

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
BOWLING GREEN DIVISION**

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**BRETT DECUIR,**  
Individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

**CRM DEVELOPMENT COMPANY**  
d/b/a CRM COMPANIES, and DROPPING  
BIRD 16, L.L.C.

*Defendant.*

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§ Civil Action No. 1:21-cv-40-GNS  
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§ JURY TRIAL DEMANDED  
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§ COLLECTIVE ACTION  
§ PURSUANT TO 29 U.S.C. § 216(b)  
§  
§ CLASS ACTION PURSUANT TO  
§ FED. R. CIV. P. 23  
§

**ORIGINAL COLLECTIVE AND CLASS ACTION COMPLAINT**

Plaintiff—Brett DeCuir, individually and on behalf of all current and former non-exempt night shift employees who used the SabreTooth clock in system (collectively, “Plaintiff and the Putative Class Members”) and who worked for CRM Development Company d/b/a CRM Companies (“CRM”) and/or Dropping Bird 16, L.L.C., (“DB16”) at any time during the relevant statutes of limitation through the final disposition of this matter—brings this action against Defendants to recover compensation, liquidated damages, and attorneys’ fees and costs pursuant to Sections 206, 207, and 216(b) of the Fair Labor Standards Act of 1938, as amended, and under the Kentucky Wage and Hour Act (“KWAHA”), KY. REV. STAT. ANN. §§ 337.010, *et seq.*

Plaintiff’s FLSA claim is asserted as a collective action under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), and the Kentucky state law claim is asserted as a class action under Federal Rule of Civil Procedure 23. The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

## I. OVERVIEW

1. This is a collective action to recover overtime wages and liquidated damages brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201–19, and a class action pursuant to the state laws of Kentucky under FED. R. CIV. P. 23, to recover unpaid straight-time wages, unpaid overtime wages, and other applicable penalties.

2. Plaintiff and the Putative Class Members are those persons who worked for Defendants as non-exempt nightshift employees who used the SabreTooth clock in system at Defendants’ restaurants, anywhere in the United States, at any time from March 8, 2018, through the final disposition of this matter, and have not been paid for all hours worked nor the correct amount of overtime in violation of state and federal law.

3. Although Plaintiff and the Putative Class Members routinely worked in excess of forty (40) hours per workweek, Plaintiff and the Putative Class Members have not been paid overtime of at least one and one-half their regular rates for all hours worked in excess of forty (40) hours per workweek.

4. During the relevant time period, Defendants knowingly and deliberately failed to compensate Plaintiff and the Putative Class Members for all hours worked each workweek and the proper amount of overtime on a routine and regular basis during the relevant time periods.

5. Specifically, Defendants employed a time keeping system (“SabreTooth”) that did not properly calculate and accurately maintain Plaintiff and the Putative Class Members’ electronic time records.

6. Defendants’ regular practice—including during weeks when Plaintiff and the Putative Class Members worked in excess of 40 hours (not counting hours worked “off-the-clock”)—was (and

is) to employ the SabreTooth time clock that automatically clocked out all employees—including Plaintiff and Putative Class Members—at 4:30 a.m. even though they regularly worked (and continue to work) “off-the-clock” past 4:30 a.m.

7. The effect of Defendants’ illegal practices were (and are) that all time worked by Plaintiff and the Putative Class Members was not (and is not) counted and paid past 4:30 a.m.; thus, Defendants have failed to properly compensate Plaintiff and the Putative Class Members for all of their hours worked and, accordingly, failed to properly calculate Plaintiff and the Putative Class Members’ overtime under the FLSA and Kentucky state law.

8. Plaintiff and the Putative Class Members did not (and currently do not) perform work that meets the definition of exempt work under the FLSA or Kentucky state law.

9. Plaintiff and the Putative Class Members seek to recover all unpaid overtime, liquidated damages, and other damages owed under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b), and to recover all unpaid straight-time, overtime, and other damages owed under the KWHHA as a class action pursuant to Federal Rule of Civil Procedure 23.

10. Plaintiff also prays that all similarly situated workers (Putative Class Members) be notified of the pendency of this action to apprise them of their rights and provide them an opportunity to opt-in to this lawsuit.

11. Plaintiff also prays that the Rule 23 class is certified as defined herein, and that Plaintiff DeCuir designated herein be named as the Class Representative for the Kentucky Class.

## **II. THE PARTIES**

12. Plaintiff Brett DeCuir (“DeCuir”) resides in Bowling Green, Warren County, Kentucky and was employed by Defendants in Bowling Green, Kentucky during the relevant time

period. Plaintiff DeCuir did not receive compensation for all hours worked or the correct amount of overtime compensation for all hours worked in excess of forty (40) hours per workweek.<sup>1</sup>

13. The FLSA Collective Members are those current and former non-exempt night shift employees who used the SabreTooth clock in system and whom were employed by Defendants, anywhere in the United States, at any time from March 8, 2018 through the final disposition of this matter, and have been subjected to the same illegal pay system under which Plaintiff DeCuir worked and was paid.

