

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

Kris Westerman, Joseph Stephens, Carlos Garcia, Calixto Sanchez, Chris Holsinger, Dustin Wooddell, Emilio Campos, Kenneth Griffin, Lucky Diggles, Matt Cypert, Ovier Mata, and Shawn Norton,

Plaintiffs,

v.

Capstone Logistics LLC and LMS
Intellibound, LLC

Defendants.

CA No.: 14-cv-3452-P

Jury Demanded

PLAINTIFFS' SECOND AMENDED COMPLAINT

Kris Westerman, Joseph Stephens, Carlos Garcia, Calixto Sanchez, Chris Holsinger, Dustin Wooddell, Emilio Campos, Kenneth Griffin, Lucky Diggles, Matt Cypert, Ovier Mata, and Shawn Norton (each individually a “**Plaintiff**” and collectively “**Plaintiffs**”) bring this Fair Labor Standards Act (“**FLSA**”) suit against Capstone Logistics LLC (“**Capstone**”) and LMS Intellibound LLC (“**LMS**”) (Capstone and LMS each a “**Defendant**” and collectively the “**Defendants**”) and show as follows:

A. Nature of Suit.

1. The FLSA was passed by Congress in 1938 as remedial legislation intended to benefit and protect workers. *See Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728,739 (1981); *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947). One of the primary purposes of the FLSA is to protect workers from “substandard wages and oppressive working hours.” *Barrentine*, 450 U.S. at 739; *see* 29 U.S.C. § 202(a), (b) (stating Congress’ intent to eliminate substandard labor conditions). “[T]he FLSA was designed to give specific minimum protections to *individual* workers and to ensure that *each* employee covered by the Act would receive ‘[a] fair day’s pay for a fair day’s work’ and would be protected from the evil

of ‘overwork’ as well as ‘underpay.’” *Barrentine*, 450 U.S. at 739 (quoting *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 578 (1942) (quoting 81 Cong. Rec. 4983 (1937) (message of President Roosevelt))). To achieve its humanitarian goals, the FLSA “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.” *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).

2. Defendants failed to pay Plaintiffs in accordance with the FLSA. Specifically, Plaintiffs were non-exempt employees. Defendants paid Plaintiffs based on “production” but did not include compensation at time and one half their regular rate of pay for all hours worked in a workweek in excess of forty hours.
3. Plaintiffs were not paid for all the hours between the time Plaintiffs reported for work and when Plaintiffs were relieved from work.

B. Parties.

4. Plaintiffs each are individuals who were employed by Defendants within the meaning of the FLSA within the three year period preceding the filing of this Complaint. A consent to be a party plaintiff form for each of the Plaintiffs is on file with the Court.
5. Capstone is a foreign limited liability company, whose corporate headquarters is located at 6525 The Corners Pkwy., Suite 520, Norcross, GA 30092. Capstone can be served by serving its registered agent National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, TX 78701. Capstone has appeared in this action.
6. LMS is a Georgia limited liability company whose corporate headquarters is located at 6525 The Corners Pkwy., Suite 520, Norcross, GA 30092. LMS can be served by serving its registered agent National Corporate Research, Ltd., 800 Brazos, Suite 400, Austin, TX 78701. LMS has appeared in this action.

C. Jurisdiction and Venue.

7. Venue of this action is proper in this district because the events giving rise to the cause of action alleged herein occurred in this judicial district and Defendants maintain one or

more offices in this district. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

8. Defendants carry on substantial business in the Northern District of Texas and have sufficient minimum contacts with this state to be subject to this Court's jurisdiction.
9. Further, the acts and omissions that form the basis of the lawsuit (i.e., Defendants' failure to pay overtime compensation) occurred within this District.
10. This Court has jurisdiction over this case pursuant to the district court's federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.
11. This Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-02.

D. Coverage.

12. At all material times, Capstone has acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs.
13. At all material times, Capstone has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
14. At all material times, Capstone has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
15. At all material times, Capstone has 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 and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated). The goods and products handled by Plaintiffs cross state lines in the course of their shipment. Thus, at all times material

hereto, Capstone had two or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.

16. At all material times, LMS has acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs.
17. At all material times, LMS has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
18. At all material times, LMS has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
19. At all material times, LMS has 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 and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated). The goods and products handled by Plaintiffs cross state lines in the course of their shipment. Thus, at all times material hereto, LMS had two or more employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce.
20. At all times hereinafter mentioned, Plaintiffs were employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 - 207 because they regularly received and handle packages and materials that had traveled in interstate commerce.

E. Factual Allegations

21. Defendants provide logistic services nationwide. Specifically, Defendants operate approximately 240 locations in multiple states, throughout the United States simultaneously. At all times material hereto, Defendants were, and continue to be, a third party warehouse logistic provider, primarily engaged in providing freight handlers, receiving clerks and account managers for its clients' warehouse and/or trucking companies throughout the United States.

