

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2017 MAY 15 PM 1:34
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS FLORIDA

DOROTHY JERNIGAN, on behalf of
herself and others similarly situated,

Plaintiff,

v.

CASE NO. 2:17-cv-265-FtM-AMRM

1st STOP RECOVERY, INC, a
Florida for Profit Corporation, and
JUDITH MARRA-PTASHINSKI,
Individually,

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DOROTHY JERNIGAN ("Plaintiff"), on behalf of herself, and others similarly situated, and by and through the undersigned counsel, files this Complaint against Defendants, 1st STOP RECOVERY, INC, ("1st STOP"), and JUDITH MARRA-PTASHINSKI, Individually ("MARRA" and together with 1st STOP, "Defendants"), and state as follows:

INTRODUCTION

1. This is an action for failure to pay overtime wages pursuant to 29 U.S.C. § 216(b) and 29 U.S.C. § 207(a).

2. Section 7(a) of the FLSA requires payment of time-and-one-half an employee's regular hourly rate whenever a covered employee works in excess of forty (40) hours per work week. 29 U.S.C. § 207(a).

3. Defendants have violated the FLSA by requiring Plaintiff, and those similarly situated, to work while not clocked in and failing to pay Plaintiff, and those similarly situated,

overtime at time-and-one-half of the Plaintiff's regular rate whenever Plaintiff, and those similarly situated, worked in excess of 40 hours per work week.

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. § 201, et seq., hereinafter called the "FLSA") to: (i) recover unpaid overtime wages; (ii) recover an additional equal amount as liquidated damages; and (iii) recover reasonable attorney's fees and costs.

2. The jurisdiction of the Court over this controversy is based upon 29 U.S.C. §216(b).

3. Venue is proper as the acts and omissions giving rise to Plaintiffs' claims occurred in Lee County, Florida.

PARTIES

4. At all times material hereto, Plaintiff was, and continues to be a resident of Lee County, Florida.

5. At all times material to this action, Defendant 1st STOP RECOVERY, INC, was and continues to be a Florida for Profit Corporation. Further at all times material hereto, Defendant 1st STOP RECOVERY, INC, was, and continues to be, engaged in business throughout The United States as well as in Florida with a principle place of business in Lee County, Florida.

6. At all times material to this action, Defendant, JUDITH MARRA-PTASHINSKI, was an individual resident of the State of Florida, who owned and operated Defendant, 1st STOP RECOVERY, INC.

7. At all times material hereto, Marra regularly held and/or exercised the authority to

hire and fire employees of 1st Stop.

8. At all times material hereto, Marra regularly held and/or exercised the authority to determine the work schedules for the employees of 1st Stop.

9. At all times material hereto, Marra regularly held and/or exercised the authority to control the finances and operations of 1st Stop.

10. By virtue of having regularly held and/or exercised the authority to: (a) hire and fire employees of 1st Stop; (b) determine the work schedules for the employees of 1st Stop; and (c) control the finances and operations of 1st Stop, Johnson is an employer as defined by 29 U.S.C. 201 et. seq.

11. Defendants provide repossession vehicle towing service for financial institutions.

12. At all times hereto, Plaintiff was “engaged in commerce” within the meaning of sections 6 and 7 of the FLSA.

13. At all times material hereto, Plaintiff was an “employee” of Defendants within the meaning of the FLSA.

14. At all times material hereto, Defendants were Plaintiff’s “employer” within the meaning of the FLSA.

15. Defendants were and continue to be, an “Employer” within the meaning of the FLSA.

16. At all times material hereto, Defendants were, and continue to be an “enterprise engaged in commerce” within the meaning of the FLSA.

17. At all times material hereto, Defendants were and continue to be, an enterprise engaged in interstate commerce, within the meaning of the FLSA.

18. Based upon information and belief, the annual gross revenue of Defendants is in

excess of \$500,000.00 per annum during the relevant time periods.