14. The Kentucky Class Members are those current and former non-exempt night shift employees who used the SabreTooth clock in system and whom were employed by Defendants, in Kentucky, at any time from March 8, 2016 through the final disposition of this matter, and have been subjected to the same illegal pay system under which Plaintiff DeCuir worked and was paid.

15. Defendant CRM Development Company d/b/a CRM Companies is a Domestic For-Profit Corporation, licensed to and doing business in the State of Kentucky. CRM Companies may be served through its registered agent for service of process: **William Craig Turner, 145 Rose Street, Lexington, Kentucky 40507.**

16. Defendant Dropping Bird 16, L.L.C. is a Domestic Limited Liability Company, licensed to and doing business in the State of Kentucky. DB16 may be served through its registered agent for service of process: **William Craig Turner, 145 Rose Street, Lexington, Kentucky 40507.**

### III. JURISDICTION & VENUE

17. This Court has federal question jurisdiction over the FLSA claims pursuant to 28 U.S.C. § 1331 as this is an action arising under 29 U.S.C. §§ 201–19.

18. This Court has supplemental jurisdiction over the Kentucky state law claims pursuant

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<sup>1</sup> The written consent of Brett DeCuir is attached hereto as Exhibit “A.”

to 28 U.S.C. § 1367.

19. This Court has personal jurisdiction over Defendants because the cause of action arose within this district as a result of Defendants' conduct within this District and Division.

20. Venue is proper in the Western District of Kentucky because this is a judicial district where a substantial part of the events or omissions giving rise to the claim occurred.

21. Specifically, Plaintiff DeCuir worked in Bowling Green, Kentucky throughout his employment with Defendants, which is located within this District and Division.

22. Venue is therefore proper in this Court pursuant to 28 U.S.C. § 1391(b).

23. Defendants are joint employers pursuant to 29 C.F.R. § 791.2. They have (or had) common ownership, oversight and control over Plaintiff and the Putative Class Members. As a result, both Defendants are responsible, both individually and jointly, for compliance with all of the applicable provisions of the FLSA, including the overtime provisions, with respect to the entire employment for the workweeks at issue in this case.

#### **IV. ADDITIONAL FACTS**

24. Defendant CRM is involved in facilities management, hotel, restaurant, and construction management.<sup>2</sup> CRM currently owns and operates 17 Raising Cane's locations in Kentucky and South Carolina.<sup>3</sup>

25. Defendant DB16 assists Defendant CRM in operating its Raising Cane's location in Bowling Green Kentucky.

26. Through unified operation and common control, Defendants CRM and DB16 qualify as joint employers under 29 C.F.R. § 791.2.

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<sup>2</sup> <https://www.crmco.com/>

<sup>3</sup> <https://www.crmco.com/portfolio?lightbox=dataItem-ih2t6whf1>

27. Defendants had and have common ownership, oversight, and control over Plaintiff and the Putative Class Members—whose work benefitted each of these Defendants.

28. Defendants dictated their employees' compensation schemes (including those of Plaintiff and the Putative Class Members), made their employees' work schedules, recorded their employees' hours, maintained their employees' employment files, maintained their employees' documents, possessed the ability to hire and fire their employees, and managed and controlled the work done by their employees.

29. As a result, Defendants are responsible, both individually and jointly, for compliance with the FLSA, including its overtime provisions, with respect to the entire employment for the workweeks at issue in this case.

30. Defendants are joint employers pursuant to 29 C.F.R. § 791.2.

31. Defendants directly or indirectly hired Plaintiff and the Putative Class Members, controlled their work schedules and conditions of employment, and determined the rate and method of the payment of wages.

32. Specifically, Plaintiff DeCuir was hired by DB16 but was paid by Defendant CRM.

33. Defendant CRM managed Plaintiff DeCuir's health insurance and other employment related benefits.

34. Defendants maintained control, oversight, and direction over Plaintiff DeCuir, including the promulgation and enforcement of policies affecting the payment of wages for overtime compensation.

35. Defendants mutually benefitted from the work performed by Plaintiff and the Putative Class Members.

36. Defendants did not act entirely independently of each other and have not been completely disassociated with respect to the work of Plaintiff and the Putative Class Members.

37. Defendants shared the services of Plaintiff and the Putative Class Members. Defendants acted directly or indirectly in the interest of each other in relation to Plaintiff and the Putative Class Members.

38. Specifically, Defendants dictated the practical goals and what pressing or tactical items needed to be done in order to meet the goals of the respective Defendants and/or their customers.

39. Moreover, Defendants have the power to hire and fire the Plaintiff and the Putative Class Members, supervise and control the Plaintiff and Putative Class Members' work schedules and conditions of their employment, determine their rate and method of payment, and maintain their employment records.

40. Plaintiff DeCuir was employed by Defendants in Bowling Green, Kentucky from approximately December of 2019 until November of 2020.<sup>4</sup>

41. Plaintiff and Putative Class Members are (or were) non-exempt night shift employees who used the SabreTooth clock in system.

