

JS 44 (Rev. 06/17)

**ER**

**CIVIL COVER SHEET**

2:18-1433

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.)

<p><b>I. (a) PLAINTIFFS</b></p> <p>Shawn Dessaigne</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Montgomery</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b></p> <p>Murphy Law Group, LLC; 1628 John F. Kennedy Blvd, Suite 2000, Philadelphia, PA 19103; (267) 273-1054</p>	<p><b>DEFENDANTS</b></p> <p>Springboard Media, Inc.</p> <p>County of Residence of First Listed Defendant <u>Philadelphia</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	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
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: Nature of Suit Code Descriptions.

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 725 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
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**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, et seq.

Brief description of cause:  
Misclassification of Employees as Exempt under FLSA and PMWA

**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 04/05/2018 SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT APR - 5 2018 APPLYING IFF \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 433 York Avenue, Lansdale, PA 19446

Address of Defendant: 121 S. 13th St., 2nd Fl., Philadelphia, PA 19107

Place of Accident, Incident or Transaction: Philadelphia, PA 18 1433

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [ ] No [X]

Does this case involve multidistrict litigation possibilities? Yes [ ] No [X]

RELATED CASE, IF ANY: Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [ ] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [ ] No [X]

CIVIL: (Place [X] in ONE CATEGORY ONLY)

- A. Federal Question Cases:
1. [ ] Indemnity Contract, Marine Contract, and All Other Contracts
2. [ ] FELA
3. [ ] Jones Act-Personal Injury
4. [ ] Antitrust
5. [ ] Patent
6. [X] Labor-Management Relations
7. [ ] Civil Rights
8. [ ] Habeas Corpus
9. [ ] Securities Act(s) Cases
10. [ ] Social Security Review Cases
11. [ ] All other Federal Question Cases (Please specify)

- B. Diversity Jurisdiction Cases:
1. [ ] Insurance Contract and Other Contracts
2. [ ] Airplane Personal Injury
3. [ ] Assault, Defamation
4. [ ] Marine Personal Injury
5. [ ] Motor Vehicle Personal Injury
6. [ ] Other Personal Injury (Please specify)
7. [ ] Products Liability
8. [ ] Products Liability — Asbestos
9. [ ] All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

Michael Murphy, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.

DATE: 4/5/18

[Signature] Attorney-at-Law

9/262 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/5/18

[Signature] Attorney-at-Law

9/262 Attorney I.D.#

ER

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Shawn Dessaigne, on behalf of Himself  
and all others similarly situated,

CIVIL ACTION

v.  
Springboard Media, Inc.

18 1433  
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

( )  
(x)

April 5, 2018  
Date

Michael Murphy  
Attorney-at-law

Shawn Dessaigne  
Attorney for

(267) 273-1054  
Telephone

(215) 525-0210  
FAX Number

murphy@phillyemploymentlawyer.com  
E-Mail Address

(Civ. 660) 10/02

APR - 5 2018

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

-----  
SHAWN DESSAIGNE, on behalf of :  
Himself and all others similarly situated, :  
433 York Avenue :  
Lansdale, PA 19446 :

CIVIL ACTION NO. \_\_\_\_\_  
**JURY TRIAL DEMANDED**

Plaintiff, :

v. :

SPRINGBOARD MEDIA, INC. :  
121 S. 13<sup>th</sup> Street, 2<sup>nd</sup> Floor :  
Philadelphia, PA 19103 :

Defendant. :  
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**COLLECTIVE AND CLASS ACTION COMPLAINT**

Plaintiff Shawn Dessaigne (“Plaintiff”) hereby brings this action against Defendant Springboard Media, Inc. (“Defendant”), and alleges, upon personal belief as to his own acts, and upon information and belief as to the acts of others, as follows:

**NATURE OF THE ACTION**

1. Plaintiff brings this complaint contending that Defendant has unlawfully failed to pay him and other similarly-situated individuals employed in the position of Professional Services Engineer and/or System Administrator, and other related and similar positions, (“Class Plaintiffs”), overtime compensation pursuant to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.100, *et seq.*

2. Plaintiffs are current and former employees of Defendant who were/are employed in the positions of Professional Services Engineer and/or System Administrator. During the course of their employment, Plaintiff and Class Plaintiffs regularly worked more than forty (40)

hours per week, but were not properly compensated for their work in that Plaintiff and Class Plaintiffs were not paid an overtime premium at 1.5 times their regular rate of pay for each hour worked in excess of forty (40) hours in a workweek.

