

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

RICHARD EDWARDS,)
individually and on behalf of all)
similarly-situated persons,)
)
Plaintiffs,)
)
v.)
)
ALL-DRY, INC., and ALAN)
CHANDLER and NICK CHANDLER,)
individually,)
)
Defendants)
_____)

Civil No.: _____

COLLECTIVE ACTION COMPLAINT
FOR VIOLATION OF THE FAIR LABOR
STANDARDS ACT OF 1938

COMPLAINT

Comes Richard Edwards and files this lawsuit against the Defendants, All-Dry, Inc., and Alan Chandler and Nick Chandler, individually, on behalf of himself and all others similarly-situated, pursuant to §216(b) of the Fair Labor Standards Act (hereinafter “FLSA”), and for their cause of action would state as follows:

I. INTRODUCTION

1. Plaintiff brings this action against All-Dry, Inc., and Alan Chandler and Nick Chandler, individually (hereinafter referred to as “Defendants”), pursuant to the collective action provision of the FLSA found at §216(b), for legal relief to redress unlawful violations of Plaintiff’s rights, and the rights of those similarly-situated to Plaintiff, under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”), which have deprived the Plaintiff, as well as others similarly-situated to Plaintiff, of their lawful wages. This suit is brought on behalf of the Plaintiff

and all others similarly-situated, pursuant to §216(b) of the FLSA.

2. Other current and former employees of Defendants are also entitled to receive their proper hourly unpaid wages and/or overtime compensation for the reasons alleged in this Complaint. Plaintiff is permitted to maintain this action “for and on behalf of [himself] and other employees similarly-situated.” 29 U.S.C. §216(b).

3. This action is brought to recover unpaid hourly and overtime compensation owed to the Plaintiff and all current and former employees of Defendants who are similarly-situated to the Plaintiff, pursuant to the FLSA. The Plaintiff and the collective group similarly-situated are, or have been, employed by Defendants as employees who perform basement waterproofing and other services in the Middle Tennessee and surrounding areas within the three year period prior to the filing of this Complaint, up through the present.

4. During the three year period prior to the filing of this Complaint through the present, Defendants committed violations of the FLSA by requiring and/or suffering or permitting their non-exempt employees, including Plaintiff, to routinely work more than 40 hours per week without payment of overtime compensation.

5. Plaintiff and all similarly-situated employees who elect to participate in this action seek unpaid compensation, an equal amount of liquidated damages, attorneys’ fees, and costs pursuant to 29 U.S.C. §216(b).

II. THE PARTIES

A. THE PLAINTIFF

6. Plaintiff Richard Edwards currently resides in Nashville, Tennessee and is a citizen of the United States. Plaintiff Edwards was employed with the Defendants for approximately three years until June of 2017.

7. During this employment with Defendants, Plaintiff worked as an hourly paid, non-exempt employee who routinely worked more than 40 hours each workweek. Even though he was non-exempt and worked a substantial number of overtime hours, Defendants failed to pay Plaintiff lawful overtime compensation as required by the FLSA.

8. At all times material to this action, the named Plaintiff and all similarly-situated members of this collective action were “employees” of Defendant All-Dry, Inc., as defined by §203(e)(1) of the FLSA.

9. At all times material to this action, the named Plaintiff and all similarly-situated members of this collective action were “employees” of Defendant Alan Chandler as defined by §203(e)(1) of the FLSA.

10. At all times material to this action, the named Plaintiff and all similarly-situated members of this collective action were “employees” of Defendant Nick Chandler as defined by §203(e)(1) of the FLSA.

11. Plaintiff worked for the Defendants within the territory of the United States within the three-year period preceding the filing of this lawsuit.

12. Plaintiff was covered by the overtime provisions of §207 of the FLSA for the period during which he was employed by Defendants.

B. THE DEFENDANTS

13. Defendant All-Dry, Inc. is incorporated under the laws of the state of Tennessee, with offices located in Hermitage, Tennessee, and Campbellsville, Kentucky.

14. Defendant All-Dry, Inc. is a privately owned company which provides basement waterproofing, foundation repair, mold remediation, crawlspace encapsulation, and attic insulation services to owners of residential property in Tennessee, Kentucky and elsewhere.

15. Throughout the three year period prior to the filing of this Complaint, Defendant All-Dry, Inc., employed and paid the Plaintiff and all other similarly-situated employees on an hourly basis.

16. Throughout the three year period prior to the filing of this Complaint, Defendants Alan Chandler and Nick Chandler were owners and/or co-owners of All-Dry, Inc. Defendant Nick Chandler also served as the operations manager.

17. During this three year period, Defendants Alan Chandler and Nick Chandler hired and fired employees, or had the authority to hire and fire them, established pay levels and compensation policies for All-Dry, Inc. employees, and made other decisions which affected the terms and conditions of work for employees such as the Plaintiff.