42. Importantly, none of the FLSA exemptions relieving a covered employer (such as Defendants) of the statutory duty to pay its employees overtime at one and one-half times the regular rate of pay apply to Plaintiff or the Putative Class Members.

43. As night shift employees, Plaintiff and Putative Class Members job duties consisted (or consist) of handling crewmember and customer situations, monitoring cleanliness and maintenance of the restaurant, and cleaning the restaurant.

44. Plaintiff and the Putative Class Members typically worked approximately forty (40) "on-the-clock" hours per week.

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<sup>4</sup> <https://www.wbko.com/content/news/Raising-Canes-to-celebrate-grand-opening-568016821.html>

45. In addition to their forty (40) “on-the-clock” hours, Plaintiff and the Putative Class Members worked up to three (3) to five (5) hours “off-the-clock” per week and have not been compensated for that time.

### **The SabreTooth Time Keeping System**

46. Defendants utilize the SabreTooth time keeping system, which was (and remains) programmed to shut down daily at 4:30 a.m.

47. When the SabreTooth time keeping system shuts down at 4:30 a.m., it automatically clocks out all workers, regardless of whether they are currently working or not.

48. Although Defendants knew their time keeping system automatically clocks employees out at 4:30 a.m., Defendants still scheduled Plaintiff and the Putative Class Members to work past 4:30 a.m.

49. Defendants did not inform Plaintiff or the Putative Class Members that they would be automatically clocked out by the SabreTooth system at 4:30 a.m.

50. Plaintiff and the Putative Class Members were (and continue to be) regularly scheduled to work from 3 p.m. to either 7 a.m. or 9 a.m. the next morning. Due to the system automatically clocking Plaintiff and the Putative Class Members out at 4:30 a.m., Plaintiff and the Putative Class Members were (and currently are) not compensated for all of their hours worked.

51. Defendants were aware of this issue because Plaintiff DeCuir discussed SabreTooth’s automatic clock-out routine with the general manager after discovering his shorted hours. In response to Plaintiff DeCuir’s concerns, the general manager informed Plaintiff DeCuir that he knew of this feature and further that SabreTooth was not designed for employees to be on the clock all night.

52. Defendants’ automatic clock out mechanism miscalculated Plaintiff and the Putative Class Members actual hours worked at or below forty (40) hours per workweek and actual hours worked in excess of 40 hours per workweek and deprived (and continues to deprive) Plaintiff and the

Putative Class Members of the required and proper amount of straight time pay and overtime pay in violation of the FLSA and the KWHHA.

53. As a result of Defendants' corporate policies and practices requiring Plaintiff and the Putative Class Members to perform work past 4:30 a.m., Plaintiff and the Putative Class Members were not (and continue to not be) compensated for all hours worked, including all hours worked in excess of forty (40) in a workweek, at the rates required by the FLSA.

54. Defendants employed (and continue to employ), other individuals who perform(ed) the same or similar job duties under the same pay provisions as Plaintiff.

55. Defendants were (and continue to be) aware of their obligation to pay for all hours worked and pay overtime for all hours worked in excess of forty (40) each week to Plaintiff and the Putative Class Members, but Defendants failed to do so.

56. Because Defendants have not paid Plaintiff and the Putative Class Members for all hours worked and time and a half for all hours worked in excess of forty (40) in a workweek, Defendants' pay policies and practices violated the FLSA and KWHHA.

57. Because Defendants did not pay Plaintiff and the Putative Class Members for each straight-time hour worked, Defendants' pay policies and practices also violate the KWHHA

**V.  
CAUSES OF ACTION**

**COUNT ONE  
(Collective Action Alleging FLSA Violations)**

**A. FLSA COVERAGE**

58. All previous paragraphs are incorporated as though fully set forth herein.

59. The FLSA Collective is defined as:

**ALL NIGHT SHIFT EMPLOYEES WHO UTILIZED THE  
SABRETOOTH CLOCK IN SYSTEM AND WHO WORKED FOR CRM  
DEVELOPMENT COMPANY D/B/A CRM COMPANIES AND/OR  
DROPPING BIRD 16, L.L.C., ANYWHERE IN THE UNITED STATES, AT**

**ANY TIME FROM MARCH 8, 2018 THROUGH THE FINAL DISPOSITION OF THIS MATTER (“FLSA Collective” or “FLSA Collective Members”).**

60. At all times hereinafter mentioned, Defendants were employers within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

61. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

62. At all times hereinafter mentioned, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, or in any closely related process or occupation directly essential to the production thereof, and in that that enterprise has had, and has, an annual gross volume of sales made or business done of not less than \$500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

63. Specifically, Defendants operate numerous restaurants, purchase materials through commerce, transport materials through commerce and on the interstate highways, and conduct transactions through commerce, including the use of credit cards, phones and/or cell phones, and the Internet.

64. During the respective periods of Plaintiff and the FLSA Collective Members’ employment by Defendants, these individuals provided services for Defendants that involved interstate commerce for purposes of the FLSA.

