

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|--|---|---------------------------------|
| PHILLIP BLACKMON, on behalf of | § | |
| himself and others similarly situated, | § | CIVIL ACTION NO. <u>17-1362</u> |
| | § | |
| <i>Plaintiff,</i> | § | |
| | § | JURY TRIAL DEMANDED |
| v. | § | |
| | § | |
| MICHAEL STAPLETON ASSOCIATES, | § | COLLECTIVE ACTION |
| LTD. d/b/a MSA SECURITY, | § | |
| | § | |
| <i>Defendant.</i> | § | |
| _____ | § | |

COLLECTIVE ACTION COMPLAINT
AND JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff hereby submits his Collective Action Complaint and Jury Demand and, upon trial of this matter, would show the trier of fact as follows:

I. SUMMARY

1. Michael Stapleton Associates d/b/a MSA Security (“MSA”), a company in the business of providing security, intelligence, training, and investigative services, is violating the Fair Labor Standards Act (“FLSA”) by forcing its explosive detection canine handlers to work a substantial amount of time without properly paying compensation for all hours worked and by forcing them to work a substantial amount of overtime without properly paying overtime compensation, thus depriving them of rightful compensation for their work that MSA is legally obligated to pay.

II. JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction under 28 U.S.C. § 1331

because Plaintiffs' claims arise under federal law, namely the FLSA, 29 U.S.C. § 201 *et seq.*

3. Venue is proper because a substantial part of the acts and omissions giving rise to Plaintiff's claims occurred in the Northern District of Texas. 28 U.S.C. § 1391(b)(2).

III. THE PARTIES

4. Plaintiff Blackmon worked for Defendant as an explosive detection canine handler. He regularly worked on average 20-35 hours per week training one of MSA's explosive detection canines without receiving any compensation for the time he was required to spend training MSA's explosive detection canine. When he spent more than 40 hours per week training MSA's explosive detection canine and performing other compensable work for MSA, he was not paid overtime compensation at a rate of one and one-half times his regular rate of pay for each hour he worked in excess of 40 hours in a week. Plaintiff Blackmon's consent is attached as Exhibit A.

5. The class of similarly situated employees consists of all current and former explosive detection canine handlers who were employed by MSA during the three-year period preceding the filing of the Original Complaint. These similarly situated individuals are referred to as the "Members of the Class" or "the Class."

6. Defendant Michael Stapleton Associates, Ltd. d/b/a MSA Security is a Delaware corporation with a principal place of business at 9 Murray Street, Second Floor, New York, New York 10007 that is engaged in commerce in the United States and is otherwise subject to the FLSA. Specifically, according to MSA's own public representations about its business, the work it does "providing security, intelligence, training and investigative services helps protect millions of Americans, every single

week.”¹ MSA represents that “[w]ith an uncompromised commitment to comprehensive best-in-class training of our canines and handlers, MSA delivers an unrivaled and nationally-certified Explosive Detection Canine (EDC) team that keeps millions of people safe across the globe.”² MSA also reports that “[y]ou’ll find MSA bomb dog teams working everywhere sniffing out potential threats from both stationary and mobile explosive odors in professional sports stadiums, airports, amphitheaters, cargo loading docks and more.”³ MSA has offices in California, Massachusetts, New York, and Virginia, operating its business in at least those four states.⁴ Therefore, MSA has or had (during the relevant time period) at least two or more employees engaged in commerce or in the production of goods for commerce for purposes of FLSA coverage.

7. Additionally, upon information and belief, MSA—a private company with at least 4 office locations identified on its website and more than 700 employees—has annual gross volume of sales made or business done of not less than \$500,000.⁵

8. MSA may be served with process by serving its Registered Agent, The Corporation Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

9. MSA employed Plaintiff within the meaning of the FLSA.

IV. BACKGROUND

10. MSA employed Plaintiff and explosive detection canine handlers similarly situated to Plaintiff to handle, train, board, and feed explosive detection canines.

1 MSA Security website, *available at* <http://msa.security.net/who-is-msa> (last visited on May 5, 2017).

2 MSA Security Website, *available at* <http://www.msasecurity.net/msa-explosive-detection-canines> (last visited on May 5, 2017).

3 *Id.*

4 MSA Security website, *available at* <http://msa.security.net/msa-contact-us> (last visited on May 5, 2017).

5 MSA Security website, *available at* <http://msa.security.net/who-is-msa>; MSA Security website, *available at* <http://msa.security.net/msa-contact-us>.

11. Plaintiff and, upon information and belief, Members of the Class regularly worked on average 20-35 hours per week training MSA's explosive detection canines. However, MSA's explosive detection canine handlers were not paid for the time they worked training MSA's canines, even though such training was a required part of their jobs. Instead, MSA paid those non-exempt workers a flat \$400 monthly stipend for expenses, which usually did not cover all of the expenses they paid per month in association with MSA's explosive detection canines.

