

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

SHAWN THOMAS, individually	§	
and on behalf of similarly situated individuals,	§	
Plaintiffs	§	
-v-	§	Civil No. 4:08-cv-429
	§	ECF
	§	
MCAFEE, INC. and DAVID G. DEWALT,	§	
Defendants	§	

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PLAINTIFF’S ORIGINAL COMPLAINT – COLLECTIVE ACTION

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TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Now comes Shawn Thomas and file this, his Plaintiff’s Original Complaint – Collective Action.

I.  
JURISDICTION AND VENUE

1. This Court has original jurisdiction to hear this complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”). Venue is proper because the Defendants do business in Plano, Collin County, Texas.

II.  
PARTIES

2. Defendant, McAfee, Inc. is a limited liability company. McAfee is an “employer” within the meaning of FLSA, 29 U.S.C. § 203(d).

3. Defendant David G. DeWalt is and has been the Chief Executive Officer of McAfee during the applicable statute of limitations. DeWalt is an “employer” within the

meaning of the FLSA, 29 U.S.C. § 203(d). An exercise of jurisdiction over DeWalt is appropriate because he committed the tort at issue in this case in Texas.

4. Plaintiff Shawn Thomas is a resident of Texas and worked as a “Sales Representative” based out of Defendants’ Plano, Texas office during the applicable statute of limitations.

5. Plaintiff brings this action on behalf of himself and other similarly situated employees pursuant to 29 U.S.C. § 216(b). (See consent forms attached as Exhibit A.) Plaintiffs and the similarly situated employees are individuals who were, or are, employed by Defendants as “Sales Representatives.”

### III. COLLECTIVE ACTION FACTUAL ALLEGATIONS

6. Plaintiff and the similarly situated individuals often worked more than 40 hours in a workweek. Defendants did not pay additional compensation for overtime.

7. The primary job duty of Plaintiff and the similarly situated individuals was inside sales.

8. Plaintiff and the similarly situated individuals did not make sales at a customer’s home or place of business on a weekly or more frequent basis.

9. The sales performed by Sales Representatives were not retail sales.

10. As a result of failing to properly pay overtime, Defendants did not compensate Plaintiff and the similarly situated individuals at a rate of one and one half times their regular hourly rate for each hour worked over 40 in a workweek.

11. These practices violate the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. § 201 et seq. As a result of these unlawful practices, Plaintiff and the similarly situated employees suffered a loss of wages.

12. Defendants showed reckless disregard for the fact that their failure to pay their Sales Representatives appropriate overtime compensation and/or minimum wages was in violation of the law.

13. All conditions precedent to the filing of this suit have been satisfied.

IV.  
JURY DEMAND

14. Plaintiffs, individually and on behalf of the putative class, exercise their right to a jury.

V.  
PRAYER FOR RELIEF

WHEREFORE, Plaintiff and all employees similarly situated who join in this action demand:

1. Issuance of notice as soon as possible to all Sales Representatives who were employed by Defendants during any portion of the three years immediately preceding the filing of this action. Generally, this notice should inform them that this action has been filed, describe the nature of the action, and explain their right to opt into this lawsuit if they were not paid correctly for hours worked as Sales Representatives during any portion of the statutory period;
2. Judgment against Defendants for an amount equal to Plaintiff and the class' unpaid back wages at the applicable overtime rate;
3. Judgment against Defendants for an amount equal to Plaintiff and the class' minimum wages at the applicable minimum wage;
4. Judgment against Defendants that their violations of the FLSA were willful;
5. An equal amount to the overtime wage damages as liquidated damages;

6. To the extent that liquidated damages are not awarded, an award of prejudgment interest;
7. All costs and attorney's fees incurred prosecuting these claims;
8. Leave to add additional Plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
9. Leave to amend to add claims under applicable state laws; and
10. For such further relief as the Court deems just and equitable.

Respectfully submitted,  
ROB WILEY, P.C.

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