65. In performing the operations hereinabove described, Plaintiff and the FLSA Collective Members were engaged in commerce or in the production of goods for commerce within the meaning

of §§ 203(b), 203(i), 203(j), 206(a), and 207(a) of the FLSA. 29 U.S.C. §§ 203(b), 203(i), 203(j), 206(a), 207(a).

66. Specifically, Plaintiff and the FLSA Collective Members are (or were) non-exempt night shift managers who assisted Defendants' customers. 29 U.S.C. § 203(j).

67. At all times hereinafter mentioned, Plaintiff and the FLSA Collective Members are (or were) individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–07.

68. The proposed class of similarly situated employees sought to be certified pursuant to 29 U.S.C. § 216(b), is defined in Paragraph 59.

69. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee and personnel records of Defendants.

**B. FAILURE TO PAY WAGES AND OVERTIME UNDER THE FAIR LABOR STANDARDS ACT**

70. Defendants violated provisions of Sections 6, 7 and 15 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2) by employing individuals in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than forty (40) hours without compensating such non-exempt employees for all the hours they worked in excess of forty (40) hours per week at rates at least one and one-half times the regular rates for which they were employed.

71. Moreover, Defendants knowingly, willfully, and with reckless disregard carried out their illegal pattern of failing to pay Plaintiff and other similarly situated employees the proper amount of overtime compensation for all hours worked over forty (40) each week. 29 U.S.C. § 255(a).

72. Defendants knew or should have known their pay practices were in violation of the FLSA.

73. Defendants are sophisticated parties and employers, and therefore knew (or should have known) their pay policies violated of the FLSA.

74. Plaintiff and the FLSA Collective Members, on the other hand, are (and were) unsophisticated laborers who trusted Defendants to pay them according to the law.

75. The decision and practice by Defendants not to pay Plaintiff and the FLSA Collective Members overtime for all hours worked over forty (40) each week was neither reasonable nor in good faith.

76. Accordingly, Plaintiff and the FLSA Collective Members are entitled to be paid overtime wages for all hours worked in excess of forty (40) hours per workweek pursuant to the FLSA in an amount equal to one-and-a-half times their regular rate of pay, plus liquidated damages, attorneys' fees and costs.

### **C. COLLECTIVE ACTION ALLEGATIONS**

77. All previous paragraphs are incorporated as though fully set forth herein.

78. Pursuant to 29 U.S.C. § 216(b), this is a collective action filed on behalf of Defendants' employees who are (or were) similarly situated to Plaintiff with regard to the work they performed and the manner in which they were paid.

79. Other similarly situated employees of Defendants have been victimized by Defendants' patterns, practices, and policies, which are in willful violation of the FLSA.

80. The FLSA Collective Members are defined in Paragraph 59.

81. Defendants' failure to pay Plaintiff and the FLSA Collective Members overtime compensation at the rates required by the FLSA, results from generally applicable policies and practices of Defendants, and does not depend on the personal circumstances of Plaintiff or the FLSA Collective Members.

82. Thus, Plaintiff's experiences are typical of the experiences of the FLSA Collective Members.

83. The specific job titles or precise job requirements of the various FLSA Collective Members does not prevent collective treatment.

84. All of the FLSA Collective Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to be properly compensated their overtime wages for all hours worked in excess of forty (40) each week.

85. Although the issues of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

86. Absent a collective action, many members of the proposed FLSA collective will not likely obtain redress of their injuries and Defendants will retain the proceeds of their violations.

87. Moreover, individual litigation would be unduly burdensome to the judicial system. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of the individual members of the classes and provide for judicial consistency.

88. Accordingly, the FLSA collective of similarly situated plaintiffs should be certified as defined as in Paragraph 59, and notice should be promptly sent.

**COUNT TWO**  
**(Class Action Alleging Violations of the KWHHA)**

**A. KWHHA COVERAGE**

89. Paragraphs 1-88 are incorporated as though fully set forth herein.

90. The Kentucky Class is defined as:

**ALL NIGHT SHIFT EMPLOYEES WHO UTILIZED THE SABRETOOTH CLOCK IN SYSTEM AND WHO WORKED FOR CRM DEVELOPMENT COMPANY D/B/A CRM COMPANIES AND/OR DROPPING BIRD 16, L.L.C., ANYWHERE IN THE STATE OF KENTUCKY, AT ANY TIME FROM MARCH 8, 2018 THROUGH THE FINAL DISPOSITION OF THIS MATTER (“Kentucky Class” or “Kentucky Class Members”).**

91. At all times hereinafter mentioned, Defendants have been “employers” within the meaning of the KWHHA. KY. REV. STAT. ANN. §§ 337.010, *et seq.*; 803 KY. ADMIN. REGS. 1:005.

92. At all times hereinafter mentioned, Plaintiff and the Kentucky Class members have been “employees” within the meaning of the KWHHA. KY. REV. STAT. ANN. §§ 337.010, *et seq.*; 803 KY. ADMIN. REGS. 1:005.