12. MSA's explosive detection canine handlers perform various tasks, including training MSA's explosive detection canines to detect potential threats from stationary and mobile explosive odors and performing such detection efforts with MSA's canines in professional sports stadiums, airports, amphitheaters, cargo loading docks, and other places. MSA's explosive detection canine handlers also board, feed, and otherwise take care of the MSA canines assigned to them. MSA's explosive detection canine handlers travel in and between various states, including but not limited to California, Louisiana, Missouri, Minnesota, Ohio, and Texas, performing work therein.

13. MSA engages in commerce by selling its explosive detection canine services to clients throughout the United States. Therefore, MSA's explosive detection canine handlers work is in practical effect a part of commerce or of the functioning of an instrumentality or facility of interstate commerce.

14. MSA pays its explosive detection canine handlers similarly situated to Plaintiff by the hour utilizing a pay period that consists of two weeks.

V. PLAINTIFF'S INDIVIDUAL ALLEGATIONS

A. Defendant Failed to Properly Pay Compensation.

15. Plaintiff worked with MSA's other similarly situated explosive detection canine handlers. They worked for MSA with its explosive detection canines in California, Louisiana, Missouri, Minnesota, Ohio, and Texas, training the canines and handling them while detecting potential threats from stationary and mobile explosive odors at professional sporting events and other locations. During his tenure working for MSA, Plaintiff typically worked on average 20-35 hours per week training the MSA explosive detection canine assigned to him. He also fed, boarded, and otherwise took care of MSA's canine. In a typical week, Plaintiff commonly worked more than 40 hours in total.

16. MSA paid Plaintiff a set hourly rate for each hour worked handling MSA's explosive detection canine. However, MSA did not pay Plaintiff for the many hours he worked training MSA's explosive detection canine during each week.

17. MSA's pay periods consisted of two weeks. Thus, during each pay period, Plaintiff worked approximately 20-35 hours during each week for which he was not compensated at all. When Plaintiff worked more than 40 hours total in a week, MSA did not pay him overtime compensation at a rate of one and one-half times his regular rate of pay for each hour he worked in excess of 40 hours in a week.

18. The FLSA requires MSA to pay compensation for each hour Plaintiff worked training MSA's explosive detection canine. MSA should have paid Plaintiff for the on average 20-35 hours a week he worked training MSA's canine, but MSA failed to do so.

19. The FLSA requires MSA to pay overtime compensation for each hour

Plaintiff worked in excess of 40 hours in a week. MSA should have paid Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for each hour he worked in excess of 40 hours in a week, but MSA failed to do so.

20. By failing to pay Plaintiff for the hours he worked training MSA's explosive detection canines and by failing to pay Plaintiff his overtime rate of pay for hours he worked in excess of 40 hours in a week, MSA has deprived Plaintiff of a significant amount of normal compensation and overtime compensation to which he is rightfully entitled.

B. Defendant Willfully Violated the FLSA.

21. The FLSA and Department of Labor regulations set forth the proper means for calculating and paying compensation to non-exempt employees like Plaintiff. MSA failed to follow these rules when paying Plaintiff.

22. MSA had a policy and/or practice of paying its explosive detection canine handlers for only a portion of the time they worked instead of the actual amount of time that they worked in a given week.

23. MSA also had a policy and/or practice of not paying its explosive detection canine handlers overtime compensation at a rate of one and one-half times his regular rate of pay for each they worked in excess of 40 hours in a week.

24. MSA knew or have shown reckless disregard for the requirements of the FLSA with respect to compensation for Plaintiff.

VI. COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff is aware that MSA's illegal policies or practices have been imposed upon Members of the Class. Like Plaintiff, the Members of the Class work for MSA as explosive detection canine handlers. The Members of the Class perform job duties similar

to Plaintiff, namely handling, training, boarding, and feeding MSA's explosive detection canines.

26. Upon information and believe, MSA's explosive detection canine handlers worked with its explosive detection canines throughout the United States.

27. Upon information and belief, as with Plaintiff, Members of the Class typically work on average 20-35 hours a week training MSA's explosive detection canines without being paid compensation for that time worked training MSA's canines.

28. As with Plaintiff, Members of the Class are paid every two weeks. Upon information and belief, the Members of the Class are not paid by MSA for the time they spend each week training MSA's explosive detection canines, and are not paid overtime compensation by MSA at a rate of one and one-half times their regular rates of pay for all or some of the hours they worked in excess of 40 hours in a week. The FLSA requires that all hours worked in a week be compensated by an employer. The FLSA requires that hours over 40 worked in a week be compensated at the overtime rate of one and one-half times the regular rate of pay. Like Plaintiff, Members of the Class should be paid their regular rate for the on average 20-35 hours a week they spend training MSA's explosive detection canines and their overtime rate for all hours worked over 40 hours in a week.

29. MSA's failure to properly compensate Plaintiff and Members of the Class results, upon information and belief, from generally applicable policies and/or practices. Specifically, upon information and belief, it is a policy and/or practice for MSA not to pay its explosive detection canine handlers for the hours worked during a work week training MSA's explosive detection canines. Upon information and belief, it is also a policy and/or practice for MSA not to pay its explosive detection canine handlers overtime compensation

at a rate of one and one-half their regular rates of pay for all or some of the hours worked in excess of 40 hours in a week.

30. As such, the Members of the Class are owed unpaid compensation for precisely the same reasons as the Plaintiff.

31. Accordingly, the class of similarly situated plaintiffs is properly defined as:

All current and former explosive detection canine handlers who were employed by MSA during the three-year period preceding the filing of the Original Complaint.

32. Members of the Class should be notified of this lawsuit and given the opportunity to opt-in if they so desire.

33. Notice from this Court should be expedited to protect these workers from losing a portion of their damages due to the running of the statute of limitations.

VII. CAUSES OF ACTION

34. The preceding paragraphs are incorporated by reference.

35. As set forth above, MSA violated the FLSA with respect to Plaintiff and Members of the Class by failing to pay compensation for all hours they worked in a week, and by failing to pay them overtime compensation for all or some of the hours they worked in excess of 40 hours in a week. 29 U.S.C. §§ 206, 207.

36. Plaintiff and Members of the Class are entitled to recover compensation for all hours worked in a week, and to recover overtime compensation for all hours worked in excess of 40 hours in a week.

37. In addition, Plaintiff and Members of the Class are entitled to liquidated

damages in an amount equal to their unpaid wages.

38. In addition, Plaintiff and Members of the Class are entitled to reasonable attorneys' fees and costs. 29 U.S.C. § 216 (b).

VIII. JURY DEMAND

39. Plaintiff demands a jury trial.

PRAYER

WHEREFORE, Plaintiff requests that this Court award them and Members of the Class judgment against MSA for:

1. damages for the full amount of their unpaid regular compensation;
2. damages for the full amount of their unpaid overtime compensation;
3. an amount equal to their unpaid wages and overtime compensation as liquidated damages;
4. reasonable attorneys' fees, costs, and expenses of this action;
5. pre-judgment and post-judgment interest at the highest rate allowed by law; and
6. such other and further relief as may be allowed by law.

Respectfully submitted,

BAILEY PEAVY BAILEY PLLC

By: /s/ Robert W. Cowan
Robert W. Cowan
Attorney-in-Charge
TX Bar No. 24031976
Justin C. Jenson
TX Bar No. 24071095
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Facsimile: (713) 425-7101

rcowan@bpblaw.com
jjenson@bpblaw.com

EXHIBIT A

NOTICE OF CONSENT

I consent to be a party plaintiff in this action and, if necessary, a subsequent action, to recover any unpaid wages owed to me by:

MICHAEL STAPLETON ASSOCIATES, MSA SECURITY, AND RELATED ENTITIES

I consent to join the lawsuit in which this Notice of Consent is filed by Bailey Peavy Bailey Cowan Heckaman PLLC and/or any of its co-counsel (collectively "BPB") and on my behalf (the "Lawsuit").

I performed the duties and was paid in the manner described in the active Complaint or Petition in this Lawsuit.

If I am not a named Plaintiff in this Lawsuit, then I authorize the named Plaintiff(s) and BPB to file and prosecute the Lawsuit on my behalf, and I designate the named Plaintiff(s) to make decisions on my behalf concerning the Lawsuit, including negotiating and deciding a resolution of my claims, and I understand that I may be bound by such decisions, subject to Court approval if required.

I agree to be represented by BPB in this Lawsuit. I agree to be bound by the Contract of Representation executed between the named Plaintiffs in this Lawsuit and BPB, subject to the additional terms stated in this Notice of Consent. I may obtain a copy of the executed Contract(s) of Representation by contacting BPB in writing.

In the event this Lawsuit is not certified or is decertified, I authorize BPB to reuse this Notice of Consent to re-file my claims in separate or related action(s) against the named Defendant(s) in this Lawsuit.



Signature

Phillip D. Blackmon

Full Legal Name (print)

03/09/2017

Date

BAILEY PEAVY BAILEY COWAN HECKAMAN PLLC
440 Louisiana Street, Suite 2100, Houston, Texas 77002
overtime@bpblaw.com • 1-866-713-8300

CIVIL COVER SHEET

JS 44 (Rev. 08/16)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Phillip Blackmon, on behalf of himself and others similarly situated

DEFENDANTS

Michael Stapleton Associates, Ltd. d/b/a MSA Security

(b) County of Residence of First Listed Plaintiff Dallas County, Texas

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant New York Co., NY

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Bailey Peavy Bailey Cowan Heckaman, PLLC 713-425-7100
440 Louisiana St., Suite 2100
Houston, Texas 77002

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 U.S.C. sec. 201, et seq.

Brief description of cause:

Defendant denied regular compensation and overtime compensation in violation of 29 U.S.C. sec. 201, et seq.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

17-1362

DATE
05/22/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Handler of Bomb-Sniffing Dogs Sues MSA Security for Unpaid OT](#)
