IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMY BADEN-WINTERWOOD,
individually and on behalf of others
similarly situated,
Plaintiffs,

v.

LIFE TIME FITNESS, INC.,
Defendant.

Case No. 2:06-cv-99
JUDGE GREGORY L. FROST
Magistrate Judge Mark R. Abel

OPINION AND ORDER

This matter is before the Court on the parties' simultaneous briefing of the merits of Tina Seals's salary level test claim. (Docs. # 102, 103.)

I. Background

On February 13, 2006, Plaintiffs, a class of 24 individuals that are current or former employees of Defendant, filed their complaint alleging that Defendant violated the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* by treating Plaintiffs as overtime-exempt employees. Specifically, Plaintiffs claimed that Defendant's compensation plan was not consistent with the salary basis test set forth in the FLSA regulations, 29 C.F.R. § 541.602, and thus, that Plaintiffs were not exempt from overtime compensation. Defendant countered that its compensation plan was at all times compliant with the FLSA, or, in the alternative, that, if Plaintiffs were entitled to overtime compensation, such compensation was limited to that earned during the time period in which Defendant made actual deductions from Plaintiffs' salaries.

In its Opinion and Order on the parties' cross motions for summary judgment, this Court

set forth the analysis required to establish an overtime exemption under the FLSA, explaining that the employer must satisfy three tests: " 'a (1) duties test; (2) salary level test; and (3) salary basis test.' " *ACS v. Detroit Edison Co.*, 444 F.3d 763, 767 (6th Cir. 2006) (quoting *Takacs v. Hahn Auto. Corp.*, 246 F.3d 776, 779 (6th Cir. 2001)); *see also* 29 C.F.R. § 541.700 (2004) (duties test); 29 C.F.R. § 541.600 (2004) (salary level test); 29 C.F.R. § 541.602 (2004) (salary basis test)." (Doc. # 75 at 12.) The Court bifurcated the time period at issue, finding that the Supreme Court's interpretation of the salary-basis test in *Auer v. Robbins*, 519 U.S. 452 (1997), controlled for the time period before August 23, 2004, while 29 C.F.R. § 541.603 controlled for the time period between August 23, 2004 and March 3, 2006. Applying these tests, the Court concluded that certain Plaintiffs were entitled to overtime compensation but only for the three pay periods occurring in November and December, 2005, when actual deductions were taken from Plaintiffs' pay. The Court did not address the issue of the pay of Plaintiff Tina Seal under the salary level test.

Plaintiffs and Defendant appealed that decision. The Sixth Circuit reviewed the decision and concluded:

> [T[he Court **AFFIRMS** the district court's decision bifurcating the class period, finding that violations of 29 C.F.R. § 541.602 occurred in November and December of 2005, and limiting § 541.603 overtime compensation to those three pay periods. However, the Court **REVERSES** the district court insofar as it found that the pre-August 23, 2004 compensation plan did not create a substantial likelihood of deductions. The Court, therefore, concludes that Life Time Fitness is liable for overtime compensation to those Plaintiffs employed and subject to the corporate bonus-pay plan from January 1, 2004 to August 23, 2004. Finally, the Court **REMANDS** the issue of whether Plaintiff Tina Seals's compensation met the salary level test to the district court for further consideration consistent with this opinion.

(Doc. # 88 at 24) (emphasis in original).

After remand, this Court addressed, first, whether Tina Seals's claim was properly before it and, on April 7, 2010, this Court issued an Opinion and Order in which it concluded that Tina Seals's claim for relief under the salary level test was properly before it. In that decision, the Court directed the parties to file simultaneous briefs addressing the merits of Seals's claim and the propriety of Seals's claim, if it survives the merits briefing, being tried at the June 21, 2010 trial scheduled in this action. Testimony at that trial will be given by representatives of the plaintiff class.

II. Analysis

The Court must now determine whether Seals's compensation met the salary level test. Under the salary level test, 29 C.F.R. § 541.6001, employees must be paid a minimum of $455 per week or $23,660 per year to qualify for the exemption from overtime pay. It is undisputed that Seals was only paid $231 per week or $12,000 per year because she was classified by Defendant as part-time. Because this amount does not meet the salary level test, Seals was not an exempt employee. Thus, Seals's compensation meets the salary level test and she was improperly classified as an overtime-exempt employee.

Nevertheless, Defendant argues that Seals's claim should be dismissed because she is only entitled to recovery for the hours she worked over forty hours per week and that during the time period for which she would be entitled to overtime pay, she did not work over forty hours per week. With regard to the entitlement to pay only for the hours worked over forty, Defendant argues that Seals "was covered by a bonus plan from August 1through October 24, 2005, and her maximum potential recovery under the salary-level test would be for hours worked beyond forty in any workweek during" the relevant time period. (Doc. # 103 at 2.) It is unclear to this Court

how being covered by a bonus plan would prevent Seals from being paid for the hours she worked over twenty. Perhaps Defendant means that Seals was actually compensated for the hours she worked over twenty in the form of bonus pay. Or, perhaps, Defendant's argument is that because the salary level test is meant to determine exemption from overtime compensation, that somehow prevents Seals from being entitled to pay she worked over her part-time status.

Seals argues that she did not receive pay for hours over twenty, she worked more than twenty hours per week during the relevant time period, and she is thus entitled to pay for the hours she worked. Indeed, as Plaintiffs correctly point out, the FLSA requires that all hours worked must be compensated. *See Tennessee Coal, Iron & R.Co. v. Muscoda Local No. 123*, 321 U.S. 590, 597 (1944) ("Congress enacted the FLSA to guarantee either regular or overtime compensation for all actual work or employment."); *Chao v. Tradesmen Int'l, Inc.*, 310 F.3d 904, 907 (6th Cir. 2002) ("The FLSA requires employers to pay at least a specified minimum wage for each hour worked, *see* 29 U.S.C. § 206, and overtime compensation for employment in excess of forty hours in a workweek. 29 U.S.C. § 207(a)(1)."). Accordingly, the Court concludes that Seals is entitled to receive pay for the hours she worked over twenty for the relevant time period. If Defendant contends that Seals was paid for the hours per week she worked over twenty, it can introduce that evidence at trial (an issue discussed below).

Turning to the relevant time period for which pay may be due to Seals, Seals argues that she is entitled to unpaid wages and overtime during the time period she was misclassified – August 1, 2005 through October 24, 2005. Defendant disagrees and contends that the Sixth Circuit affirmed the portion of this Court's decision limiting liability during 2005 to the three pay periods corresponding to work performed from October 16 through November 30, 2005.

Thus, there are only two pay periods at issue here, *i.e.*, the October 16, 2005 and the October 24, 2005 pay periods. This Court agrees.

Therefore, the Court concludes that left in dispute are the precise number of hours Seals worked during the pay periods of October 16, 2005 and October 24, 2005, and possibly still in dispute is whether Seals was compensated for those hours by the bonus plan pay. Thus, the exact amount due, if any, is left to be determined at trial. With regard to trial, neither party addressed the propriety of Seals' claim being tried by representative testimony at the June 21, 2010 trial. The Court determines that the appropriate procedure is to have Seals appear at trial as opposed to having her damages, if any, determined by representative testimony.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE