

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

TONY EPPS,

and

**MATTHEW SULLIVAN,
For themselves and on behalf
of all others similarly situated,**

Plaintiffs,

v.

Case No.: 2:17cv562

SCAFFOLDING SOLUTIONS, LLC,

Defendant.

COMPLAINT

COME NOW the Plaintiffs, Tony Epps (hereinafter “Epps”) and Matthew Sullivan (hereinafter “Sullivan”), by counsel, and file this Complaint to recover unpaid wages and damages under the Federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq* (“FLSA”), and for breach of contract, and for other damages from Defendant as set forth below.

Parties and Jurisdiction

1. This Court has jurisdiction over Defendant pursuant to 16(b) of the FLSA, 29 U.S.C. § 216(b) and 28 U.S.C. § 1337 relating to “any civil action or proceeding arising under any Act of Congress regulating commerce.”
2. Subject matter jurisdiction is invoked under 28 U.S.C. § 1331.
3. Venue is proper pursuant to 28 U.S.C. § 1391.

4. Epps resides in Norfolk, VA and worked for Defendant during a portion of the three years immediately preceding the filing of this Complaint (the “applicable time period”).

5. Sullivan resides in Chesapeake, VA and worked for Defendant during a portion of the applicable time period.

6. Defendant maintains eight branches total in Virginia, North Carolina, South Carolina and Washington, D.C.

7. Plaintiffs and similarly situated individuals are present and former erectors, assistant erectors and foremen at Defendant who worked at its Chesapeake branch.

8. Plaintiffs and similarly situated employees of the Defendant were hourly employees who were not paid for travel time, and as a result, were not paid the minimum wage required by the FLSA for travel time.

9. Indeed, the only person who was paid during travel time was the person who was physically driving the vehicle, not any of the passengers who were obviously not free to do what they wanted to do with their time when they were driving from their branch to the work location, between work locations, and driving back to their branch.

10. Plaintiffs engaged in travel time of a minimum of an hour per day, and as much as five hours per day when they were dispatched to jobs throughout the region from their branch in Chesapeake.

11. Plaintiffs periodically worked through lunch, 30 minutes of which was paid, and 30 minutes of which was unpaid, resulting in additional uncompensated time. Plaintiffs also occasionally worked on weekends.

12. When the time Plaintiffs worked through lunch, on weekends, and traveling to and between jobs is aggregated, this resulted in Plaintiffs and similarly situated employees working overtime for which they were not compensated.

13. Defendant failed to compensate Plaintiffs at all for overtime because Defendant uniformly redlined and decreased Plaintiffs' hours worked on the time records the Plaintiffs submitted to Defendant.

14. Defendant regularly reduced the hours turned in by foremen on behalf of themselves and employees.

15. In particular, this was likely to occur if an employee worked more than 40 hours in a week according to his time sheets.

16. If, and when, employees complained, Defendant said it would make up the hours in the following week.

17. Most of the time Defendant failed to make up the hours in the following week, but when it did, the employee was still robbed of the overtime compensation from the initial week when hours were added to a subsequent week.

18. Upon information and belief, the only branch that fails to pay its employees when they start work, but rather pays them when they get to the work site, is Chesapeake.

19. Not surprisingly, the Chesapeake branch used to have 30 employees, but now they are down to only a handful.

20. The foregoing pay policies violated the FLSA both with respect to minimum wage and unpaid overtime during the applicable time period.

21. Plaintiffs are not only entitled to minimum wage for their uncompensated hours, but under the oral contract between the parties, they are entitled to their respective hourly rates.

22. At all times relevant, Defendant was engaged in commerce and the production of goods for commerce within the meaning of § 3(s)(1) of the FLSA (29 U.S.C. § 203(s)(1)).

23. At all times relevant, Defendant's gross revenue exceeded \$500,000.00, and thus Defendant qualified as an "enterprise" within the meaning of § 3(r) of the FLSA (29 U.S.C. § 203(r)).