18. Defendants Alan Chandler and/or Nick Chandler made the decision to only pay the Plaintiff and similarly-situated employees their regular hourly rate of pay for overtime hours, instead of at time and one-half their regular hourly rates as required by the FLSA.

19. During all or part of the recovery period applicable to this action, Defendants Alan Chandler and Nick Chandler enforced, approved and/or ratified a policy and practice of paying Plaintiff and other similarly-situated employees their regular hourly rate of pay for the overtime hours they worked, instead of at time and one-half their regular hourly rates as required by the FLSA.

20. Throughout the recovery period applicable to this action, Defendants Alan Chandler and Nick Chandler knew that the law required that employees of the Defendants be paid overtime pay for hours worked in excess of forty hours in a workweek.

21. Defendants are subject to personal jurisdiction in the state of Tennessee for purposes of this lawsuit.

22. At all times material to this action, Dry-All, Inc., has been an enterprise engaged in commerce or in the production of goods for commerce as defined by §203(s)(1) of the FLSA, and has had a gross volume of sales which has exceeded \$500,000.

24. At all times material to this action, Defendants have been “employers” of the named Plaintiff, as defined by §203(d) of the FLSA, as well as employers of all other persons similarly-situated to the named Plaintiffs, namely, employees who perform basement waterproofing and other services.

25. The overtime provisions set forth in §2077 of the FLSA apply to the Defendants.

III. JURISDICTION AND VENUE

26. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction); and 29 U.S.C. §216(b) (FLSA).

27. Venue is proper in the Middle District of Tennessee under 28 U.S.C. §1391(b)-(c).

IV. VIOLATIONS OF THE FLSA

A. Defendants' failure to pay overtime compensation

28. Defendants have intentionally and repeatedly engaged in a practice of improperly and unlawfully failing to pay their non-exempt employees overtime pay including, but not limited to, the named Plaintiff and the collective group of similarly-situated employees who worked as for them in violation of the provisions of the FLSA and corresponding federal regulations.

29. Specifically, Defendants have intentionally and repeatedly engaged in the practice of paying their non-exempt employees, including the Plaintiff, at their regular hourly rate of pay for hours worked in excess of 40 per week, instead of at the required rate of time and one-half their regular hourly rate of pay, in violation of the provisions of the FLSA.

30. Plaintiff typically worked between 55 and 65 hours per week for Defendants, but until the last few months of his employment Plaintiff was not paid at time and one-half his regular hourly rates as required by the FLSA.

31. Plaintiff would typically meet other employees on his crew at Defendants' office at 5:00 a.m., and they would then leave together to travel to the job site in a company truck supplied by Defendants. If the job was out of town, which happened approximately 2 to 6 times a month, Plaintiff and his crew could travel as much as 3 hours to the job site.

32. Plaintiff's experience is typical of other employees who worked for Defendants.

33. Defendants only began paying Plaintiff and similarly-situated employees lawful

overtime pay during the last few months of Plaintiff's employment because some new employees complained about not receiving overtime pay for working more than 40 hours in a workweek.

V. SCOPE OF DEFENDANTS' LIABILITY

34. On information and belief, there are other similarly-situated present and former employees of Defendants who have been improperly compensated in violation of the FLSA and who would benefit from the issuance of court-supervised notice of the present action. Those similarly-situated employees are known to Defendants and are readily identifiable and locatable through Defendants' records. Specifically, all current and former employees should be notified who, at any time during the three years preceding the filing date of this Complaint, up through and including the date of this Court's issuance of court-supervised notice, have been "suffered or permitted to work" for Defendants without receiving their proper and lawful wages.

35. Throughout the recovery period applicable to this action, Defendants Alan Chandler and Nick Chandler exercised operational control over the business activities and operations of All-Dry, Inc., including control over the employees they employed.

36. In particular, Defendants Alan Chandler and Nick Chandler directed and controlled work performed by the Plaintiff and all similarly-situated employees who worked for them or had the right to direct and control their work, and implemented, approved, and/or ratified the policy of not paying overtime pay to Plaintiff and other similarly-situated employees.

37. During a significant portion of the recovery period applicable to this action, Defendants Alan Chandler and Nick Chandler were fully aware of the fact that Plaintiff and similarly-situated employees were not paid at the rate of time and one-half their regular hourly rate of

pay for hours worked in excess of 40 in a workweek.

38. Accordingly, Defendants Alan Chandler and Nick Chandler acted “directly or indirectly in the interest of an employer in relation to” the named Plaintiff and similarly-situated employees within the meaning of §203(d) of the FLSA, and are thus individually and personally liable for the unpaid wages, liquidated damages, costs and attorneys’ fees, and all other relief sought herein.

