

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

**CHRISTOPHER ELLIS,
ROBERT L. SCHMITZ & GREGORY SURBECK,
On behalf of themselves
and all others similarly situated,**

Plaintiffs,

v.

Case No. _____

**BAPTIST MEMORIAL HEALTH CARE
CORPORATION,**

JURY DEMANDED

Defendant.

COMPLAINT

I
Introduction

Plaintiffs Christopher Ellis, Robert L. Schmitz, and Gregory Surbeck, on behalf of themselves and all others similarly situated, hereby file this lawsuit against Defendant Baptist Memorial Health Care Corporation for declaratory relief, injunctive relief, and money damages for violations of the Fair Labor Standards Act (hereinafter "FLSA"). In support thereof, Plaintiffs would state the following:

II
Jurisdiction and Venue

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 29 U.S.C. § 216(b). All acts alleged in this complaint occurred in the Northern District of Mississippi; therefore, venue is appropriate in this Court.

III

Parties

2. Plaintiff Christopher Ellis is an adult citizen of the State of Mississippi and a resident of Lafayette County, Mississippi. At all times relevant, Plaintiff Ellis was employed by Defendant in its location in Oxford, Mississippi as an EMT, making around \$12.50 per hour towards the end of his employment with Defendant.

3. Plaintiff Robert L. Schmitz is an adult citizen of the State of Mississippi and a resident of Yalobusha County, Mississippi. At all times relevant, Plaintiff Schmitz was employed by Defendant in its location in Oxford, Mississippi as a paramedic, making around \$23.22 per hour towards the end of his employment with Defendant.

4. Plaintiff Gregory Surbeck is an adult citizen of the State of Mississippi and a resident of Lafayette County, Mississippi. At all times mentioned herein, Plaintiff Surbeck was employed by Defendant in its location in Oxford, Mississippi as a paramedic making \$16.97 per hour towards the end of his employment with Defendant.

5. Defendant Baptist Memorial Health Care Corporation is a Tennessee non-profit corporation regularly doing business in the State of Mississippi as Baptist Memorial Hospital North Mississippi in Oxford, Baptist Memorial Hospital-Union County in New Albany, Baptist Memorial Hospital- Calhoun in Calhoun City, Mississippi, and Baptist Memorial Hospital-Golden Triangle in Columbus, Mississippi. Defendant's registered agent for service of process in the state of Mississippi is CT Corporation System at 645 Lakeland East Drive, Ste. 101, Flowood, Mississippi 39232.

6. At all times relevant, Defendant employed Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated at its Oxford, New Albany, Calhoun City, or Columbus locations as emergency medical service drivers, emergency medical technicians, or paramedics.

IV

Collective Action Allegations

7. This action is a collective action brought under 29 U.S.C. § 216(b), on behalf of Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated who are described as follows:

All persons formerly employed by Defendant as emergency medical service drivers, emergency medical technicians, or paramedics at its Oxford, New Albany, Calhoun City, or Columbus locations in Mississippi from January 1, 2015 to the present (known hereinafter as “FLSA Class”).

8. Plaintiffs Ellis, Schmitz, and Surbeck are unable to state the exact number of persons in the FLSA Class. However, Plaintiffs Ellis, Schmitz, and Surbeck are informed and believe that the FLSA Class exceeds 50 members. The members of this class are so numerous as to make joinder impracticable.

9. There are questions of law or fact common to the FLSA Class.

10. The claims of Plaintiffs Ellis, Schmitz, and Surbeck are typical of the claims of the FLSA Class.

11. Plaintiffs Ellis, Schmitz, and Surbeck will fairly and adequately protect the interests of the FLSA Class. Plaintiffs Ellis, Schmitz, and Surbeck know of no difficulty that should be encountered in the management of this litigation that would preclude its maintenance as a collective action or class action. Plaintiffs Ellis, Schmitz, and Surbeck do hereby consent to join their claims in this collective action. See Consents, attached hereto as Exhibits “A” , “B”, and “C.”

12. The prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications in different jurisdictions with respect to individual class members, which could establish incompatible standards of conduct for Defendant. Consequently, collective action certification is proper.

