

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2017 JUN 23 AM 11:48

CASE NO.: 6:17-cv-1161-GAP-KRS
COLLECTIVE ACTION

US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

CHRISTIAL GEFFRARD, individually
and on behalf of all those similarly
situated,

Plaintiffs,

vs.

FUSION LOGISTICS, INC.,

Defendant.

**PLAINTIFF'S COLLECTIVE ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, CHRISTIAL GEFFRARD, ("Mr. Geffrard" or "Class Representative"), individually and as Class Representative on behalf of all other similarly situated employees, by and through his undersigned counsel, hereby files this Representative Action against FUSION LOGISTICS, INC., ("Fusion"), and state as follows:

I. INTRODUCTION

1. This is a Representative Action brought pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA"), for failure to pay overtime wages pursuant to 29 U.S.C. § 207.

2. This lawsuit is not dealing with mere chattels or articles of trade but with the rights of those who toil, of those who sacrifice a full measure of their freedom and talents to the use and profit of others, in this case-Fusion. Those are the rights that Congress has specially legislated to protect in the Fair Labor Standards Act.

3. The FLSA prevents the exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage is not only detrimental to their health and wellbeing but casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399 (1937)(Hughes, C.J).

4. Because of such unequal bargaining power, the Class Representative, Mr. Geffard, brings this action on behalf of himself as well as other similarly situated employees who were employed by Fusion as “delivery drivers” and paid a day rate. (hereinafter referred to as “Delivery Driver[s]”).

5. The Class Representative will seek conditional certification and notice to an opt-in class of “Delivery Drivers” who are or were employed by Fusion in Florida during the three years preceding the filing of the Complaint; were paid a “day rate;” were not properly paid overtime wages in violation of the Fair Labor Standards Act.

II. JURISDICTION AND VENUE

6. This Court has jurisdiction to hear this Complaint pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 201.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in Orange County, Florida in the Orlando Division of the Middle District of Florida.

III. THE PARTIES

8. Fusion provides Nationwide End-to-End Logistic Solutions, Local Dedicated Delivery and an array of Management Services to its customers in the small package, final mile

delivery space. (See <http://solutionsbyfusion.com/about-fusion>).

9. Fusion's customers include Amazon, ebay, and other online retailers.

10. Fusion has locations in Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Maine, Michigan, Minnesota, Missouri, North Carolina, New Hampshire, New Jersey, Nebraska, New Mexico, Nevada, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Vermont, Wisconsin, and West Virginia. (See <http://solutionsbyfusion.com/fusion-location-list>).

11. Fusion's Florida locations are Davenport, Ft. Lauderdale, Jacksonville, Miami, Ocala, Orlando, Panama City, Pensacola, Tallahassee, Tampa, and West Palm Beach.

12. The Class Representative, Mr. Geffrard, was employed with Fusion as a Delivery Driver at Fusion's Orlando, Florida location.

IV. FACTUAL ALLEGATIONS

13. The Class Representative, Mr. Geffrard, was employed with Fusion as a Delivery Driver at its Orlando, Florida facility from approximately March 3, 2017 until April 15, 2017.

14. As a Delivery Driver, Mr. Geffrard, and all similarly situated Deliver Driver's job duties were to deliver packages for Fusion's customers.

15. As a Delivery Driver, Mr. Geffrard and all similarly situated Deliver Drivers were paid an agreed upon "day rate."

16. Upon information and belief, Fusion employed hundreds of similarly situated

Delivery Drivers throughout its eleven (11) Florida locations to service its clients.

17. Fusion provided Mr. Geffrard and other similarly situated Delivery Drivers with a vehicle to perform their delivery driver duties.

18. The vehicle that Fusion provided Mr. Geffrard and other similarly situated Deliver Drivers had a gross vehicle weight rating and a gross weight of less than 10,001 pounds.

19. The vehicle that Fusion provided Mr. Geffrard and other similarly situated Deliver Drivers did not have any seats for passengers.

20. The vehicle that Fusion provided Mr. Geffrard and other similarly situated Deliver Drivers were not designed or used to transport more than eight passengers, including the driver, for compensation.

21. The vehicle that Fusion provided Mr. Geffrard and other similarly situated Deliver Drivers were not designed or used to transport more than fifteen passengers, including the driver, for compensation.

22. The vehicle that Fusion provided Mr. Geffrard and other similarly situated Deliver Drivers were not used in transporting hazardous material, requiring placarding under the regulations prescribed by the Secretary of Transportation.

23. At all times relevant to their employment, Mr. Geffrard and all other similarly situated Delivery Drivers, regularly used the instrumentalities of interstate commerce while performing their work. At all times relevant to their employment, Mr. Geffrard and all other similarly situated Delivery Drivers, also regularly used the channels of commerce while performing their work.

24. Fusion is an "employer" as defined by 29 U.S.C. § 203(d).

25. Fusion has employees subject to the provisions of the FLSA, 29 U.S.C. § 207, in the facility where the Class Representative, Mr. Geffrard and all other similarly situated Deliver Drivers were employed.

26. Fusion has employed two or more persons, including the Class Representative, "engaged in commerce or in the production of goods for commerce," or has "had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by a person," as defined by 29 U.S.C. § 203(s)(1)(A)(i).

27. Class Representative, Mr. Geffrard, avers that at all times relevant to the violations of the Fair Labor Standards Act Defendant, Fusion, was an enterprise whose annual gross volume of sales made or business done was not less than \$500,000, in accordance with 29 U.S.C. § 203(s)(1)(A)(ii).

28. Fusion's Deliver Drivers would routinely work between four (4) to five (5) days per week, and sometimes six (6) days per week.