VI. COUNT ONE

39. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1-38 herein. By their actions alleged herein, Defendants willfully, knowingly, and/or recklessly violated the provisions of the FLSA and corresponding federal regulations.

40. Defendants willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by endeavoring to prevent the proper compensation of Plaintiff and other present and former, similarly-situated employees in accordance with §207 of the FLSA.

41. As a result of Defendants’ violations of the FLSA, Plaintiff, as well as all others similarly-situated, has suffered damages by failing to receive their lawful overtime wages in accordance with §207 of the FLSA.

42. Defendants have made no good faith effort to comply with the FLSA with respect to their compensation of Plaintiff or other similarly-situated employees.

43. Defendants’ willful conduct is evidenced by its treatment of Plaintiff.

44. As a result of the unlawful acts of Defendants, Plaintiff and all persons similarly-

situated to Plaintiff have been deprived of their rightful hourly and/or overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and all other compensation and relief permitted by applicable law.

45. Pursuant to 29 U.S.C. §216(b), a Consent to participate in this action signed by the Plaintiff is attached hereto as Exhibit A.

VII. PRAYER FOR RELIEF

46. WHEREFORE, the named Plaintiff, individually and on behalf of all other similarly-situated persons, pursuant to §216(b) of the FLSA, prays for the following relief:

A. That at the earliest possible time, he be allowed to give notice, or that the Court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed as hourly workers for the Defendants. Such notice shall inform them that this action has been filed, the nature of the action, and of their right to opt into this lawsuit pursuant to 29 U.S.C. §216(b).

B. That the Plaintiff, and all similarly-situated employees, be awarded damages in the amount of their respective unpaid compensation, plus an equal amount of liquidated damages and/or prejudgment interest;

C. Reasonable attorneys' fees;

D. The costs and expenses of this action; and

E. Such other, further legal and equitable relief, including but not limited to, any

injunctive and/or declaratory relief to which they may be entitled.

DICKINSON WRIGHT PLLC

/s/ Martin D. Holmes

Martin D. Holmes, TN Bar# 012122

R. Cameron Caldwell, TN Bar #29084

Fifth Third Center

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mdholmes@dickinsonwright.com

ccaldwell@dickinsonwright.com


NASHVILLE 75736-1 615051v2

EXHIBIT A

**INDIVIDUAL WAGE AND HOUR LITIGATION
AGAINST ALL-DRY, INC.
PLAINTIFF CONSENT FORM**

By my signature below, I hereby authorize the filing and prosecution of a Fair Labor Standards Act action in my name against Defendant, All-Dry, Inc., its successors, owners, and/or principals, and authorize Dickinson Wright PLLC to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, to file a proof of claim on my behalf in the event Defendant(s) file for bankruptcy protection under Chapters 7 or 11 of the Bankruptcy Act, to negotiate and to take any other action necessary to present or preserve my wage and hour claim against Defendant, All-Dry, Inc., its successors, owners, and/or principals.

9-23-17
DATE


SIGNATURE

Richard Edwards
(Print Name)

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.)

<p>I. (a) PLAINTIFFS</p> <p>RICHARD EDWARDS</p> <p>(b) County of Residence of First Listed Plaintiff _____ <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Martin Holmes, R. Cameron Caldwell, Dickinson Wright, PLLC, 424 Church St. Ste 800, Nashville, TN 37219 (615) 244-6538</p>	<p>DEFENDANTS</p> <p>ALL-DRY, INC., and ALAN CHANDLER and NICK CHANDLER</p> <p>County of Residence of First Listed Defendant <u>Sumner</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 <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <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>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</td> <td style="width: 45%;"></td> <td style="width: 10%; text-align: center;">PTF</td> <td style="width: 10%; text-align: center;">DEF</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>		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
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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.](#)

<p>CONTRACT</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 & 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>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & 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>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</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>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input checked="" type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 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>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</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>SOCIAL SECURITY</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>FEDERAL TAX SUITS</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>OTHER STATUTES</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. et seq.

Brief description of cause:
Failure to pay proper hourly wages and/or overtime in violation of the Fair Labor Standards Act

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 09/27/2017 SIGNATURE OF ATTORNEY OF RECORD s/Martin D. Holmes

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Court Name: U. S. District Court, MD/TN
Division: 3
Receipt Number: 34675047527
Cashier ID: mgregory
Transaction Date: 09/27/2017
Payer Name: DICKINSON WRIGHT

CIVIL FILING FEE
For: DICKINSON WRIGHT
Amount: \$400.00

Paper Check Conversion
Amt Tendered: \$400.00

Total Due: \$400.00
Total Tendered: \$400.00
Change Amt: \$0.00

Assigned Case No. 3:17-cv--1313

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Waterproofing Company All-Dry, Inc. Hit with Unpaid Overtime Lawsuit](#)