3. Accordingly, Plaintiffs contend they are owed unpaid wages and overtime compensation, which were denied them as a result of Defendant's unlawful pay practices.

4. Plaintiff brings this action as a representative action under the FLSA and PMWA, for monetary damages and penalties, to seek redress for Defendant's willful, unlawful, and improper conduct.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 216(b), which provides, in relevant part, that suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction." See 29 U.S.C. § 216(b).

6. This Court also has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. This Court has supplemental jurisdiction over Plaintiffs' state law claims because those claims arise out of the same nucleus of operative fact as Plaintiffs' FLSA claims.

8. The venue in this district is proper pursuant to 28 U.S.C. § 1391(b), as the parties reside in this judicial district, doing business therein, and the unlawful practices of which Plaintiffs are complaining were committed in the Commonwealth of Pennsylvania.

### **PARTIES**

9. Plaintiff Shawn Dessaigne currently resides at 433 York Avenue, Lansdale, PA 19446.

10. Upon information and belief, Defendant Springboard Media, Inc., is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal place of business located at 121 S. 13<sup>th</sup> Street, 2<sup>nd</sup> Floor, Philadelphia, PA 19107.

11. Defendant is a “private employer” and covered by the FLSA.

12. Plaintiff is a former employee who was employed by Defendant during all times relevant hereto and, as such, is an employee entitled to the FLSA’s protections. See 29 U.S.C. § 203(e).

13. At all times relevant hereto, Defendant acted or failed to act through its agents, servants, and/or employees thereto existing, each of whom acted at all times relevant hereto in the course and scope of their employment with and for Defendant.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

14. Paragraphs 1 through 13 are hereby incorporated by reference as though the same were fully set forth at length herein.

15. This action is brought as a collective action to recover unpaid compensation and overtime compensation, liquidated damages, unlawfully withheld wages, statutory penalties, and damages owed to Plaintiffs and all similarly situated current and former employees of Defendant.

16. Pursuant to 29 U.S.C. § 216(b) of the FLSA, Plaintiffs bring this action individually and on behalf of all other similarly situated persons presently or formerly employed by Defendant in the positions of Professional Services Engineer and/or System Administrator, or in positions with substantially similar job duties, who worked for Defendant at any point in the past three (3) years who were paid on a salaried basis and denied overtime compensation at their regular rate of pay for all hours worked over forty (40) in a workweek (“Class Plaintiffs”).

17. Plaintiff estimates that there are in excess of twenty (20) other similarly situated Professional Services Engineers and/or System Administrators who either are working or worked for Defendant and were unlawfully denied overtime compensation at 1.5 times their “regular rate” of pay for hours worked in excess of forty (40) in a workweek as a result of the unlawful practices described above. The precise number of employees can easily be ascertained by Defendant. These employees can be identified and located using Defendant’s payroll and personnel records. Class Plaintiffs may be informed of the pendency of this Collective Action by direct mail and/or publication.

18. Pursuant to 29 U.S.C. § 216(b), this action is properly maintained as a collective action because the Class Plaintiffs are similarly-situated. Plaintiff and other similarly situated employees were similarly misclassified as exempt for overtime purposes and not paid an overtime premium for hours worked in excess of forty (40) hours in a workweek, had the same job classification and job duties, and were subject to the same uniform policies, business practices, payroll practices, and operating procedures. Further, Defendant’s willful policies and practices which are discussed more fully in this Collective and Class Action Complaint, whereby Defendant failed to pay Plaintiff and Class Plaintiffs an overtime premium for all hours worked over forty (40) hours in a workweek, has affected Plaintiff and Class Plaintiffs in the same fashion.

19. Plaintiff will request the Court to authorize notice to all current and former similarly-situated employees employed by Defendant, informing them of the pendency of this action and their right to “opt-in” to this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid compensation, overtime compensation, and liquidated damages under the FLSA.

**CLASS ACTION ALLEGATIONS**

20. Paragraphs 1 through 19 are hereby incorporated by reference as though the same were fully set forth at length herein.

21. Plaintiffs bring this action individually, and on behalf of the following state-wide class of similarly situated individuals, pursuant to Rule 23 of the Federal Rules of Civil

Procedure:

All persons presently or formerly employed by Defendant during the past three (3) years in the positions of Professional Services Engineer and/or System Administrator, or in positions with substantially similar job duties who were denied overtime compensation for work performed in excess of 40 hours in a workweek.

22. The members of the class are so numerous that joinder of all members is impractical. Class members may be informed of the pendency of this Class Action by direct mail.

