

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY DIVISION**

CHRISTOPHER SHILLING, on behalf of himself and others similarly situated,)	Docket No. <u>CIV-21-152-PRW</u> .
)	
Plaintiff,)	<u>COLLECTIVE AND CLASS ACTION COMPLAINT</u>
)	
v.)	<u>JURY TRIAL DEMANDED</u>
)	
LOVE’S TRAVEL STOPS & COUNTRY STORES, INC.)	
)	
Defendant.)	
)	

Plaintiff Christopher Shilling (“Plaintiff”), by and through counsel, and for his Complaint against Defendant Love’s Travel Stops & Country Stores, Inc. (“Defendant”), states and alleges the following:

1. This is a “collective action” instituted by Plaintiff as a result of Defendant’s practices and policies of not paying its hourly, non-exempt assistant managers, including Plaintiff and other similarly situated employees, for all hours worked in excess of 40 hours per workweek at a rate of one and one-half times their regular rate of pay, in violation of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219.

2. Plaintiff also brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and others like him who worked for Defendant in Ohio and suffered the same harms described below.

3. The Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

4. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Defendant's principal place of business is located in this District and Division.

5. The Court has supplemental jurisdiction over the asserted state law claims pursuant to 28 U.S.C. § 1367 because the claims are so related to the FLSA claims as to form part of the same case or controversy.

6. At all times relevant herein, Plaintiff was a citizen of the United States and a resident of Henry County, Ohio. Plaintiff's Consent to Join Form is attached hereto.

7. At all times relevant herein, Plaintiff was an employee of Defendant within the meaning of 29 U.S.C. § 203(e).

8. At all times relevant herein, Defendant was a for-profit corporation, organized and existing under the laws of the State of Oklahoma, headquartered in Oklahoma City.

9. At all times relevant herein, Defendant was an employer within the meaning of 29 U.S.C. § 203(d).

10. At all times relevant herein, Defendant was an enterprise within the meaning of 29 U.S.C. § 203(r).

11. At all times relevant herein, Defendant was an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203(s)(1).

12. At all times relevant herein, Plaintiff was an employee engaged in commerce within the meaning of 29 U.S.C. §§ 206-207.

13. Written consents to join this action, as and when executed by other individual plaintiffs, will be filed pursuant to 29 U.S.C. § 216(b).

FACTUAL ALLEGATIONS

14. Defendant owns and operates more than 500 travel stops in 41 states.
15. At all times material to this Complaint, Plaintiff was employed as an hourly, non-exempt Assistant Manager at Defendant's travel stop located at 13190 Deshler Rd, North Baltimore, Ohio 45872.
16. Other similarly situated employees were employed by Defendant as hourly, non-exempt Assistant Managers at Defendant's locations throughout the country.
17. Plaintiff and other similarly situated employees routinely worked forty (40) or more hours per workweek.
18. Defendant pays its hourly Assistant Managers a nondiscretionary quarterly bonus based on store performance.
19. The amount of the quarterly bonuses was not included in determining Plaintiff's and other similarly situated employees' regular rate of pay for purposes of calculating their overtime compensation.
20. As a result of Defendant's failure to include quarterly bonuses in determining Plaintiff's and other similarly situated employees' regular rate of pay for purposes of calculating their overtime compensation, Plaintiff and other similarly situated employees were not paid for all hours worked in excess of 40 hours per workweek at a rate of one and one-half times their regular rate of pay.
21. Defendant's failure to include these quarterly bonuses in determining Plaintiff's and other similarly situated employees' regular rate of pay for purposes of calculating their overtime compensation was knowing and willful.

COLLECTIVE ACTION ALLEGATIONS

22. Plaintiff brings Count One of the action on his own behalf pursuant to 29 U.S.C. § 216(b), and on behalf of all other persons similarly situated who have been, are being, or will be adversely affected by Defendant’s unlawful conduct.

23. The class which Plaintiff seeks to represent and for whom Plaintiff seeks the right to send “opt-in” notices for purposes of the collective action, and of which Plaintiff himself is a member, is composed of and defined as:

All former and current hourly Assistant Managers employed by Defendant at any of its locations in the United States of America, who received a quarterly bonus, and who worked more than 40 hours in any workweek at any time within the three years preceding the date of filing of this Complaint to the present.

