

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

OCT 30 2018

JAMES W. MCCORMACK, CLERK
By: *[Signature]* DEPT. CLERK

PLAINTIFF

**IAN DOLPHIN, Individually and on
Behalf of all Others Similarly Situated**

vs.

No. 4:18-cv-810-SWW

**TMT LITTLE ROCK, INC.,
and BEN DARNELL**

This case assigned to District Judge Wright **DEFENDANTS**
and to Magistrate Judge Harris

ORIGINAL COMPLAINT—CLASS AND COLLECTIVE ACTION

COMES NOW Plaintiff Ian Dolphin, individually and on behalf of all others similarly situated, by and through his attorneys Chris Burks and Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint—Class and Collective Action against Defendants TMT Little Rock, Inc., and Ben Darnell (collectively “Defendants”), he does hereby state and allege as follows:

I. PRELIMINARY STATEMENTS

1. This is a hybrid class and collective action brought by Plaintiff Ian Dolphin, individually and on behalf of other Movers or similarly situated employees employed by Defendants at any time within a three-year period preceding the filing of this Complaint.

2. Plaintiff brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* (“AMWA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, costs, including a reasonable attorney’s fee as a result of

Defendants' failure to pay Plaintiff and other Movers lawful overtime compensation for hours worked in excess of forty (40) hours per week.

3. Upon information and belief, for at least three (3) years prior to the filing of this Complaint, Defendants have willfully and intentionally committed violations of the FLSA as described, infra.

II. JURISDICTION AND VENUE

4. The United States District Court for the Eastern District of Arkansas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

5. Plaintiff's claims under the AMWA form part of the same case or controversy and arise out of the same facts as the FLSA claims alleged in this Complaint.

6. Therefore, this Court has supplemental jurisdiction over Plaintiff's AMWA claims pursuant to 28 U.S.C. § 1367(a).

7. The acts complained of herein were committed and had their principal effect against Plaintiff within the Western Division of the Eastern District of Arkansas; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

8. Defendants do business in this district and a substantial part of the events alleged herein occurred in this District.

9. The witnesses to overtime violations alleged in this Complaint reside in this District.

10. On information and belief, the payroll records and other documents related to the payroll practices that Plaintiff challenges are located in this District.

III. THE PARTIES

11. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

12. Plaintiff Ian Dolphin is a citizen and resident of Pulaski County.

13. Plaintiff worked for Defendants as a Mover within the three (3) years preceding the filing of this Complaint.

14. Plaintiff was paid an hourly rate.

15. At all times material herein, Plaintiff has been entitled to the rights, protection and benefits provided under the FLSA and the AMWA.

16. Defendant TMT Little Rock, Inc. ("TMT Little Rock"), is a for-profit corporation created and existing under and by virtue of the laws of the State of Arkansas, providing moving services.

17. TMT Little Rock's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of exercise taxes at the retail level that are separately stated) during each of the three calendar years preceding the filing of this complaint.

18. During each of the three years preceding the filing of this Complaint, TMT Little Rock employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person.

19. TMT Little Rock's primary address is 4125 Crystal Hill Road, Suite A, North Little Rock, Arkansas 72118.

20. TMT Little Rock was at all times relevant hereto Plaintiff's employer, as well as the employer of the members of the class, and is and has been engaged in interstate commerce as that term is defined under the FLSA.

21. Within the past three (3) years preceding the filing of this Complaint, TMT Little Rock continuously employed at least four employees, including Plaintiff.

22. Upon information and belief, Defendant Ben Darnell owns and operates TMT Little Rock.

23. Defendants acted jointly as the employer of Plaintiff and the proposed collective and class and all Defendants are and have been engaged in interstate commerce as that term is defined under the FLSA and AMWA.

24. Defendants have unified operational control and management, as well as control over employees, including shared power to supervise, hire and fire, establish wages and wage policies, and set schedules for their employees through unified management.

25. As a result of this unified operation, control and management, through shared employees and ownership with the authority to establish wages and wage policy, Defendants operated as single enterprise.

IV. REPRESENTATIVE ACTION ALLEGATIONS

26. Plaintiff brings this claim for relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons similarly situated as Movers who were or are employed by Defendants and who are entitled to payment for all of their overtime wages that Defendants failed to pay from

three years prior to the date of the filing of this lawsuit, through the time of the trial of this case.

27. Plaintiff is unable to state the exact number of the collective but believes that the collective's membership is over forty (40) persons.

28. Defendants can readily identify the members of the collective, who are a certain portion of the current and former employees of Defendants.