23. Pursuant to Federal Rule of Civil Procedure 23(a)(2), there are question of law and fact common to the Class, including, but not limited to:

A. Whether Plaintiff and the Class are entitled to overtime compensation for services rendered in excess of forty (40) hours per week under the PMWA;

B. Whether Plaintiff and the Class worked in excess of forty (40) hours per week;

C. Whether Plaintiff and Class Plaintiffs were misclassified as “exempt” from overtime within the meaning of the PMWA; and,

D. Whether Plaintiff and the Class have suffered and are entitled to damages, and if so, in what amount.



24. Plaintiff's claims are typical of the claims of the Class members. Plaintiffs are current and former employees of Defendant employed in the positions of Professional Services Engineer and/or System Administrator who have suffered similar injuries as those suffered by the Class members as a result of Defendant's failure to pay wages and overtime compensation. Defendant's conduct of violating the PMWA has affected Plaintiff and the Class in the exact same way.

25. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff is similarly situated to the Class and has no conflict with the Class members.

26. Plaintiff is committed to pursuing this action and have retained competent counsel experienced in class action litigation.

27. Pursuant to Rules 23(b)(1), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, this action is properly maintained as a class action because:

A. The prosecution of separate actions by or against individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class that would establish incompatible standards of conduct for Defendant;

B. Defendant, by failing to pay wages and overtime compensation when they became due and owing in violation of the PMWA, has acted or refused to act on grounds generally applicable to the Class, thereby making equitable relief appropriate with respect to the Class as a whole; and

C. The common questions of law and fact set forth above applicable to the Class predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this case, especially

with respect to considerations of consistency, economy, efficiency, fairness and equity, as compared to other available methods for the fair and efficient adjudication of the controversy.

28. A class action is also superior to other available means for the fair and efficient adjudication of this controversy because individual joinder of the parties is impractical. Class action treatment will allow a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense if these claims were brought individually. Additionally, as the damages suffered by each Class member may be relatively small, the expenses and burden of individual litigation would make it difficult for the Class members to bring individual claims. The presentation of separate actions by individual Class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of each member of the Class to protect his or her interests.

#### **FACTUAL BACKGROUND**

29. Paragraphs 1 through 28 are hereby incorporated by reference as though the same were fully set forth at length herein.

30. Plaintiff Shawn Dessaigne (“Plaintiff”) began his employment with Defendant in or around July 2013, when he was hired as a Professional Services Engineer at Defendant’s Philadelphia office.

31. In or around 2016, Plaintiff was transitioned to the position of System Administrator, which he held until the date of his termination on or about January 2018. However, despite the change in Plaintiff’s job title, his job duties remained effectively the same.

**Facts Pertaining to Plaintiff's Collective/Class Claims for Unpaid Overtime Compensation under the FLSA/PMWA**

32. Paragraphs 1 through 31 are hereby incorporated by reference as though the same were fully set forth at length herein.

33. In their capacities as Professional Services Engineers, Plaintiff and Class Plaintiffs work with clients to repair issues on desktops or networks and also maintain internal systems.

34. In their capacities as System Administrators, Plaintiff and Class Plaintiffs generally perform the same duties of Professional Services Engineers.

35. Plaintiff and Class Plaintiffs provide the aforementioned services on a schedule determined by Defendant, who instructs Plaintiff and Class Plaintiffs where and when to report to work.

36. Plaintiff and Class Plaintiffs are required to perform the aforementioned work in accordance with certain specific guidelines, protocols, and trainings provided by Defendant.

37. Plaintiff and Class Plaintiffs also receive annual performance evaluations from Defendant, along with performance feedback, coaching, and discipline for failing to perform in accordance with Defendant's expectations.

38. Defendant's Professional Services Engineers and System Administrators are/were compensated on a salaried basis for all work performed as instructed by Defendant.

39. Accordingly, during a typical workweek, Plaintiff – and, upon information and belief, Class Plaintiffs – perform, on average, approximately forty (40) to fifty (50) hours of work per week. On occasion, Plaintiff and Class Plaintiffs would work well in excess of fifty (50) hours in a workweek.

40. However, despite regularly working over forty (40) hours per week, Plaintiff and Class Plaintiffs did not receive overtime compensation for the hours they worked over forty (40) in a workweek.

41. By way of example, during the workweek beginning on January 15, 2018 and ending on January 20, 2018, Plaintiff worked a total of forty-seven (47) hours and was only paid for forty (40) hours of his work. Plaintiff was not paid anything for the seven (7) hours he worked over forty (40) hours.