24. Plaintiff is unable to state at this time the exact size of the potential class, but upon information and belief aver that it consists of more than 5,000 people.

25. This action is maintainable as an “opt-in” collective action pursuant to 29 U.S.C. § 216(b) as to claims for unpaid overtime compensation, liquidated damages, attorneys’ fees and costs under the FLSA. In addition to Plaintiff, numerous current and former employees are similarly situated with regard to their wages and claims for unpaid overtime and damages. Plaintiff is representative of those other employees and is acting on behalf of their interests, as well as his own, in bringing this action.

26. These similarly situated employees are known to Defendant and are readily identifiable through Defendant’s business and payroll records. These individuals may readily be notified of this action and allowed to opt in pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for unpaid wages, overtime

compensation, liquidated damages, attorneys' fees and costs under the FLSA.

OHIO CLASS ACTION ALLEGATIONS

27. Plaintiff brings class claims pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of himself and all other current or former persons employed by Defendant in Ohio within the last two years ("Ohio Class") defined as:

All former and current hourly Assistant Managers employed by Defendant at any of its locations in Ohio, who received a quarterly bonus, and who worked more than 40 hours in any workweek at any time within the two years preceding the date of filing of this Complaint to the present.

28. The Ohio Class is so numerous that joinder of all class members is impracticable. Plaintiff is unable to state the exact size of the potential Ohio Class members but estimates that it consists of at least 90 or more employees during relevant times.

29. There are questions of law and fact common to the Ohio Class including: whether Defendant failed to pay its included quarterly bonuses into the overtime calculations for its hourly Assistant Managers, whether failing to do so resulted in unpaid overtime, and whether such overtime remains unpaid.

30. Plaintiff will adequately protect the interests of the Ohio Class. His interests are not antagonistic to but, rather, are in unison with, the interests of the Ohio Class members. Plaintiff's counsel has broad experience in handling class action wage-and-hour litigation and are fully qualified to prosecute the claims of the Ohio Class in this case.

31. The questions of law or fact that are common to the Ohio Class predominate over any questions affecting only individual members. The primary questions that will

determine Defendant's liability to the Ohio Class are common to the class as a whole and predominate over any questions affecting only individual class members.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring Ohio Class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys' fees, and demands on court resources. Many Ohio Class members' claims are sufficiently small that they would be reluctant to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case pursuant to Fed. R. Civ. P. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

COUNT ONE
(Fair Labor Standards Act Violations)

33. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

34. The FLSA requires that non-exempt employees be paid for hours worked in excess of 40 in a workweek at a rate of not less than one and one-half their regular rates of pay.

35. Regular rate of pay is defined as "all remuneration for employment paid to, or on behalf of, the employee," with certain exceptions, none of which apply here. 29 U.S.C. § 207(e).

36. Defendant violated the FLSA by failing to include quarterly bonuses paid to, or on behalf of, Plaintiff and those similarly situated when calculating their regular rate of

pay.

37. Defendant's practice and policy of not including all remuneration for employment paid to, or on behalf of, Plaintiff and those similarly situated when calculating their regular rate of pay caused them to receive less overtime compensation than they were entitled in violation of the FLSA.

38. By engaging in the above-mentioned conduct, Defendant willfully, knowingly, and/or recklessly violated provisions of the FLSA.

39. As a result of Defendant's practices and policies, Plaintiff and those similarly situated have been damaged in that they have not received wages due to them pursuant to the FLSA, and because wages remain unpaid, damages continue.

COUNT TWO
(Ohio Overtime and OPPA - Class Violations)

40. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

41. Defendant's practice and policy of not including non-discretionary bonuses into regular rate and overtime calculations resulted in Defendant not paying Plaintiff and those similarly situated overtime compensation at a rate of one and one-half times their properly calculated regular rate of pay for all hours worked over 40 each workweek violated Ohio law.

42. Plaintiff and those similarly situated are not exempt from the protections of Ohio law.

43. Additionally, the OPPA requires Defendant to pay Plaintiff and the Ohio Class members all wages, including overtime, on or before the first day of each month, for

wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages earned by them during the last half of the preceding calendar month. *See* O.R.C. § 4113.15(A).