29. The names and physical and mailing addresses of the FLSA collective action Plaintiffs are available from Defendants, and notice should be provided to the FLSA collective action Plaintiffs via first class mail to their last known physical and mailing addresses as soon as possible.

30. The email addresses of many of the FLSA collective action Plaintiffs are available from Defendants, and notice should be provided to the FLSA collective action Plaintiffs via email to their last known email addresses as soon as possible.

31. The cellular telephone numbers of the FLSA collective action Plaintiffs are available from Defendants, and notice should be provided to the FLSA collective action Plaintiffs via text message as soon as possible.

32. The proposed FLSA collective members are similarly situated in that they have been subject to uniform practices by Defendants which violated the FLSA, including:

A. Defendants' uniform failure to compensate employees pursuant to the requirements of the FLSA; and

B. Defendants' failure to pay members of the class proper overtime compensation in violation of the FLSA, 29 U.S.C. § 201 et seq.

V. FACTUAL ALLEGATIONS

33. Plaintiff repeats and re-alleges all the preceding paragraphs of this Original Complaint as if fully set forth in this section.

34. Plaintiff worked for Defendants as a Mover at Defendants' location in North Little Rock.

35. Defendants directly hired Plaintiff and other similarly-situated employees, paid them wages and benefits, controlled their work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding their employment.

36. Plaintiff and other similarly-situated employees performed duties such as traveling to meet with Defendants' customers and assisting customers with moving tasks.

37. Plaintiff and other similarly-situated employees worked in excess of forty (40) hours per week throughout their tenure with Defendants.

38. Plaintiff and other similarly-situated employees were classified as hourly employees and regularly were required to and did work in excess of forty (40) hours per week.

39. Defendants did not pay Plaintiff or similarly-situated employees for all hours worked in excess of forty (40) in a week.

40. It was Defendants' commonly applied policy to only pay Plaintiff and other Movers for the time spent working for a particular customer.

41. The work that Plaintiff and the class members performed and were required to perform, including travel between customer locations and time spent at

Defendants' yard, was not all billable to a particular customer; therefore not all of the work was compensated.

42. Defendants knew, or showed reckless disregard for whether, the way they paid Plaintiff and other Movers violated the FLSA.

VI. LEGAL ALLEGATIONS

43. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

A. Individual Allegations under the FLSA

44. 29 U.S.C. § 207 requires employers to pay employees one and one-half times the employee's regular rate for all hours that the employee works in excess of forty (40) per week. 29 U.S.C.S. § 207 (LEXIS 2013).

45. Defendants violated Section 778.208 of Title 29 of the Code of Federal Regulations by failing to pay Plaintiff and other similarly-situated employees the proper overtime premium.

46. Defendants' conduct and practice, as described above, have been and is willful, intentional, unreasonable, arbitrary and in bad faith.

47. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff for, and Plaintiff seeks, unpaid overtime wages, liquidated damages, pre-judgment interest, civil penalties and costs, including reasonable attorney's fees as provided by the FLSA.

B. FLSA § 216(b) Representative Action Allegations

48. Plaintiff brings this collective action on behalf of all Movers employed by Defendants to recover monetary damages owed by Defendants to Plaintiff and

members of the Putative Class for all the overtime compensation for all the hours he and they worked in excess of forty (40) each week.

49. Plaintiff brings this action on behalf of himself individually *and* all other similarly situated employees, former and present, who were and/or are affected by Defendants' willful and intentional violation of the FLSA.

50. In the past three years, Defendants have employed many Movers.

51. Like Plaintiff, these Movers regularly worked more than 40 hours in a week.

52. Defendants failed to pay these employees the proper overtime wages. Because these employees are similarly situated to Plaintiff, and because they are owed overtime for the same reasons, the opt-in class is properly defined as:

**All Movers, or Similar Positions,
Within The Past Three Years**

C. Individual Allegations Under the AMWA

53. Plaintiff asserts this claim for damages and declaratory relief pursuant to the AMWA, Arkansas Code Annotated §§ 11-4-203(4).

54. At all relevant times, Defendants were Plaintiff's "employer" within the meaning of the AMWA, Ark. Code Ann. § 11-4-203(4).

55. Defendants failed to pay Plaintiff all overtime wages owed, as required under the AMWA.

56. Defendants' conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

57. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff for monetary damages, liquidated damages, costs, and a reasonable attorney's

fee provided by the AMWA for all violations which occurred beginning at least three (3) years preceding the filing of Plaintiff's initial complaint, plus periods of equitable tolling.