42. Defendant regularly failed to pay Plaintiff and Class Plaintiffs overtime compensation when their hours exceeded forty (40) in one workweek.

43. Defendant classified Plaintiff and Class Plaintiffs as “exempt” under the FLSA and PMWA and therefore determined that Plaintiff and Class Plaintiffs were not entitled to overtime compensation.

44. Defendant unlawfully misclassified Plaintiff and Class Plaintiffs as “exempt.” Plaintiff and Class Plaintiffs were/are not exempt from receiving overtime compensation.

45. As a result of the aforesaid practices, Plaintiff and Class Plaintiffs have been denied overtime compensation for hours worked over forty (40) in a workweek.

46. Plaintiff and Class Plaintiffs do not qualify for the executive, administrative, or professional exemptions under the FLSA/PMWA.

47. Plaintiff and Class Plaintiffs also do not have the authority to hire, fire, or discipline other employees of Defendant, nor do they make recommendations with respect to employee status changes to which Defendant gives substantial weight.

48. As a result, Plaintiff and Class Plaintiffs do not satisfy the duties requirements for the exemption for executive employees under the FLSA/PMWA.

49. Plaintiff and Class Plaintiffs do not perform work directly related to Defendant's management or general business operations, nor do they exercise discretion or independent judgment regarding matters of significance to Defendant.

50. Accordingly, Plaintiff and Class Plaintiffs do not meet the duties requirements for the exemption for administrative employees under the FLSA/PMWA.

51. Plaintiff's and Class Plaintiffs' primary duty does not include the performance of work predominately intellectual in nature requiring advanced knowledge in a field of science or learning acquiring through a prolonged course of intellectual instruction. In this regard, Plaintiff's and Class Plaintiffs' job duties do not require the consistent exercise of discretion and judgment, as distinguished from the performance of routine mental, manual, and mechanical work. Rather, Plaintiff and Class Plaintiffs are required to perform their job responsibilities in accordance with specific guidelines, protocols, procedures, and trainings provided by Defendant.

52. Accordingly, Plaintiff and Class Plaintiffs do not meet the duties requirements for the exemption for learned professionals under the FLSA/PMWA.

53. Plaintiff's and Class Plaintiffs' primary duties do not consist of: (1) the application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; (2) the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) the design, documentation, testing, creation or modification of computer programs related to machine operating systems; or, (4) a combination of these duties, the performance of which requires the same level of skills. Therefore, Plaintiff and Class Plaintiffs do not qualify for the computer

employee exemption under the FLSA. In addition, the PMWA does not recognize the computer employee exemption.

54. Finally, there are no other exemptions under the FLSA and/or PMWA which could arguably be applicable to Plaintiff or Class Plaintiffs.

55. Plaintiff and Class Plaintiffs are/were, within the meaning of the FLSA and PMWA, non-exempt employees of Defendant and therefore are/were entitled to overtime compensation for all hours they worked over forty (40) in a workweek.

56. As a result of Defendant's aforesaid illegal actions, Plaintiff and Class Plaintiffs have suffered damages.

**COUNT I**  
**FAIR LABOR STANDARDS ACT**  
**29 U.S.C § 201, *et seq.***  
**FAILURE TO PAY OVERTIME COMPENSATION**

57. Paragraphs 1 through 55 are hereby incorporated by reference as though the same were full set forth at length herein.

58. Pursuant to Section 206(b) of the FLSA, employees must be compensated for every hour worked in a workweek.

59. Moreover, under Section 207(a)(1) of the FLSA, employees must be paid overtime equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of forty (40) hours per week.

60. According to the policies and practices of Defendant, Plaintiff and Class Plaintiffs were required to work in excess of forty (40) hours per week. Despite working in excess of forty (40) hours per week, Plaintiff and Class Plaintiffs were denied overtime compensation for compensable work performed in excess of forty (40) hours per week in violation of the FLSA.

In fact, Plaintiff and Class Plaintiffs were only paid the same weekly salary, regardless of the number of hours actually worked.

61. As a result, Defendant failed to pay Plaintiff and Class Plaintiffs overtime compensation for all hours worked over forty (40) in a workweek at 1.5 times their regular rate of pay.

62. The foregoing actions of Defendant and the policies and practices of Defendant violate the FLSA.

63. Defendant's actions were willful, not in good faith, and in reckless disregard of clearly applicable FLSA provisions.

64. Defendant is liable to Plaintiff and Class Plaintiffs for actual damages, liquidated damages, and other equitable relief, pursuant to 29 U.S.C. § 216(b), as well as reasonable attorneys' fees, costs, and expenses.

