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U.S. DISTRICT COURT  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

-----X  
**Joseph Faltaous on behalf of himself and  
others similarly situated**

**Plaintiff,**

**v.**

**JOHNSON AND JOHNSON, et al.**

**Defendants.**  
-----X

**CIVIL ACTION NO:**

**FIRST AMENDED COMPLAINT**

**FLSA COLLECTIVE ACTION**

**DEMAND FOR JURY TRIAL**

**INTRODUCTION AND CERTAIN DEFINITIONS**

1. This is an action for violation of federal and state wage and hour laws by and on behalf of former and current employees of Defendants, referred to below as "Covered Employees." The Covered Employees include Joseph Faltaous, Plaintiff. Pursuant to a decision, policy and plans, these employees are unlawfully classified by Defendants as exempt from laws requiring overtime pay, but actually were and are non-exempt and entitled to overtime pay.

2. In this pleading, the term "Covered Employees" means all persons who have been, are, or in the future will be employed by any of the Defendants in any job whose title is or was referred to by any of the following titles, and employees who performed substantially the same work as employees with those titles (discovery may reveal additional titles and employees that should be included):

- a. Professional Sales Representative
- b. Senior Sales Representative
- c. Executive Sales Representative
- d. Senior Executive Sales Representative

and who were employed during the statute of limitations period for the particular claim for relief in which the term Covered Employees is used, including time during which the statute of limitation was or may have been tolled or suspended. The above job positions are referred to herein as "Covered Positions."

3. In this pleading, "Defendants" means "defendants and each of them" and refers to the defendants named in the particular claim for relief in which the word "Defendants" appears. Defendants include Johnson & Johnson and all domestic affiliates and subsidiaries.

4. The allegations in this pleading are made without any admission that, as to any particular allegation, Plaintiffs bear the burden of pleading, proof, or persuasions. Plaintiffs reserve all rights to plead in the alternative.

### JURISDICTION AND VENUE

5. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*

6. Venue is proper in this District because a substantial part of the events and omissions giving rise to the claims occurred in this District, including in Defendants' corporate headquarters in New Brunswick, New Jersey. Venue is proper in this District also because there is personal jurisdiction in this District over all Defendants. Presently and at all times, Defendants have conducted substantial, continuous and systematic commercial activities in this District.

### PARTIES

7. Defendant Johnson and Johnson is a New Jersey corporation with its principal place of business in New Jersey, doing business in the District of New Jersey. Together with the other Defendants, Johnson and Johnson does business in all fifty states and the United States Territories.

8. Plaintiff Joseph Faltaous is a New Jersey resident and was employed by Defendants in New Jersey from October 2002 to July 20, 2006 as a Professional Sales Representative and a Senior Sales Representative. Joseph Faltaous worked hours in excess of forty (40) hours per workweek, without receiving overtime compensation as required by federal and state laws.

9. Plaintiff is informed and believes and thereon alleges at all relevant times each defendant, directly or indirectly, or through agents or other persons, employed

Plaintiff and/or other Covered Employees, and exercised control over the wages, hours and working conditions of Plaintiff and Covered Employees. Plaintiff is informed and believes and thereon alleges, that, at all relevant times, each defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each defendant acted pursuant to and within the scope of the relationships alleged above, that each defendant knew or should have know about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

**FIRST CLAIM FOR RELIEF**

**(for FLSA Overtime  
And Record Keeping Violations)**

10. Plaintiff and other Covered Employees reallege and incorporate by reference all previous paragraphs.

11. Plaintiff is informed and believes and thereon alleges that at all relevant times, each Defendant has been, and continues to be, an "employer" engaged in interstate "commerce" within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, each Defendant has employed, and continues to employ the Covered Employees as "employee[s]" within the meaning of the FLSA. At all relevant times, each defendant has had gross operating revenues in excess of \$500,000.

12. Throughout the statute of limitations period covered by these claims, Plaintiff and the other Covered Employees regularly worked in excess of forty (40) hours per workweek and continue to do so.

