

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 07-80829-CIV-RYSKAMP/VITUNAC

DONALD HAMM,  
ELLIOT COOK,  
RONALD SIMMS,  
MARK WAGNER,  
MARTHA HARRIS, and  
TIMOTHY BRIDGES,  
individually and on behalf  
of persons similarly situated,  
Plaintiffs,

v.

TBC CORPORATION,  
a Delaware corporation, and  
TIRE KINGDOM, INC.,  
a Florida corporation,  
Defendants.

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**ORDER ADOPTING THE REPORT AND RECOMMENDATION**

THIS CAUSE comes before the Court upon the report and recommendation of Magistrate Judge Ann E. Vitunac [DE 147] entered on December 30, 2008. Pending before Judge Vitunac was defendants' motion for sanctions [DE 58]. Judge Vitunac held a hearing on July 31, 2008. Plaintiffs' objected to the report [DE 151] on January 21, 2009.

While plaintiffs agreed to some of Judge Vitunac's recommendations, they did object to others arguing that they were too broad in scope. Specifically, Judge Vitunac recommended that The Shavitz Law Group withdraw as counsel for any current or future opt-in plaintiff who did not work with any of the named plaintiffs. Judge Vitunac recommended that this Court bar The Shavitz Law Group from collecting any fees or costs for work performed in representing those individuals. The Shavitz Law Group agrees with Judge Vitunac with respect to any current opt-

in plaintiffs, but argues that it should not be barred from representing any future opt-in plaintiffs, regardless of whether the future opt-in plaintiff worked with a named plaintiff. This Court disagrees. The report and recommendation achieves two purposes: first, ensuring that counsel acts ethically in this litigation and second, sanctioning The Shavitz Law Group for unethically soliciting clients. Part of that sanction includes barring The Shavitz Law Group from representing any future opt-in client not directly associated with the named plaintiffs.

This Court would also note that, according to the Administrative Office of the United States Courts, for the past five years the Southern District of Florida has averaged 28.7% of all FLSA cases filed in the United States. This would cause one to wonder if the employers in the Southern District are willfully ignoring the FLSA. The more logical conclusion is that FLSA cases are heavily weighted in favor of the plaintiff. Most cases are filed against small businesses which quickly realize that it is cheaper to pay a small claim and the plaintiff's attorney's fee than it is to defend the claims. Very few FLSA cases go to trial. It is clear that the volume of cases in the Southern District is attorney-driven. This Court would note further that in the past five years the Shatvitz Law Group has filed 1437 cases in the Southern District of Florida which represents 23% of all cases filed in this district. These figures lead credence to the factual findings of the Magistrate Judge.

This Court has read and considered all of the above submissions in light of the record. Accordingly, it is hereby,

ORDERED AND ADJUDGED that:

(1) The Report of Magistrate Judge Vitunac **[DE 147]** be, and the same hereby is, RATIFIED, AFFIRMED and APPROVED in its entirety;

(2) Defendants' motion for sanctions [DE 58] is GRANTED in the following respects;

- (A) The Shavitz Law Group is hereby barred from representing any individual, including any current opt-in plaintiff, who did not work with any of the named plaintiffs in this action: Donald Hamm, Elliot Cook, Ronald Simms, mark Wagner, Martha Harris, and Timothy Bridges;
- (B) The Shavitz Law Group is barred from collecting any fees or costs for work preformed in representing any individual, including any current opt-in plaintiff, who did not work with any of the named plaintiffs in this action;
- (C) The Shavitz Law Group is ordered to formulate and implement a formal written policy on solicitation to inform and govern the conduct of all Shavitz Law Group attorney and non-attorney staff;
- (D) A copy of this Order, and Judge Vitunac's report and recommendation, will be forwarded to the Florida Bar for possible further action; and
- (E) The Shavitz Law Group is ordered to reimburse defendants for all reasonable fees and costs incurred in bringing and prosecuting the motion.

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 3 day of February, 2009.

/s/ Kenneth L. Ryskamp  
KENNETH L. RYSKAMP  
UNITED STATES DISTRICT JUDGE

Copies provided:  
All counsel of record  
Magistrate Judge Ann E. Vitunac