29. Fusion Delivery Drivers would routinely work ten (10) to fifteen (15) hours in a day.

30. Class Representative, Mr. Geffrard, worked between four (4) to six (6) days per week while employed as a Deliver Driver for Fusion.

31. Class Representative, Mr. Geffrard, routinely worked in excess of ten (10) hours a day.

32. Class Representative, Mr. Geffrard, and all other similarly situated Deliver Drivers were paid an agreed upon "day rate."

33. Class Representative, Mr. Geffrard, and all other similarly situated Deliver Drivers, worked more than forty hours in many workweeks and only received their agreed upon "day rate."

34. In fact, there were many weeks that Class Representative, Mr. Geffrard, and all other similarly situated Deliver Drivers, did not even receive the “day rate” as agreed.

35. Class Representative, Mr. Geffrard, and all other similarly situated Deliver Drivers, worked overtime in numerous workweeks and did not receive proper overtime pay.

36. Fusion had knowledge that Class Representative, as well as other similarly situated Delivery Drivers, were working overtime without proper compensation.

37. Fusion failed to make a good faith effort to determine if the Class Representative and similarly situated Delivery Drivers, were being compensated appropriately pursuant to the FLSA.

38. Fusion has also failed to maintain and keep accurate time records as required by the Fair Labor Standards Act. *See e.g.* 29 U.S.C. §§ 211(c); 215(a); 29 C.F.R. § 516, *et. al.*

39. Fusion also failed to post the required notice pursuant to the Fair Labor Standards Act.

40. Class Representative, Mr. Geffrard, has retained LaBar & Adams, P.A. as Class Counsel to represent himself and the Class and has agreed to pay said firm a reasonable attorney’s fee for its services.

V. COLLECTIVE ACTION ALLEGATIONS

41. Class Representative, Mr. Geffrard, brings this action on behalf of himself as well as other similarly situated employees who were employed by Fusion as a “Delivery Driver” in Florida and paid a day rate.

42. Specifically, Class Representative, Mr. Geffrard, brings the class’ claim under the Fair Labor Standards Act as a collective action, and will request the Court to grant conditional class certification under 29 U.S.C. § 216(b).

43. Class Representative, Mr. Geffrard, will seek class certification of all employees of Fusion who: (1) were employed as "Delivery Drivers" in Florida during the preceding three (3) years; (2) were paid a "day rate;" and (3) worked more than forty hours in a workweek without being paid proper overtime compensation.

44. Class Representative, Mr. Geffrard, and the similarly situated Delivery Drivers had similar job duties, were paid the same and were subjected to the same illegal policies and practices.

45. Fusion's unlawful compensation practices are in willful disregard of the rights of the Class Representative, Mr. Geffrard, and the similarly situated Delivery Drivers.

46. Fusion's labor conditions are detrimental to the health, efficiency, and the general well-being of our community and is in violation of the Fair Labor Standards Act.

COUNT I
CLASS REPRESENTATIVE'S COLLECTIVE ACTION
FOR VIOLATION OF THE OVERTIME PROVISION OF THE
FAIR LABOR STANDARDS ACT

47. Class Representative re-alleges and incorporates herein the allegations contained in paragraphs 6 through 45, above.

48. Throughout the employment of the Class Representative and all other similarly situated Delivery Drivers, the Defendant, Fusion, repeatedly and willfully violated Section 7 and Section 15 of the Fair Labor Standards Act by failing to compensate the Class Representative and all other similarly situated Delivery Drivers, at a rate not less than one and one-half times the regular rate at which they were employed for workweeks longer than forty (40) hours.

49. Specifically, Class Representative and all other similarly-situated Delivery Drivers, worked numerous weeks throughout their employment in excess of forty (40) hours a week, yet

were not compensated for all hours worked in excess of forty (40) hours at a rate not less than one and one-half times the regular rate at which they were employed.

50. Fusion failed to maintain and keep accurate time records as required by the Fair Labor Standards Act. *See e.g.* 29 U.S.C. §§ 211(c); 215(a); 29 C.F.R. § 516, *et. al.*

51. Fusion failed to post the required notice pursuant to the Fair Labor Standards Act.

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) Unpaid overtime wages found to be due and owing;
- (b) An additional equal amount equal to the unpaid overtime wages found to be due and owing as liquidated damages;
- (c) Prejudgment interest in the event liquidated damages are not awarded;
- (d) A reasonable attorney's fee and costs; and,
- (e) Such other relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues contained herein this Complaint.

Dated: 6/22/17

Respectfully submitted,

SCOTT C. ADAMS, ESQ.
Florida Bar No.: 0573442
Email: sadams@labaradams.com
N. RYAN LABAR, ESQ.
Florida Bar No.: 0010535
Email: rlabar@labaradams.com
LABAR & ADAMS, P.A.
2300 East Concord Street
Orlando, Florida 32803
(407) 835-8968 (phone)
(407) 835-8969 (facsimile)

JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil coversheet 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

CHRISTIAL GEFFRARD, individually and on behalf of all those similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Scott C. Adams, Esq, LaBar & Adams, P.A.
2300 E. Concord Street, Orlando, Florida 32803
(407) 835-8968

DEFENDANTS

FUSION LOGISTICS, INC.

County of Residence of First Listed Defendant ORANGE
(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 checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" 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)*

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 (Excl. 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 - Med. Malpractice	<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/Mgmt. 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 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <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"/> 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"/> 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	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <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

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. Sections 201, et. seq.

Brief description of cause:
Unpaid wages under the Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE: _____

DOCKET NUMBER _____

DATE

6/22/17

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: [Delivery Driver Says Fusion Logistics Owes 'Day Rate' Workers OT](#)
