Department of Labor to maintain and preserve payroll and other employment
28

1 records with respect to plaintiffs and other employees similarly situated from which
2 the amounts of defendant's liability can be ascertained.

3 12. Plaintiffs seek a jury trial to the extent permitted by law.

4 WHEREFORE, the plaintiffs, on their own behalf and on behalf of others
5 similarly situated, pray that this Court:

6 (a) Enter a declaratory judgment declaring that the defendant has
7 willfully and wrongfully violated its statutory obligations, and deprived the
8 plaintiffs of their rights, protections and entitlements under law, as alleged
9 herein;

10 (b) Enter a permanent injunction restraining and preventing the
11 defendant from withholding the compensation that is due each of the
12 plaintiffs and from further violating their rights under law;

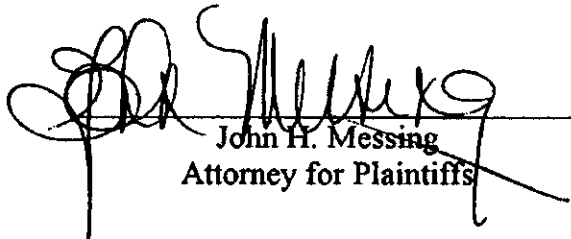
13 (c) Order a complete and accurate accounting of all the
14 compensation to which the plaintiffs are entitled;

15 (d) Award each plaintiff monetary damages in the form of back
16 pay compensation, liquidated damages equal to their unpaid compensation,
17 plus interest;

18 (e) Award plaintiffs their reasonable attorneys' fees to be paid by
19 the defendant, and the costs and disbursements of this action; and

20 (f) Grant such other relief as may be just and proper.

21 Respectfully submitted this 30 day of December 1994,

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24 
25 John H. Messing
26 Attorney for Plaintiffs
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