19. At all times hereto, Plaintiff was “engaged in commerce” and subject to individual coverage of the FLSA.

20. At all times hereto, Plaintiff was engaged in interstate commerce and subject to the individual coverage of the FLSA, as she regularly placed and accepted interstate phone calls, used the internet, emails, cloud based software and computing devices to interface with out of state lending institutions regarding delinquent car loans and subsequent repossession efforts

21. At all times material to this action, Defendants advertised on the internet, processed credit cards, communicated via mail, email, and telephone with the clients within and without Florida, and purchased goods produced out of state for use in its business here in Lee County.

22. Further, Defendant(s) had two or more employees who regularly handle vehicles and Defendant(s)’ products and equipment, including painting supplies, cleaning supplies, design material, and other equipment, which had previously moved through interstate commerce, during performance of their duties.

23. At all times material hereto, the work performed by the Plaintiff was directly essential to the business performed by Defendant.

STATEMENT OF FACTS

24. Defendants operate a vehicle repossession business in this state.

25. Plaintiff worked for Defendants as an in office repossession agent/office assistant from approximately September 2015 to December 2016.

26. Plaintiff was compensated on an hourly basis.

27. Plaintiff was a non-exempt employee for Defendants.

28. Throughout the duration of her employment, Plaintiff was required to complete various non-exempt duties as her primary job function which included, but were not limited to, placing and receiving telephone calls, drafting and responding to email, data entry, tow truck coordination, and other activities facilitating the repossession of automobiles on behalf of Defendants' clients.

29. At various times, Defendants required Plaintiff to work, and Plaintiff did work, off the clock, without receiving compensation for the hours worked.

30. Plaintiff was not compensated for all of her overtime hours worked at a rate of time-and-a-half-her regular rate.

31. Plaintiff should be compensated at a rate of one and one-half times Plaintiff's regular rate for those hours that Plaintiff worked in excess of forty (40) hours per week as required by the FLSA.

32. Defendant has violated Title 29 U.S.C. §207 from at least September 2015 and continuing through today, in that:

- a. Plaintiff, and those similarly situated, worked in excess of forty (40) hours in one or more workweeks for the period of employment with Defendants;
- b. No payments or provisions for payment have been made by Defendants to properly compensate Plaintiff, and those similarly situated, at the statutory rate of one and one-half times their regular rate for all hours worked in excess of forty (40) hours per workweek, as provided by the FLSA; and
- c. Defendant has failed to maintain proper time records as mandated by the FLSA.

33. Upon information and belief, Defendants did not rely upon any written

administrative regulation, order, ruling, approval or interpretation of the Department of Labor Wage and Hour Division in creating Plaintiff's pay structure.

34. Defendants knew or should have known with reasonable diligence that their conduct violated the Fair Labor Standards Act or was in reckless disregard for its provisions. As such, Defendants' violation of the law was willful.

35. Defendant failed and/or refused to properly disclose or apprise Plaintiff of her rights under the FLSA.

36. Defendants were unjustly enriched by accepting the benefit and value of Plaintiff's work pursuant to the policies and procedures outlined above, but not compensating Plaintiff for this work.

37. Defendants employed and are employing other individuals who perform(ed) the same or similar job duties under the same pay provisions as Plaintiff.

38. Plaintiff has retained the law firm of MORGAN & MORGAN, P.A. to represent Plaintiff in the litigation and have agreed to pay the firm a reasonable fee for its services.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

39. Plaintiff realleges and reavers paragraphs 1 through 38 of the Complaint as if fully set forth herein.

40. Plaintiff was an employee of Defendant.

41. Defendants were employers as defined by the FLSA.

42. Defendant, 1st Stop, is a covered enterprise as defined by the FLSA.

43. From at least and approximately from September 2015 and continuing through December 2016, Plaintiff worked in excess of the forty (40) hours in one or more workweeks for

which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiff's regular rate of pay.

44. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

45. At all times material hereto, on information and belief, Defendants failed, and continue to fail, to maintain proper time records as mandated by the FLSA.