**B. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE KENTUCKY STATUTES**

93. All previous paragraphs are incorporated as though fully set forth herein.

94. The KWHHA requires that “[e]very employer doing business in [Kentucky] shall . . . pay to each of its employees all wages or salary earned to a day not more than eighteen (18) days prior to the date of that payment.” KY. REV. STAT. ANN. § 337.020.

95. Defendants have willfully failed to pay Plaintiff DeCuir and the Kentucky Class Members for all hours they worked. When this “off-the-clock” time is included as time worked, Defendants have failed to pay Plaintiff DeCuir and the Kentucky Class Members correct wages and overtime wages as required by the KWHHA.

96. Plaintiff DeCuir and the Kentucky Class Members have suffered damages and continue to suffer damages as a result of Defendants’ acts or omissions as described herein. Defendants are in possession and control of necessary documents and information from which Plaintiff DeCuir would be able to precisely calculate damages.

97. Plaintiff DeCuir, on behalf of himself and the Kentucky Class Members, seeks recovery of their unpaid wages and an additional equal amount as liquidated damages, attorneys’ fees, costs, and reasonable expenses of this action to be paid by Defendants. *See* KY. REV. STAT. ANN. § 337.385.

98. The proposed class of employees, i.e. putative class members sought to be certified pursuant to the Kentucky Wage and Hour Act, is defined in Paragraph 90.

99. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendants.

**C. KENTUCKY CLASS ALLEGATIONS**

100. All previous paragraphs are incorporated as though fully set forth herein.

101. Plaintiff DeCuir brings his Kentucky claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all similarly situated individuals employed by Defendants who worked in Kentucky at any time since March 8, 2016.

102. Class action treatment of Plaintiff DeCuir's Kentucky claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

103. The number of Kentucky Class Members is so numerous that joinder of all class members is impracticable.

104. Plaintiff DeCuir is a member of the Kentucky Class, his claims are typical of the claims of other Kentucky Class Members, and he has no interests that are antagonistic to or in conflict with the interests of other Kentucky Class Members.

105. Plaintiff DeCuir and his counsel will fairly and adequately represent the Kentucky Class Members and their interests.

106. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

107. Accordingly, the Kentucky Class should be certified as defined in Paragraph 90.

**VI.  
RELIEF SOUGHT**

108. Plaintiff DeCuir respectfully prays for judgment against Defendants as follows:

- a. For an Order certifying the FLSA Collective as defined in Paragraph 59 and requiring Defendants to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all putative collective action members;
- b. For an Order approving the form and content of a notice to be sent to the FLSA Collective Members advising them of the pendency of this litigation and of their rights with respect thereto;
- c. For an Order pursuant to Section 16(b) of the FLSA finding Defendants liable for unpaid back wages due to Plaintiff (and those FLSA Collective Members who have joined in the suit), and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those FLSA Collective Members who have joined in the suit);
- d. For an Order certifying the Kentucky Class as defined in Paragraph 90 and designating Plaintiff DeCuir as the Class Representative of the Kentucky Class.
- e. For an Order pursuant to the KWHHA awarding the Kentucky Class Members all damages allowed by law;
- f. For an Order awarding the costs of this action;
- g. For an Order awarding attorneys' fees;
- h. For an Order awarding pre-judgment and post-judgment interest at the maximum legal rate;
- i. For an Order awarding Plaintiff DeCuir a service award as permitted by law;
- j. For an Order compelling the accounting of the books and records of Defendants, at Defendants' expense; and

k. For an Order granting such other and further relief as may be necessary and appropriate.

Date: March 10, 2021

Respectfully submitted,

**The Lawrence Firm, PSC**

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***Attorneys in Charge for Plaintiff and Putative Class Members***

**LEGAL REPRESENTATION AGREEMENT**  
FOR USE WITH CLIENTS

IF YOU RECOVER NOTHING, THEN YOU OWE THE ATTORNEYS NOTHING  
40% CONTINGENT-FEE AGREEMENT

Client(s) names (“Client”): Brett A DeCuir

Thank you for asking **ANDERSON ALEXANDER, PLLC** (hereinafter “the Law Firm”) to represent your interests and those of other similarly situated current and former employees of **CRM COMPANIES, INC.** in the above referenced matter. This document sets forth the terms of our relationship as attorney and client. When you sign this document, it becomes a contract between the Law Firm and you, which is legally enforceable by either of us.

**SCOPE OF REPRESENTATION**

By this Legal Representation Agreement (this “Agreement”), Client hires **ANDERSON ALEXANDER, PLLC** (“Law Firm,” and together with Client, the “Parties”) to represent Client as Client’s attorney in connection with the prosecution of any and all of Client’s claims and damages arising out of an employment dispute between Client and **CRM COMPANIES, INC.** and/or any other entity found to be Client’s employer. We agree to act as your lawyers in the above referenced matter, but not in any other matters without an additional contract.

This Agreement binds Client and her heirs, executors, administrators, successors, assigns, and any wards, minors, or incompetents over whom Client is a guardian.