13. At all relevant times, Defendants have had, and continue to operate under a decision, policy and plan, and under common policies, programs, practices, procedures, protocols, routines and rules of willfully failing and refusing to pay the Covered Employees at time and a half rates for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA even though the Covered Employees have been and are entitled to overtime.

14. At all relevant times, Defendants willfully, regularly and repeatedly failed, and continue to fail to pay Plaintiff and other Covered Employees at the required overtime rates, time and a half regular hourly rates, for hours worked in excess of forty (40) hours per workweek.

15. At all relevant times, Defendants willfully, regularly and repeatedly failed, and continue to fail to make, keep and preserve accurate records required by the FLSA with respect to Plaintiff and the other Covered Employees, including records sufficient to accurately determine the wages and hours of employment pertaining to plaintiffs and other Covered Employees.

16. Plaintiff and the Covered Employees seek damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and cost, injunctive relief requiring Defendants to cease and desist from their violations of the FLSA described herein and to

comply with the FLSA, and such other legal and equitable relief as this Court deems just and proper.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

17. Plaintiff brings the First Claim for Relief, for violation of the Fair Labor Standards Act ("FLSA"), as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all Covered Employees, as defined herein.

18. At all relevant times, Plaintiff and the other Covered Employees are and have been similarly situated, have had substantially similar job requirements and pay provisions, and have been subject to Defendants' decision, policy, plan and common policies, programs, practices, procedures, protocols, routines, and rules willfully failing and refusing to pay them at the legally required time and a half rates for work in excess of forty (40) hours per workweek, and willfully failing to keep records required by the FLSA, and willfully classifying them as exempt from overtime pay even though they were non-exempt and entitled to overtime pay and even though Defendants were aware that the Covered Employees were non-exempt and entitled to overtime pay. The claims of Plaintiff stated herein are essentially the same as those of the other Covered Employees.

19. The First Claim for Relief is properly brought under and maintained as an opt-in collective action pursuant to § 16(b) of the FLSA, 29 U.S.C. 216(b). The Covered Employees are readily ascertainable. For purpose of notice and other purposes related to this action, their names and addresses are readily available from the Defendants. Notice

can be provided to the FLSA Collective Plaintiffs via first class mail to the last address known to Defendants.

20. A signed consent to sue executed by Plaintiff in connection with the FLSA claim alleged herein has been filed with the Court. Plaintiff is informed and believes and thereon alleges that a great many other Covered Employees will sign and file such consents.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and all other Covered Employees, prays for relief as follows:

- A. A declaratory judgment that the practices complained of herein are unlawful under FLSA;
- B. Designation of Plaintiff as representative of the FLSA Collective Action Members;
- C. An award of damages, according to proof, including liquidated damages, to be paid by Defendant;
- D. Penalties available under applicable law;
- E. Costs of action incurred herein, including expert fees;
- F. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216 and other applicable statutes;
- G. Pre-Judgment and post-judgment interest, as provided by law; and
- H. Such other and further legal and equitable relief as this Court deems necessary, just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all causes of action and claims with respect to which he has a right to jury trial.

Respectfully submitted,

**SMITH MULLIN, P.C.**

BY: 

~~NEIL MULLIN (NM-6020)~~  
NANCY ERIKA SMITH (NES-1546)  
Attorneys for Plaintiff, the Proposed  
Class and the Proposed Collective  
Action Member

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Dated: Montclair, New Jersey  
October 3, 2006

**CONSENT TO BE "PARTY PLAINTIFF" UNDER  
FEDERAL FAIR LABOR STANDARDS ACT**

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I am a former or current employee of Johnson & Johnson Inc.

I consent to become a "party plaintiff" in a Fair Labor Standards Act (FLSA) lawsuit, seeking payment of unpaid wages, including overtime wages, and related relief against Johnson & Johnson Inc., on behalf of myself and other former and current employees of Johnson & Johnson Inc.

FALTAOUS, Joseph

Print Name

Signature

Date

9/30/06