**WHEREFORE**, Plaintiffs pray for the following relief on behalf of themselves and Class Plaintiffs;

A. An Order from this Court permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. An Order from the Court ordering Defendant to file with this Court and furnish to the undersigned counsel a list of all names and addresses of all persons presently or formerly employed by Defendant in the positions of Professional Services Engineer or System Administrator, or in positions with substantially similar job duties, who worked for Defendant at any point in the past three (3) years who were paid on a salaried basis and denied overtime compensation at their regular rate of pay for all hours worked over forty (40) in a workweek, and authorizing Plaintiffs' counsel to issue a notice at the earliest possible time to these individuals,

informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they worked for Defendant during the liability period, but were not paid overtime compensation at 1.5 times their regular rate of pay as required by the FLSA;

C. Adjudicating and declaring that Defendant's conduct as set forth herein and above is in violation of the FLSA;

D. Adjudicating and declaring that Defendant violated the FLSA by failing to pay overtime compensation to Plaintiff and Class Plaintiffs for work performed in excess of forty (40) hours per week;

E. Awarding Plaintiff and Class Plaintiffs back pay wages and/or overtime wages in an amount consistent with the FLSA;

F. Awarding Plaintiff and Class Plaintiffs liquidated damages in accordance with the FLSA;

G. Awarding Plaintiff reasonable attorneys' fees and all costs of this action, to be paid by Defendant, in accordance with the FLSA;

H. Awarding pre- and post-judgment interest and court costs as further allowed by law;

I. Granting Plaintiff and the Class Plaintiffs leave to add additional Plaintiffs by motion, the filing of written opt-in consent forms, or any other method approved by the Court; and

J. For all additional general and equitable relief to which Plaintiff and the Class Plaintiffs may be entitled.



**COUNT II**  
**PENNSYLVANIA MINIMUM WAGE ACT OF 1968**  
**43 P.S. § 333, et seq.**  
**FAILURE TO PAY OVERTIME COMPENSATION**

65. Paragraphs 1 through 63 are hereby incorporated by reference as though the same were fully set forth at length herein.

66. The Pennsylvania Minimum Wage Act provides that employers must pay certain “minimum wages,” including overtime wages, to its employees. See 43 P.S. § 333.113.

67. The Pennsylvania Minimum Wage Act further provides that “employees shall be paid for overtime not less than one and one half times the employee’s regular rate” for hours worked in excess of forty (40) hours in a workweek. See 43 P.S. § 333.113.

68. By its actions alleged above, Defendant has violated the provisions of the Pennsylvania Minimum Wage Act of 1968 by failing to properly pay overtime compensation and for failing to properly pay Plaintiff and Class Plaintiffs for all hours work.

69. As a result of Defendant’s unlawful acts, Plaintiff and Class Plaintiffs have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, together with interest, costs and attorney’s fees pursuant to Pennsylvania Minimum Wage Act of 1968, 43 P.S. § 333.113.

**WHEREFORE**, Plaintiff, on behalf of himself and the Class Plaintiffs, pray for judgment against Defendant as follows:

A. An Order certifying this case as a class action and designating Plaintiff as the representative of the Class and his counsel as class counsel;

B. An award to Plaintiff and Class Plaintiffs for the amount of unpaid overtime compensation to which they are entitled, including interest thereon, and penalties subject to proof;

C. An award to Plaintiff and Class Plaintiffs of reasonable attorney's fees and costs pursuant to the Pennsylvania Minimum Wage Act; and

D. An award to Plaintiff and Class Plaintiffs for any other damages available to them under applicable Pennsylvania law, and all such other relief as this Court may deem proper.

**JURY DEMAND**

Plaintiff and Class Plaintiffs hereby demand a trial by jury as to all issues so triable.

Respectfully submitted,

**MURPHY LAW GROUP, LLC**

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Dated: April 5, 2018

**DEMAND TO PRESERVE EVIDENCE**

The Defendant is hereby demanded to preserve all physical and electronic information pertaining in any way to Plaintiffs' and the Class/Collective Plaintiffs' employment, to their potential claims and their claims to damages, to any defenses to same, including, but not limited to, electronic data storage, employment files, files, memos, job descriptions, text messages, e-mails, spread sheets, images, cache memory, payroll records, paystubs, time records, time sheets and any other information and/or data which may be relevant to any claim or defense in this litigation.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Suspected Labor Law Violations Detailed in Complaint Against Springboard Media](#)

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