**ATTORNEY’S FEES**

In consideration of Law Firm’s legal services to be rendered to Client in connection with this Agreement, Client agrees to pay Law Firm 40% of Client’s gross recovery, if any, in connection with Client’s Claims, before deduction for Law Firm’s Case Costs, as defined below, (Law Firm’s “Contingent Fee” and Clients’ “Gross Recovery,” respectively); and, Client assigns to Law Firm an undivided property interest in Client’s Gross Recovery in the amount of Law Firm’s Contingent Fee. Client’s Gross Recovery will include, without limitation, all money paid to Client after the date of this Agreement and in connection with Client’s Claims. If the defendant agrees or is compelled to pay Client’s attorney’s fees in connection with Client’s Claims (Client’s “Fee Award”), then Law Firm may, in its sole discretion, elect to receive the greater of the full amount of (1) Law Firm’s Contingent Fee, which will be calculated on the basis of including in Client’s Gross Recovery the Fee Award, or, in the alternative, (2) Client’s Fee Award.

### **CASE COSTS**

Law Firm will advance all Case Costs, as defined below, in connection with Law Firm's prosecution of Client's Claims. Client will from Client's portion of their Gross Recovery reimburse Law Firm for its Case Costs, as defined below, paid in connection with Law Firm's prosecution of Client's Claims. "Case Costs" include, without limitation, Law Firm's costs and expenses paid in connection with (1) document, photograph, video, computer-generated, map, and electronic-data imaging, editing, and production, (2) database management, (3) travel (private or commercial airfare provided, if private, then at commercial rates), lodging, and meals, (4) communications (for example, telephone, fax, U.S. mail, FedEx, UPS, EchoSign, air cargo, etc.), (5) consulting and/or testifying experts, (6) interest, if any, on Law Firm's Case Costs, (7) jury consultants, and (8) appellate and other specialized counsel (e.g., bankruptcy counsel).

In the event you do not prevail on your claim, you will not be personally required to pay a share of the Law Firm's or the Client's employer's litigation costs or expenses, nor will you be required to pay a share of the Client's employer's attorney's fees.

### **TIMING**

Client understands that it may take years to resolve her Claims and there will be periods of time in which Law Firm is not active in the prosecution of Client's Claims, but, instead, waiting on others to take some action.

### **POWER OF ATTORNEY**

Client authorizes Law Firm to do anything and everything reasonably necessary to prosecute Client's Claims, including, without limitation, engaging in litigation (e.g., discovery, hearing, trials, etc.), incurring and paying Case Costs, making demands for settlement, and engaging in mediation or other negotiations to settle some or all of Client's Claims; in this regard, Law Firm may, on behalf of Client, sign all pleadings, releases, drafts, checks, and authorizations in aid of Law Firm's prosecution of Client's Claims.

### **SETTLEMENT**

Client alone may determine whether and when to settle his/her Claim; provided, Client may not settle his/her Claim without prior written notice to Law Firm. Law Firm may not settle Client's Claims without prior consent by Client. Any check from potential defendants to Client will be made payable to Client and Law Firm or, in the alternative, Law Firm alone.

### **ADVANCES**

Client understands that Law Firm may not advance Client money, other than Case Costs.

### **CLIENT'S REPRESENTATIONS TO LAW FIRM**

Client represents to Law Firm, and Law Firm relies upon Client's representations, that: (1) Client has the authority to enter into this Agreement and bind Client; (2) Client has read every word of this Agreement; (3) Client has had ample opportunity to consult with an attorney independent of Law Firm to review this Agreement to Client's complete and total satisfaction;

(4) Client knows that Client can hire any law firm of Client's choosing to represent Client in the prosecution of Client's Claims, and some law firms may charge an attorney's fee that is less than, more than, or the same as Law Firm; (5) Client is under no pressure to sign this Agreement; (6) Client may seek to modify any term of this Agreement, if such term concerns Client; (7) as of the date of this Agreement and in Client's dealings with Law Firm, Client has dealt exclusively with Law Firm; and, (8) in connection with Client's decision to hire Law Firm, Client is not relying on any promise by Law Firm, guarantee by Law Firm, or anything of value from Law Firm, except as set forth in this Agreement.

### **WITHDRAWAL OR TERMINATION**

We reserve the right to release the Law Firm from this contract and to withdraw from your representation if, following investigation or legal research, it reasonably appears to us that continued pursuit of your case would not result in a sustainable claim and/or collectable judgment; or if you should engage in any conduct that renders it unreasonably difficult for us to represent you effectively. We also specifically reserve the right to withdraw from your representation if the total number of plaintiffs participating in this lawsuit is not at least ten (10) individuals. Law Firm may, in its sole discretion, withdraw from Client's representation; provided, Law Firm will give Client not less than 30-days written notice of Law Firm's intent to withdraw before Law Firm withdraws; and, Client will nonetheless remain obligated to pay Law Firm its Contingent Fee or Fee Award, as the case may be, and Case Costs. Further, Client may, in her sole discretion, terminate Law Firm's representation; provided, Client will nonetheless remain obligated to pay Law Firm its Contingent Fee or Fee Award, as the case may be, and Case Costs.