24. At all times relevant, Plaintiffs were individual employees who, while engaged in their employment duties, handled and constructed and worked with and on scaffolds consisting of materials that were moved in or produced for commerce so that each Plaintiff was an individual employee who was engaged in commerce or the production of goods for commerce as required by 29 U.S.C. § 206-207.

25. Pursuant to the foregoing, Defendant qualified as Plaintiffs' employer for purposes of the FLSA.

Facts

26. Epps and Sullivan worked for Defendant constructing scaffolding and earned \$23.00 per hour during the applicable time period.

27. Each day Defendant required Epps and Sullivan to report to work at 6:00am.

28. During the time between 6:00am and 6:30am Defendant knew Plaintiffs were at work because it mandated it.

29. Mondays Defendant conducted a safety meeting between 6:00am and 6:30am.

30. The rest of the week Plaintiffs were gathering up construction materials, filling coolers with water and ice and stowing them on company vehicles, and sometimes Plaintiffs had to move their tools, which they left in the truck overnight, from one vehicle to a different vehicle, and otherwise were preparing to construct scaffolding at the ultimate work location.

31. Defendant would not permit Epps and Sullivan and similarly situated employees to clock in at 6:00am.

32. Defendant would not permit Epps and Sullivan and similarly situated employees to clock in at 6:30am when they left the branch for the construction site.

33. Plaintiffs could only clock in once they arrived at the first construction site which generally was at approximately 7:00am.

34. This resulted in approximately one hour of uncompensated time each morning.

35. Similarly, Defendant required Epps and Sullivan to clock out for lunch, whether they worked through lunch or not.

36. Also, Defendant required Epps and Sullivan to clock out if they had to travel from one work location to another, which frequently was the case, and then clock back in only when they reached the new work location.

37. At the end of the day in the field at the work site Defendant required Epps and Sullivan and similarly situated employees to clock out when they finished, with the result that they were not paid for the return trip to the Chesapeake branch.

38. Defendant actually supplied its foremen, including Epps and Sullivan, with a portable clock which they used to clock in themselves and the other employees when they were out in the field as described above.

39. Plaintiffs and similarly situated employees at Defendant also worked periodically on weekends without proper compensation.

40. This weekend work would have resulted in overtime hours and resulting overtime pay, but for the fact that Defendant decreased the hours worked and recorded and submitted by Plaintiffs on their time records.

41. Plaintiffs are similarly situated to dozens of employees who worked for Defendant during the applicable time period, many of whom are expected to opt into this action presently.

42. As a result of the foregoing, Defendant failed to pay Plaintiffs minimum wage for travel time and for the time before and after they were working on their respective job sites.

43. In addition, Defendant failed to pay Plaintiffs time and a half compensation for most of the overtime hours they worked.

44. Further, Defendant failed to pay Plaintiffs their contractual rate of pay, which varied between \$12.00 and \$24.00 per hour for each hour they worked (as opposed to merely minimum wage).

45. Defendant had no reasonable or good faith basis for paying Plaintiffs in violation of the FLSA.

46. As a result, Defendant is liable for double the amount of wages due Plaintiffs.

47. Also, Defendant violated the FLSA willfully.

48. First, Defendant and its authorized agents repeatedly reduced the hours reported by the Plaintiffs and the Plaintiffs' foremen, including but not limited to Epps and Sullivan.

49. Second, upon information and belief, Defendant paid its hourly employees correctly at its other seven branches.

COUNT I –
Violation of the Federal Fair Labor Standards Act
(Minimum Wage)

50. Plaintiffs adopt by reference the allegations contained in the earlier paragraphs of this Complaint with the same effect as if fully set forth herein.

51. Defendant, as Plaintiffs' employers, were obligated to pay the Plaintiffs for all hours worked at an hourly wage at least equal to that the Federal Minimum Wage, \$7.25 per hour.

52. As noted above, Plaintiffs worked at least five to ten hours per week without any wages whatsoever.

53. Plaintiffs seek their attorney's fees incurred and all additional damages authorized by the FLSA.

COUNT II –
Violation of the Federal Fair Labor Standards Act
(Unpaid Overtime)

54. Plaintiffs adopt by reference the allegations contained in the earlier paragraphs of this Complaint with the same effect as if fully set forth herein.