58. Alternatively, should the Court find that Defendants acted in good faith in failing to pay Plaintiff as provided by the AMWA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

D. Class Allegations Under the AMWA

59. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

60. Plaintiff, individually and on behalf of all others similarly situated who were employed by Defendants within the State of Arkansas, brings this claim for relief for violation of the AMWA as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

61. Plaintiff proposes to represent the first AMWA liability class of individuals defined as follows:

**All Arkansas Movers, or Similar Positions,
Within The Past Three Years**

62. Upon information and belief, there are more than 40 persons in the proposed class. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

63. Common questions of law and fact relate to all of the proposed liability class members, such as these:

- i. Whether Defendants' policy of failing to properly pay all overtime-rate wages to members of the proposed class who worked in excess of forty (40) hours per week was unlawful under the AMWA; and

- ii. Whether, as a result of Defendant's failure to lawfully pay Plaintiff's overtime pay, Defendant paid members of the proposed class one and one-half times their regular wages for hours worked over forty (40) in each week in accordance with the AMWA.

60. The above common questions of law and fact predominate over any questions affecting only Plaintiff, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

61. The class members have no interest in individually controlling the prosecution of separate actions because the policy of the AMWA provides a bright-line rule for protecting all non-exempt employees as a class. To wit: "It is declared to be the public policy of the State of Arkansas to establish minimum wages for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being." Ark. Code Ann. § 11-4-202. To that end, all non-exempted employees must be paid for time worked over forty (40) hours per week at a rate of one and one-half times their regular rate. Ark. Code Ann. § 11-4-211.

62. At the time of the filing of this Complaint, neither Plaintiff nor Plaintiff's counsel know of any litigation already begun by any members of the proposed class concerning the allegations in this complaint.

63. No undue or extraordinary difficulties are likely to be encountered in the management of this class action.

64. The claims of Plaintiff are typical of the claims of the proposed liability class in that Plaintiff and all others in the proposed liability class will claim that they were

not paid one and one-half times their regular rate of pay for hours worked in excess of forty per week.

65. Plaintiff and her counsel will fairly and adequately protect the interest of the class.

66. Plaintiff's counsel is competent to litigate Rule 23 class actions and other complex litigation matters, including wage and hour cases like this one.

VII. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Ian Dolphin, individually and on behalf of all others similarly situated, respectfully prays that each Defendant be summoned to appear and to answer herein as follows:

A. That Defendants be required to account to Plaintiff, the class members, and the Court for all of the hours worked by Plaintiff and the class members and all monies paid to them;

B. A declaratory judgment that Defendants' practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, the AMWA, and their relating regulations;

C. Certification of, and proper notice to, together with an opportunity to participate in the litigation, all qualifying current and former employees;

D. Judgment for damages for all unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, the AMWA, and their relating regulations;

E. Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*, the AMWA, and their relating regulations in an amount

equal to all unpaid overtime compensation owed to Plaintiff and members of the Class during the applicable statutory period;

F. An order directing Defendants to pay Plaintiff and members of the Class prejudgment interest, reasonable attorney's fees and all costs connected with this action; and

G. Such other and further relief as this Court may deem necessary, just and proper.

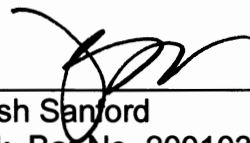
Respectfully submitted,

**IAN DOLPHIN, Individually
and on Behalf of all Others
Similarly Situated, PLAINTIFF**

SANFORD LAW FIRM, PLLC
One Financial Center
650 South Shackleford, Suite 411
Little Rock, Arkansas 72211
Telephone: (501) 221-0088
Facsimile: (888) 787-2040



Chris Burks
Ark Bar No. 2010207
chris@sanfordlawfirm.com



Josh Sanford
Ark. Bar No. 2001037
josh@sanfordlawfirm.com

CIVIL COVER SHEET

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.)

4-18CV 810-5494

I. (a) PLAINTIFFS

IAN DOLPHIN, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Pulaski

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Josh Sanford, SANFORD LAW FIRM, PLLC, One Financial Center, 650 South Shackleford, Suite 411, Little Rock, Arkansas 72211 501-221-0088; josh@sanfordlawfirm.com

DEFENDANTS

TMT LITTLE ROCK, INC., and BEN DARNELL

County of Residence of First Listed Defendant

(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)

- PTF DEF Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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 4 columns of suit categories: Personal Injury, Personal Property, Labor/Management, and various other legal actions like Insurance, Land Condemnation, Habeas Corpus, 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, 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):

29 USC 201

Brief description of cause:

Unpaid Wages

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

DATE 10/30/2018 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: [Mover Files Unpaid Overtime Lawsuit Against TMT Little Rock](#)