### **JOINT REPRESENTATION**

Law Firm has advised Client that Law Firm may eventually represent other clients in prosecuting their claims arising out of the Incident, which claims are similar to Client's Claims (Law Firm's "Other Clients"). Further, Law Firm has advised Client that there are important pros and cons of participating in a joint representation in which Law Firm, as here, represents a large number of clients in prosecuting their claims arising out of the Incident. Client consents to Law Firm's joint representation of Client and such Other Clients. If conflicts arise between Client and one or more Other Clients, then Client's sole remedy will be either to (1) waive such conflicts or (2) terminate Law Firm's representation of Client. Client agrees not to seek disqualification of Law Firm from its continued representation of any Other Clients. Client irrevocably waives the right to seek such disqualification, as a condition for Law Firm's willingness to represent Client in connection with this Agreement; said differently, Law Firm would not represent Client but for Client's irrevocable waiver of their right to seek such disqualification. Client agrees that Law Firm may mediate or otherwise negotiate Client's Claims in combination with Other Client's claims.

### **TAX ADVICE**

Law Firm will give Client no tax advice of any kind on any matter.

### **CLIENT'S JOB**

Client agrees to use his/her best efforts at all times and in all ways to assist Law Firm in its prosecution of Client's Claims, including, at bare minimum, providing Law Firm prompt written notice of any change in how best to contact Client; further, Client agrees to respond to Law Firm's contacts within hours (vs. days, weeks, or months), once Client becomes aware of such contacts, as such contacts may be in connection with time-sensitive (e.g., litigation) matters for which the consequence for delay is extinguishment of Client's Claims without compensation or effective recourse (i.e., a total loss). Client further agrees to cooperate fully in providing any and all information requested from you by the Law Firm and in responding to any and all applicable discovery requests. Client agrees to attend any and all scheduled meetings related to this matter and to attend and participate in any and all scheduled appearances for deposition and/or for trial.

### **STATE BAR OF TEXAS**

The State Bar of Texas investigates and prosecutes professional misconduct committed by Texas attorneys. Although not every complaint against or dispute with a lawyer involves professional misconduct, the State Bar Office of General Counsel will provide you with information about how to file a complaint. For more information, please call 1-800-932-1900. This is a toll-free phone call.

### **DOCUMENT RETENTION**

At the conclusion of this representation, Law Firm will retain electronic files in connection with Client's Claims for four years, after which Law Firm will permanently destroy same; and, Client's consent to Law Firm's permanent destruction of such files. Client may, of course, request and obtain a copy of such files from Law Firm at any time until they are permanently destroyed.

### **DISPUTES**

Any dispute between any of the Parties, large or small, at law or in equity, arising out of or in any way relating to this Agreement, including, without limitation, the determination of the whether this provision is applicable to a dispute, will be determined by binding arbitration administered by the San Antonio, Texas office of JAMS (the "Arbitration"); provided, any Party may file an action in any court of competent jurisdiction to enforce this provision; and, if any Party to a dispute fails to submit to arbitration following such filing, then the Party failing to submit to arbitration will bear the other Party's reasonable costs, including attorneys' fees, paid in connection with compelling arbitration. The rules and procedures applicable to the Arbitration will be JAMS' Streamlined Arbitration Rules and Procedures, effective July 1, 2014, except as modified in this provision (the "Rules"). The Arbitration will be determined by one arbitrator (the "Arbitrator"). The Arbitrator will be a former state or federal judge before whom none of the Parties to the dispute have appeared, with whom none of the Parties to the dispute has worked, to whom none of the Parties to the dispute made a political contribution, with whom none of the Parties to the dispute has or had a personal relationship, and who has reviewed this provision and affirmed to JAMS that he or she can and will enforce its terms and conditions, including, without limitation, the time line set forth in this provision.

JAMS will provide the Parties to the dispute a list of 10 potential arbitrators, each of whom is qualified to serve pursuant to the foregoing qualifications; then, the Party demanding the arbitration will have 10 days to strike up to five names and serve such strikes on JAMS and the other Party; then, the Party responding to the demand for arbitration will have 10 days to strike up to five names and serve such strikes on JAMS and the other Party; then, JAMS will select the Arbitrator from those names neither Party to the dispute chose to strike; provided, if the Parties chose to strike all names, then JAMS will repeat the process; and, provided, further, the Parties may at any time and from time to time agree on the Arbitrator, and such agreement will control. Upon appointment of the Arbitrator, and in parallel with the Arbitration, JAMS will appoint a mediator (the "Mediator"), other than the Arbitrator, and such mediator will administer a mediation within 30 days of the foregoing appointment (the "Mediation"). All oral or written communications in connection with the Arbitration and Mediation will be confidential and privileged and will not be disclosed to anyone other than the participants in same. If JAMS receives two or more demands for arbitration in connection with the same (or substantially the same) dispute ("Related Demands"), JAMS will consolidate all such proceedings for determination by the Arbitrator appointed in connection with the first of the Related Demands filed with JAMS. Judgment on the Arbitrator's award (the "Award") may be entered in any court of competent jurisdiction. The Arbitration and all related proceedings, including, without limitation, discovery (e.g., oral depositions), and mediations will occur in San Antonio, Texas. The Arbitrator will determine a scheduling order that contemplates no more than 90 days of pre-arbitration proceedings, including, without limitation, discovery (e.g., oral depositions), the Arbitration to occur within 30 days of such cut off, and the Award to be issued within 30 days of the Arbitration. The Award will be binding and not subject to appeal, absent breach of this provision. This Agreement will be governed by Texas law, exclusive of its choice of law rule; provided, this Agreement involves interstate commerce, and this provision will be governed first by the Federal Arbitration Act (Title 9 of the United States Code) and second by Texas law. The Law Firm will pay the reasonable costs payable to JAMS, the Arbitrator, and the Mediator; provided, the Arbitrator will award the prevailing Party in the Arbitration its damages up to, but not exceeding, \$10,000 of its reasonable costs, including attorneys' fees, paid in connection with the Arbitration and Mediation, including, without limitation, its costs paid to JAMS, the Arbitrator, and the Mediator. Statutes of limitations and repose applicable to any dispute will apply to any Arbitration in connection with such dispute. Notwithstanding any other terms of conditions in this Agreement, this provision will survive termination of this Agreement.