55. Defendant, as Plaintiffs' employer, was obligated to pay the Plaintiffs for all overtime hours worked at time and a half their hourly wage.

56. As noted above, Plaintiff worked numerous hours of unpaid overtime.

57. Plaintiffs seek their attorney's fees incurred and all additional damages authorized by the FLSA.

COUNT III -
Breach of Contract

58. Plaintiffs adopt by reference the allegations contained in the earlier paragraphs of this Complaint with the same effect as if fully set forth herein.

59. Plaintiffs assented to employment with Defendant and Defendant agreed to pay each Plaintiff a predetermined and mutually agreed upon hourly rate.

60. As set forth above, the compensation structure was ignored by Defendant when it unilaterally decreased the hours reported by Plaintiffs to Defendant, and when it failed to pay Plaintiffs their hourly rate for each hour worked.

61. Plaintiffs performed, in a workmanlike manner, all contractual duties and obligations they owed to Defendant for which full consideration is now due and owing.

62. This suit is brought within three years of the Defendant's breach of each oral pay contract, and Plaintiffs seek three years of unpaid hourly compensation.

63. Defendant's refusal to pay Plaintiffs compensation due and owing as per oral agreement between the parties constitutes a material breach of the compensation agreements resulting in substantial damages.

64. The written and signed consent to join this action of Tony Epps is attached as Exhibit A.

WHEREFORE, Plaintiffs pray that they be awarded judgment on each count against the Defendant, jointly and severally, in such an amount as is proven at trial, plus interest (both pre- and post-judgment), the costs of this action, attorney's fees on Counts I and II, and any other and further relief this Court or jury deems appropriate.

Jury Demand

Plaintiffs request a trial by jury on all facts so triable.

Respectfully Submitted,

**TONY EPPS and
MATTHEW SULLIVAN,**

DATE: October 26, 2017

BY: /s/ Christopher Colt North
Of Counsel

Christopher Colt North
VSB # 16955
The Consumer & Employee Rights Law Firm, P.C.
751-A Thimble Shoals Boulevard
Newport News, Virginia 23606
Phone: (757) 873-1010
Fax: (757) 873-8375
Email: cnorthlaw@aol.com
Counsel for Plaintiff

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Defendant.

CONSENT TO JOIN ACTION

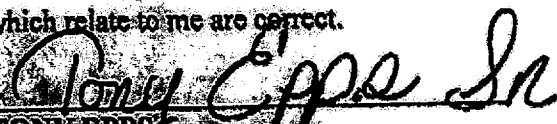
I, Tony Epps, being duly sworn, depose and say:

I reside at 1313 Corprew Avenue, Norfolk, VA 23504. I am over the age of eighteen (18) years. I hereby consent to be a party plaintiff in the above styled action and to be bound by the decision of the Court in connection herewith. I am a former employee of Scaffolding Solutions, LLC, and I am similarly situated to other employees of Defendant, both present and former. I worked for Defendant on and off since 2009 and currently.

Defendant failed to pay me minimum wage for travel time and for the time before and after working on job sites, as well as when I worked through lunch. Defendant also failed to pay me time and a half compensation for most of the overtime hours I worked.

I have entered into a written contract with Christopher Colt North, Esquire of The Consumer & Employee Rights Law Firm, P.C., authorizing him to act on my behalf in this case.

I have read and hereby adopt the allegations of the Complaint. I hereby declare under penalty of perjury that the allegations in the Complaint which relate to me are correct.


TONY EPPS

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

Tony Epps and Matthew Sullivan, For themselves and on behalf of all others similarly situated

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

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

Christopher Colt North, The Consumer & Employee Rights Law Firm, P.C., 751-A Thimble Shoals Boulevard, Newport News, VA 23606, (757) 873-1010

DEFENDANTS

Scaffolding Solutions, LLC

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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<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 Antitrust <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	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	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. § 201, et seq

Brief description of cause:

Violations of the FLSA

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

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Claims Scaffolding Solutions Owes Unpaid Travel Time Wages](#)