46. Defendants' actions were willful and/or showed reckless disregard for the provisions of the FLSA, as evidenced by their failure to compensate Plaintiff, and those similarly situated, at the statutory rate of one and one-half times Plaintiff's regular rate of pay for all hours worked in excess of forty (40) hours per week when it knew, or should have known, such was, and is, due.

47. Defendants have failed to properly disclose or apprise Plaintiff of her rights under the FLSA.

48. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff, and those similarly situated, suffered and continue to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

49. At all times material hereto, Defendants failed to comply with Title 29 and United States Department of Labor Regulations, 29 C.F.R. §§516.2 and 516.4, by virtue of the management policy, plan or decision that intentionally provided for the compensation of such employee for fewer hours than they actually worked.

50. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, Plaintiff, on behalf of herself and on behalf of those similarly situated, request conditional certification; pursuant to Section 216(b) of the FLSA, of the employees who worked over 40 hours in one or more workweeks, an order permitting Notice to all potential class members; a Declaration that Defendants' policy violates the FLSA; entry of judgment in Plaintiff's favor and against Defendants for actual and liquidated damages, as well as costs, expenses and attorneys' fees and such other relief deemed proper by this Court.

COUNT II
UNJUST ENRICHMENT

51. Plaintiff re-alleges and reincorporate paragraphs 1 through 38 as if fully set forth herein.

52. This Court has supplemental jurisdiction over Plaintiff's unjust enrichment claims pursuant to 28 U.S.C. § 1367(a) because Plaintiff's unjust enrichment claims form a part of the same case or controversy and arise out of the common nucleus of operative facts as her overtime claims.

53. Plaintiff, and all others similarly situated to her, performed work for Defendants off the clock for which they were not compensated.

54. Plaintiff, and all others similarly situated to her, seek compensation for the time spent working while not clocked in to the extent that these hours cannot be captured as part of their overtime claims in Count One, because the addition of these work hours may be less than forty (40) hours within a single work week.

55. Defendants accepted the performance of, and retained the benefit of, the work performed by Plaintiff, and all others similarly situated to her, on their behalf without paying for that work.

56. Defendants have been unjustly enriched as a result of its accepting the work of

Plaintiff, and others similarly situated to her, without proper compensation. It would be unjust to allow Defendants to enjoy the fruits of the collective class's labor without proper compensation.

WHEREFORE, Plaintiff, on behalf of herself and on behalf of those similarly situated, request class certification, pursuant to rule 23 of the Federal Rules of Civil Procedure, of the employees who worked less than 40 hours in one or more workweeks who were not compensated for all of their time worked while in the employ of Defendants, an order permitting Notice to all potential class members; a Declaration that Defendants' were unjustly enriched by failing to compensate Plaintiff, and those similarly situated, for work performed while in the employ of Defendants; entry of judgment in Plaintiff's favor and against Defendants for actual and punitive damages, as well as costs, expenses and attorneys' fees and such other relief deemed proper by this Court.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED this 12th day of May, 2017.

Respectfully submitted,

Morgan & Morgan, P.A.

By: /s/ Paul M. Botros

Paul M. Botros, Esq.

FL Bar No.: 63365

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Trial Counsel for Plaintiff

JS 44 (Rev. 08/16)

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.)

I. (a) PLAINTIFFS
DOROTHY JERNIGAN, on behalf of herself and others similarly situated,

DEFENDANTS
1st STOP RECOVERY, INC, a Florida for Profit Corporation, and
JUDITH MARRA-PTASHINSKI,

(b) County of Residence of First Listed Plaintiff **Lee County**
 (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant **Lee County**
 (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)
Morgan & Morgan, P.A.
 600 N.Pine Island Road, #400, Plantation, Florida 33324
 (954) 318-0268

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

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):
 29 USC Section 216(b)

Brief description of cause:
 Recovery of 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 5/12/17 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY: RECEIPT # AMOUNT 4000 APPLYING IFP JUDGE 2:17-cv-265-MAG. JUDGE [Signature]

RECEIVED
 CLERK US DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 FORT MYERS FLORIDA
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Florida Repo Service Facing Unpaid Overtime Allegations](#)