**DISCLAIMER OF GUARANTEES, PROMISES, PAYMENTS & IMPROPER SOLICITATION**

By signing and entering into this contract, the Client hereby affirms and warrants the following: (a) that employment of any attorneys in this matter was not solicited, either in person or by other forms of oral, written or electronic communication, by or on behalf of any attorneys or any of their employees, agents or representatives, (b) that this contract is not being entered into as a result of anyone paying, giving, or offering to pay or give a Client or any relative of a Client money or anything of value, (c) that the Client is not aware of anyone

paying, giving, or offering to pay or give money or anything of value to obtain or solicit legal employment in this matter, and (d) that no promises or guarantees of a successful recovery have been made to the client.

**MISCELLANEOUS**

This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting same. If any provision of this Agreement is held by the Arbitrator to be illegal, invalid, or unenforceable under present or future laws, then such provision will be modified by the Arbitrator to conform to such laws, and the balance of this Agreement will remain in full force and effect. Each waiver in this Agreement is subject to the overriding and governing rule that it will be effective only if and to the extent that (1) it is not prohibited by applicable law and (2) applicable law neither provides for nor allows any material sanctions to be imposed against a party for having bargained for and obtained it.

THIS AGREEMENT EMBODIES THE ENTIRE AGREEMENT AND UNDERSTANDING BETWEEN THE PARTIES IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT AND SUPERSEDES AND CANCELS ALL PRIOR AGREEMENTS AND UNDERSTANDING IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT.

The Parties may by mutual agreement amend or supplement this Agreement at any time and from time to time; provided that that they must do so in writing, and such writing must be signed by Client and Law Firm. Texas law provides that a client need not prove actual damages in order to obtain forfeiture of attorney’s fees for an attorney’s breach of his or her fiduciary duty to the client. Nonetheless, Client agrees to amend Client’s right to obtain such forfeiture; in any claim by Client against Law Firm (other than a claim for legal negligence), Client’s recovery and Law Firm’s forfeiture of Law Firm’s attorney’s fees will be limited to the greater of (1) Client's actual damages as a result of the wrongful act or (2) \$1,000.

READ CAREFULLY. THIS IS YOUR AGREEMENT WITH LAW FIRM. IT PROTECTS BOTH YOU AND LAW FIRM AND WILL PREVENT MISUNDERSTANDINGS IN THE FUTURE. IF YOU DO NOT UNDERSTAND THIS AGREEMENT, PLEASE DO NOT SIGN IT.

I have read this contract and agree to its terms:

Brett A DeCuir  
Brett A DeCuir (Jan 14, 2021 17:16 CST)  
\_\_\_\_\_  
**Client Signature**

Jan 14, 2021  
\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**ANDERSON ALEXANDER, PLLC**

\_\_\_\_\_  
**Date**

**Please print all information requested below which will be kept confidential:**

\_\_\_\_\_  
Printed Name

**426512883**

\_\_\_\_\_  
Social Security Number (Last 4)

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Home Phone Number

\_\_\_\_\_  
Cell Phone Number

CIVIL COVER SHEET 1:21-cv-40-GNS

JS 44 (Rev. 10/20)

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

Brett DeCuir, Individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff Warren, KY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) The Lawrence Firm, PSC, 606 Philadelphia St., Covington, KY 41011, (859) 578-9130

DEFENDANTS

CRM Development Company d/b/a CRM Companies and Dropping Bird 16, LLC

County of Residence of First Listed Defendant Fayette, KY (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 210 Land Condemnation, 365 Personal Injury, etc.

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. 201, et seq. ("FLSA") Brief description of cause:

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: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

03/10/2021 /s/ Anne L. Gilday

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

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I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
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\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Raising Cane Night Shift Employees Owed Wages for Off-the-Clock Work, Lawsuit Alleges](#)

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