22. Plaintiffs are employed as Unloaders. The Unloaders employed by Defendants perform manual labor unloading trucks engaged in the distribution of goods and products.
23. The Unloaders' primary job duty is to receive and unload Defendants' clients' trucks, and break down pallets. This duty consisted of manual labor.
24. For the work Plaintiffs performed as Unloaders, Plaintiffs have been paid on a "production" basis, i.e., piece-rates (based on the number of trucks unloaded). Defendants did not accurately track and pay the Plaintiffs for this work on an hourly basis.
25. To the extent Defendants tracked the hours of Plaintiffs Defendant improperly failed to count time Plaintiffs were on duty waiting to unload trucks or perform other tasks for Defendants.
26. Plaintiffs, when not unloading or servicing a truck, were required to remain on Defendants' premises or so close thereto that Plaintiffs could not use the time effectively for their own purposes. The Plaintiffs were not compensated for this time.
27. Plaintiffs rarely were able to take lunch breaks yet Defendants' timekeeping system, to the extent it existed, automatically deducted 30 minutes from each day's work for a lunch break.
28. Thus, to the extent Defendants tracked hours and paid overtime, Defendants required Plaintiffs to work "off-the-clock" and did not compensate them for that time.
29. During their employment, Plaintiffs worked in excess of forty (40) hours per week for which they were not compensated at the statutory rate of one and one-half times their regular rate of pay.
30. Plaintiffs typically and routinely worked in excess of forty (40) hours per week as part of their regular job duties.
31. Despite the fact that Plaintiffs typically and routinely worked more than(40) hours per week, Defendants failed to pay Plaintiffs overtime compensation at a rate of one and one-half times their regular rates of pay for all hours worked over forty (40) in a workweek.
32. Defendants have violated and continue to violate Title 29 U.S.C. § 207 in that:

- a. Plaintiffs worked in excess of forty (40) hours per week during one or more weeks of employment;
 - b. No payments, or insufficient payments and/or provisions for payment, have been made by Defendants to properly compensate Plaintiffs at the statutory rate of one and one-half times the regular rate for all those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and
 - c. Defendants have failed to maintain proper time records as mandated by the FLSA.
33. Plaintiffs have retained the Law Office of Chris R Miltenberger, PLLC to represent them in this litigation and have agreed to pay the firm a reasonable fee for its services.

F. Cause of Action: Failure to Pay Wages in Accordance with the Fair Labor Standards Act.

34. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.
35. Plaintiffs were, and are, entitled to be paid at the statutory rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours in a workweek.
36. During the relevant period, Defendants violated the FLSA by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, as aforesaid, for one or more workweeks without compensating such employees for their work at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.
37. At all times material hereto, Defendants failed, and continues to fail, to maintain proper time records as mandated by the FLSA.
38. To date, Defendants continue to fail to pay Plaintiffs their FLSA mandated overtime pay.

39. Defendants' actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by their continued failure to compensate Plaintiffs at the statutory rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours in a workweek when it knew, or should have known, such was, and is due.
40. Defendants have failed to properly disclose or apprise Plaintiffs of their rights under the FLSA.
41. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiffs suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours in a workweek, plus liquidated damages.
42. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

G. Jury Demand.

43. Plaintiffs demand a trial by jury herein.

H. Relief Sought.

44. Wherefore, Plaintiffs respectfully request that this Court grant the following relief for the time period beginning three years prior to the date of the filing of this suit and continuing to the date of trial:
 - a. An order requiring Defendants to turn over to Plaintiffs, at Defendants' expense, a detailed investigative accounting for the number of overtime-eligible hours actually worked by the Plaintiffs;
 - b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
 - c. An order for injunctive relief ordering the Defendants to end all of the illegal wage practices alleged herein pursuant to the FLSA and related laws and regulations;

- d. An order imposing a Federal Monitor to be put in place for 5 years at Defendants' expense with the power to subpoena, observe and report and ensure Defendants' compliance with the FLSA.
- e. A finding that Defendants' actions are willful under the FLSA;
- f. An award of unpaid wages and overtime compensation due under the FLSA and continuing until the time of trial;
- g. An award of liquidated damages as a result of the Defendants' failure to pay wages and overtime compensation pursuant to the FLSA and continuing until the time of trial;
- h. An award of prejudgment and post judgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees;
- j. Such other and further relief as this Court deems just and proper.

Respectfully submitted:

The Law Office of Chris R. Miltenberger, PLLC

By: /s/ Chris R. Miltenberger
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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to the attorneys of record, who have consented in writing to accept this “Notice” as service of this document by electronic means.

By: /s/ Chris R. Miltenberger
Chris R. Miltenberger