44. During relevant times, Plaintiff and the Ohio Class members were not paid all overtime wages earned within 30 days of performing the work. *See* O.R.C. §4113.15(B).

1. Plaintiff's and the Ohio Class members' earned overtime compensation remains unpaid for more than 30 days beyond their regularly scheduled payday.

45. The OPBA provides for liquidated damages in an amount equal to six percent (6%) of the amount of the claim still unpaid or two hundred dollars per pay period, whichever is greater.

46. By engaging in the above-mentioned conduct, Defendant willfully, knowingly, and/or recklessly violated Ohio law.

47. As a result of Defendant's practices, Plaintiff and other similarly situated Ohio Class employees have been harmed in that they have not received wages due to them pursuant to Ohio's wage and hour laws, and because such wages remain unpaid, damages continue.

COUNT THREE
(Damages Pursuant to O.R.C. § 2307.60)

48. Plaintiff incorporates by reference the foregoing allegations as if fully rewritten herein.

49. As a result of Defendant's practices and policies, Plaintiff and those similarly situated have been harmed in that they have not received wages due to them pursuant to the FLSA.

50. The Fair Labor Standards Act, 29 U.S.C. § 216(a), imposes criminal penalties for willful violations of the FLSA.

51. By their acts and omissions described herein, Defendant has willfully violated the FLSA, and Plaintiff and those similarly situated have been injured as a result.

52. O.R.C. § 2307.60 permits anyone injured in person or property by a criminal act to recover damages in a civil action, including exemplary and punitive damages.

53. As a result of Defendant's willful violations of the FLSA, Plaintiff and Opt-in Plaintiffs who join and worked in Ohio are entitled to compensatory and punitive damages pursuant to O.R.C. § 2307.60.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and all those similarly situated, collectively pray that this Honorable Court:

A. Issue an order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. Order prompt notice, pursuant to 29 U.S.C. § 216(b), to all class members that this litigation is pending and that they have the right to "opt in" to this litigation;

C. Award Plaintiff and the collective he represents actual damages for unpaid overtime compensation;

D. Award Plaintiff and the collective he represents liquidated damages equal in amount to the unpaid overtime compensation found due to Plaintiff and the collective;

E. Award Plaintiff, and the class he represents, actual damages for unpaid wages, liquidated, exemplary, and punitive damages as provided under Ohio law;

F. Award Plaintiff and the collective he represents pre- and post-judgment interest at the statutory rate;

G. Award Plaintiff and the collective he represents attorneys' fees and costs; and,

H. Award Plaintiff and the collective he represents further and additional relief as this Court deems just and proper.

Respectfully submitted,

NILGES DRAHER LLC

/s/ Robi J. Baishnab

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Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all claims so triable.

/s/ Robi J. Baishnab

Robi J. Baishnab

**CONSENT TO JOIN
PURSUANT TO 29 U.S.C. §216(b)**

1. I, Christopher Shilling, hereby consent and agree and opt-in to become a plaintiff class member in a lawsuit or arbitration brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201, *et seq.* against my current/former employer, Loves Travel, and any of its officers, agents, parent corporations, subsidiaries, joint employers and representatives.

2. I hereby agree to be bound by any adjudication of this action by the Court or arbitrator, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by the Court or an arbitrator as fair, adequate, and reasonable.

DATE: 1/28/2021

SIGNATURE: 
4D906C643BA1467...

Christopher Shilling

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

Christopher Shilling

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Robi J. Baishnab, Nilges Draher LLC 34 N. High St., Ste 502, Columbus, OH 43215 614-824-5770

DEFENDANTS

Love's Travel Stops & Country Stores, Inc.

County of Residence of First Listed Defendant Oklahoma City (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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 U.S.C. §§ 201-219

Brief description of cause: FLSA violation

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

02/24/2021

SIGNATURE OF ATTORNEY OF RECORD

Handwritten signature: Robi J. Baishnab

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Love's Travel Shops Underpaid Assistant Managers for Overtime, Lawsuit Alleges](#)