13. Plaintiffs Ellis, Schmitz, and Surbeck are informed and believe that Defendant, in

refusing to pay overtime to the FLSA Class and in intentionally misclassifying them, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate declaratory, injunctive and monetary relief for all members of the FLSA Class. Consequently, collective action certification is proper under 29 U.S.C. § 216(b).

14. The common questions of law and fact predominate over any questions affecting individual class members only. A collective action is superior to other available methods for the fair and efficient adjudication of the controversy. Consequently, collective action certification is proper under 29 U.S.C. § 216(b).

V

Factual Allegations

15. At all times relevant, Defendant employed Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated in connection with the business of Defendant at its Mississippi locations in Oxford, New Albany, Calhoun City, or Columbus. At all relevant times, Defendant has been an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203.

16. From January 1, 2015 and up to November 2017, Defendant employed Plaintiffs Ellis, Schmitz, and Surbeck, and all others similarly situated, for many workweeks in excess forty (40) hours in the workweek.

17. Defendant failed and refused to compensate Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated for **all** such work in excess of forty (40) hours at rates not less than one and one-half (1 ½) times the regular rates at which they were employed during those times, contrary to the provisions of 29 U.S.C. § 207(a). Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated are non-exempt employees under the FLSA.

18. Defendant's failure to pay overtime compensation for **all** such time was willful and in reckless disregard to the federally protected rights enjoyed by Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated.

19. Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated would incorporate paragraphs 1 through 18 above as though specifically set forth herein and would state Defendant's refusal to pay overtime compensation constitutes violation of the FLSA.

VI

Prayer for Relief

WHEREFORE, THE PREMISES CONSIDERED, Plaintiffs Ellis, Schmitz, and Surbeck prays for the following:

1. That the Defendant be required to appear and answer the Complaint within the time provided in the Federal Rules of Civil Procedure;
2. That the Court certify the FLSA Class pursuant to 29 U.S.C. § 216(b);
3. That the Court authorize notification to all persons in the FLSA Class of the existence and their right to participate in the collective action pursuant to 29 U.S.C. § 216(b);
4. That the Court provide declaratory relief clarifying that Plaintiffs Ellis, Schmitz, and Surbeck and all others are similarly situated are entitled to receive overtime compensation;
5. That the Court provide injunctive relief to Plaintiffs Ellis, Schmitz, and Surbeck and all others are similarly situated by ordering Defendant to pay overtime compensation to Plaintiff Ellis, Schmitz, and Surbeck and all others similarly situated in the future;
6. That Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated be awarded unpaid overtime compensation;
7. That Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated be awarded liquidated damages;
8. That Plaintiffs Ellis, Schmitz, and Surbeck and all others similarly situated be awarded reasonable attorney's fees, expert witness fees, as well as costs and expenses incurred in bringing this lawsuit; and
9. Plaintiffs demand on behalf of themselves and all others similarly situated that such other and further relief as may be just and proper, including, but not limited to, pre-

judgment and post-judgment interest.

Respectfully submitted,

By: 

James D. Harper - MS Bar #99386
HARPER WHITWELL, PLLC
800 College Hill Road, Ste. 5201
P.O. Box 3150
Oxford, MS 38655
Telephone: 662/234-0320
Facsimile: 662/259-8464

ATTORNEYS FOR PLAINTIFFS

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 ELLIS, ROBERT L. SCHMITZ & GREGORY SURBECK, On behalf of themselves and all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Harper Whitwell, PLLC, P. O. Box 3150, Oxford, MS 38655
 662.234.0320

DEFENDANTS

BAPTIST MEMORIAL HEALTH CARE CORPORATION

County of Residence of First Listed Defendant _____
 (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)

| | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Annuity <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | |

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. 216
 Brief description of cause:
Collective Action for violations of the Fair Labor Standards Act for failure to pay overtime.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
 DEMAND \$ TBD
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 3/23/18 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
 RECEIPT # 1533825 AMOUNT \$ 400 APPLYING IFP _____ JUDGE Aycock MAG. JUDGE Virden

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Baptist Memorial Health Care Corporation Owes Emergency Medical Personnel Unpaid OT, Lawsuit Claims](#)
