

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

SHAVITZ LAW GROUP, P.A.

Gregg I. Shavitz, *pro hac vice*
Keith M. Stern, *pro hac vice*
1515 S. Federal Hwy
Boca Raton, Florida 33432
Telephone: (561) 447-8888

OUTTEN & GOLDEN LLP

Justin M. Swartz
Ossai Miazad
Melissa L. Stewart
3 Park Avenue, 29th Floor
New York, New York 10016
Telephone: (212) 245-1000

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

**MAXCIMO SCOTT, JAY ENSOR, MATTHEW
MEDINA, EUFEMIA JIMENEZ, KRYSTAL
PARKER, STACY HIGGS, and CHRISTINA JEWEL
GATELEY, on behalf of themselves and all others
similarly situated,**

Plaintiffs,

-against-

**CHIPOTLE MEXICAN GRILL, INC., and
CHIPOTLE SERVICES, LLC,**

Defendants.

12 Civ. 8333 (ALC)(SN)

**THIRD AMENDED
CLASS ACTION
COMPLAINT**

Plaintiffs Maxcimo Scott, Jay Ensor, Matthew Medina, Eufemia Jimenez, Krystal Parker, Stacy Higgs, and Christina Jewel Gateley (“Plaintiffs”), individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves, and upon information and belief as to other matters, alleges as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover overtime compensation and spread-of-hours pay for Plaintiffs and their similarly situated co-workers, Apprentices and/or Assistant Managers (hereinafter

“Apprentices”), who work or have worked for Defendants Chipotle Mexican Grill, Inc. and/or Chipotle Services, LLC (previously known as Chipotle Mexican Grill Service, Co., LLC), at Chipotle Mexican Grill 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.

5. 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.”

6. At Chipotle, Apprentices are required to provide customer service while on duty.

7. Apprentices 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.

8. Regardless of the number of hours worked, Apprentices do not receive overtime compensation.

9. Chipotle classifies all Apprentices as “executives” and exempt from overtime pay.

10. However, Apprentice’s primary duties are food preparation and customer service and are similar to the duties performed by hourly non-exempt employees.

11. Apprentices should be classified as non-exempt from the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”) and state wage and hour laws.

12. Upon information and belief, Chipotle applied the same compensation and employment policies, practices, and procedures to all Apprentices nationwide.

13. Plaintiffs bring this action on behalf of themselves and similarly situated current and former Apprentices nationwide 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 Chipotle that have deprived Plaintiffs and other similarly situated employees of their lawfully earned wages.

14. Plaintiff Maxcimo Scott also brings this action on behalf of himself and all similarly situated current and former Apprentices who worked in New York pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law, Article 6, §§ 190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations (collectively, “NYLL”).

15. Plaintiff Jay Ensor also brings this action on behalf of himself and all similarly situated current and former Apprentices who worked in Missouri pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the Missouri Labor Law Rev. Stat. § 290.502 and § 290.505 (collectively, “MLL”).

16. Plaintiff Matthew Medina also brings this action on behalf of himself and all similarly situated current and former Apprentices who worked in Colorado pursuant to Federal Rule of Civil Procedure 23 to remedy violations of C.R.S. 8-4-101, *et seq.* and Colorado Wage Order No. 29, 7 C.C.R. 1103-1, *et seq.* (collectively “Colorado Wage Laws”).

17. Plaintiffs Eufemia Jimenez and Christina Jewel Gateley also bring this action on behalf of themselves and all similarly situated current and former Apprentices who worked in Illinois pursuant to Federal Rule of Civil Procedure 23 to remedy violations of Illinois Minimum Wage Law, 820 Ill. Comp. Stat. § 105/1, *et seq.*, the Illinois Wage Payments and Collections Act, 820 Ill. Comp. Stat. §§ 115/1, *et seq.*, and their implementing regulations, 56 Ill. Admin. Code §§ 210.100 through 300.850 (collectively, “Illinois Wage Laws”). Plaintiff Krystal Parker also brings this action on behalf of herself and all similarly situated current and former Apprentices who worked in North Carolina pursuant to Federal Rule of Civil Procedure 23 to remedy violations of North Carolina’s Wage and Hour Act, N.C. Gen. Stat. § 95-25.1, *et seq.*, and implementing regulations, 13 N.C. Admin. Code 12.0300, *et seq.* (collectively, “North Carolina Wage Laws”).

18. Plaintiff Stacy Higgs also brings this action on behalf of herself and all similarly situated current and former Apprentices who worked in Washington pursuant to Federal Rule of Civil Procedure 23 to remedy violations of Washington’s Minimum Wage Act, Rev. Code Wash. §§49.46.005, *et seq.*; Washington’s Industrial Welfare Act, Rev. Code Wash. §§49.12.005, *et seq.*; Washington’s Wage Rebate Act, Rev. Code Wash. §§49.52.050, *et seq.*; and Washington Administrative Code §§296-126-092 (collectively, “Washington Wage Laws”).

THE PARTIES

Plaintiffs

Maxcimo Scott

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

20. From in or around 2007 until 2009 Scott was employed by Defendants as a Crew Member at the Chipotle located at 9 Saint Marks Place, New York, New York 10003 (“St. Marks”).

21. From in or around 2009 to October 17, 2011, Scott was employed by Defendants as an Apprentice at the St. Marks Chipotle.

22. As an Apprentice, Scott frequently performed the functions of an hourly Crew member on the line.

23. Scott frequently worked more than 40 hours per week with an average of 50 to 55 hours per week.

24. 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.

25. Pursuant to Chipotle’s policy and pattern or practice, Chipotle did not pay Scott spread-of-hours pay when the length of his workday was greater than 10 hours.

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

27. A written consent form for Scott was filed as an attachment to the original Class Action Complaint.



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.