

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli

Brian S. Schaffer

Frank J. Mazzaferro

475 Park Avenue South, 12th Floor

New York, New York 10016

Telephone: (212) 300-0375

12 CIV 8333

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

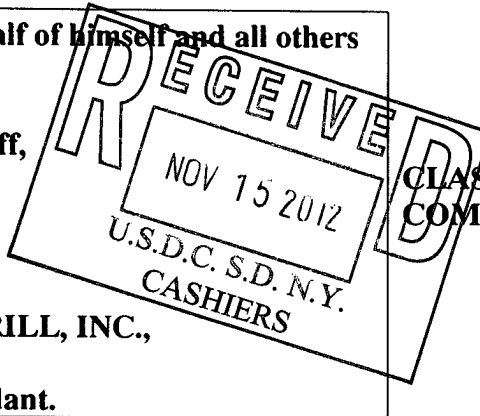
**MAXCIMO SCOTT on behalf of himself and all others
similarly situated,**

Plaintiff,

-against-

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.



Plaintiff Maxcimo Scott (“Plaintiff”), individually and on behalf of all others similarly situated, as class representative, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation for Plaintiff and his similarly situated co-workers, salaried Apprentices and/or Assistant Managers (hereinafter “Apprentices”), who work or have worked at the Chipotle Mexican Grille Restaurants nationwide (collectively “Chipotle”).

2. Chipotle is a chain of Mexican style Restaurants known for its’ natural ingredients and assembly line production. According to their website, Chipotle considers itself a “fast-casual” dining establishment, where “customers expect food quality that’s more in line with full-service restaurants, coupled with the speed and convenience of fast food.”

http://www.chipotle.com/en-us/company/about_us.aspx.

3. According to Chipotle's Form 10-K for the fiscal year ending on December 31, 2011, Chipotle operated 1,350 restaurants, employed 2,570 salaried employees and 28,370 hourly employees. For the fiscal year 2011, Chipotle earned approximately \$2.27 billion dollars in revenue.

4. Chipotle's restaurants are designed around the concept of an open kitchen, where employees are constantly engaging customers and preparing meals in front of customers in an assembly line production. In fact, Chipotle states in its' 2011 form 10-K that, "All of our restaurant employees are encouraged to interact with customers no matter their job, whether preparing food or serving customers..." Chipotle further states that its' "employees spend hours preparing our food onsite."

5. At Chipotle, Apprentices are required to assist in service while on duty. Rather than managing and supervising the restaurant, Apprentices typically spend the majority of their shifts working the assembly line, filling orders for customers, grilling, operating the cash register, and preparing items for the line including salsa, guacamole, chopped vegetables and other food items.

6. Regardless of the amount of hours worked, Apprentices are compensated by an average salary starting under \$40,000.00 per year and do not receive overtime compensation. In that regard, Defendants classify Apprentices as a managerial position, and thus purportedly exempt from overtime pay. However, as outlined above, an Apprentice's primary duties are similar to those performed by hourly employees and are thus not exempt from the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA") and New York Labor Law ("NYLL"), Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*

7. Upon information and belief, Defendant applied the same employment policies, practices, and procedures to all similarly situated employees at the nationwide chain of Chipotle restaurants.

8. Plaintiff brings this action on behalf of himself and similarly situated current and former employees who elect to opt-in to this action pursuant to the FLSA, and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiff and other similarly situated employees of their lawfully earned wages.

9. Plaintiff also brings this action on behalf of himself and all similarly situated current and former employees pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the NYLL, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

THE PARTIES

Plaintiff

Maxcimo Scott

10. Maxcimo Scott (“Scott”) is an adult individual who is a resident of Bronx, New York.

11. From in or around 2007 to 2009 Scott was employed by Defendant as a Crew Member at the Chipotle located at 9 Saint Marks Place, New York, New York 10003 (“St. Marks”). From in or around 2009 to October 17, 2011, Scott was employed as an Apprentice at the St. Marks Chipotle. From in or around October 17, 2011 to the present, Scott has been employed as a General Manager at the Chipotle located at 55 E 8th Street, New York, New York 10003.

12. As an Apprentice, Scott frequently performed the functions of an hourly Crew member on the line. Defendant knew about this practice and encouraged this practice in order to reduce labor costs.

13. Scott frequently worked over 40 hours per week with a maximum of approximately 55 hours per week.

14. Pursuant to Chipotle's policy and pattern or practice, Chipotle did not pay Scott premium overtime pay when he worked as an Apprentice for their benefit in excess of 40 hours in a workweek.

15. Scott is a covered employee within the meaning of the FLSA and the NYLL.

16. A written consent form for Scott is being filed with this Class Action Complaint.

Defendant

Chipotle Mexican Grill, Inc.

17. Chipotle Mexican Grill, Inc. ("Chipotle Mexican Grill") has owned and/or operated the Chipotle restaurants during the relevant period.

18. Chipotle Mexican Grill is a foreign business corporation organized and existing under the laws of Delaware.

19. Upon information and belief, Chipotle Mexican Grill's principal executive office is located at 1401 Wynkoop Street, Suite 500, Denver, Colorado, 80202.

20. At all times relevant, Chipotle Mexican Grill has been the corporate entity listed on Plaintiff's paychecks and W-2 forms.

21. Chipotle Mexican Grill is a covered employer within the meaning of the FLSA and the NYLL, and, at all times relevant, employed Plaintiff and similarly situated employees.

22. At all times relevant, Chipotle Mexican Grill maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and

other employment practices that applied to them.

23. Chipotle Mexican Grill applies the same employment policies, practices, and procedures to all Apprentices at the Chipotle restaurants, including policies, practices, and procedures with respect to the payment of overtime compensation.

24. Upon information and belief, at all times relevant, Chipotle Mexican Grill's annual gross volume of sales made or business done was not less than \$500,000.00.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

26. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

27. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

28. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

COLLECTIVE ACTION ALLEGATIONS

29. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of himself and all similarly situated persons who have worked as Apprentices at Chipotle restaurants nationwide, who elect to opt-in to this action (the "FLSA Collective").

30. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and other similarly situated Apprentices.

31. Consistent with Defendant's policy and pattern or practice, Plaintiff and the FLSA Collective were not paid premium overtime compensation when they worked beyond 40 hours in

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.