

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTON SYKES, JULIUS GOODWIN)	
TREMALLE MATTHEWS, DEONTE)	
BELL, DANTRELL CHILDS,)	
COURTNEY DAVIS, LARON GIBSON)	
JAMAL DAVIS, TYRONE BEARDEN)	
WILLIAM MIETKIEWICZ, CARSON)	
GIBSON)	
individually and on behalf of all persons)	
similarly situated)	
)	
Plaintiffs,)	Case No.:
)	
v.)	
)	
GALLAGHER CONSTRUCTION GROUP)	
LLC, GALLAGHER MARKETING)	
GROUP, LLC, MICHAEL GALLAGHER)	
DANIEL GALLAGHER)	
)	
)	
Defendants.)	

CLASS ACTION COMPLAINT

Plaintiffs ANTON SYKES, JULIUS GOODWIN, TREMALLE MATTHEWS, DEONTE BELL, DANTRELL CHILDS, COURTNEY DAVIS, LARON GIBSON, JAMAL DAVIS, TYRONE BEARDEN, CARSON GIBSON and WILLIAM MIETKIEWICZ (collectively, “Plaintiffs”) by and through their attorneys, for their Class Action Complaint against GALLAGHER CONSTRUCTION GROUP, LLC, GALLAGHER MARKETING GROUP, LLC, MICHAEL GALLAGHER, and DANIEL GALLAGHER (collectively, “Defendants”) state as follows:

Introduction

1. This is a case about a business cheating the low wage workers and the government by misclassifying employees as “subcontractors.” Plaintiffs (construction workers mostly making approximately \$15 to \$20 per hour) bring this action on behalf of themselves and a class of current

and former construction workers for the purpose of challenging Defendants' unlawful practice of misclassifying workers as contractors, depriving them over their wages and overtime, and seeking the recovery of statutory damages as allowed by the Illinois Employee Classification Act (ECA).

2. The United States Department of Labor has found that: "The misclassification of employees as independent contractors presents one of the most serious problems facing affected workers, employers and the entire economy."¹ The Illinois Department of Labor has pointed out that misclassification also results in:

"Law abiding employers fac[ing] a competitive disadvantage when competing for business or bidding for jobs against employers who misclassify. Misclassifying employers have artificially low costs because they have not covered the cost of unemployment insurance contributions and workers' compensation for their employees. Law abiding businesses that properly classify their employees are subsidizing businesses that misclassify and could end up paying higher unemployment insurance contributions, higher workers' compensation premiums, and higher taxes than would be required if all employers followed Illinois law."

3. In fact, in Illinois alone, misclassification has been reported to cost our state more than \$50 million per year in unpaid unemployment insurance, \$97.9 million in unpaid workers compensation, and between \$125 and \$207 million in unpaid state income tax.²

Jurisdiction and Venue

4. Subject matter jurisdiction is conferred on this Court by Title 28 U.S.C. § 1337 and by 29 U.S.C. § 216(b).

5. Venue is proper in this Judicial District as all of the events arising out of this case arose in this Judicial District.

¹ <https://www.dol.gov/whd/workers/misclassification/>

²Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries, National Employment Law Project, July 2015 Fact Sheet, available at: <http://www.nelp.org/content/uploads/Independent-Contractor-Costs.pdf>

Facts

6. The Plaintiffs are each individuals who performed for the Defendants with the past year in the state of Illinois.

7. Defendant Gallagher Construction Group, LLC is an Illinois limited liability company that is not in good standing with the Secretary of State.

8. Defendant Gallagher Marketing Group, LLC is an Illinois limited liability company that operates under the assumed name of Gallagher Companies LLC. (Gallagher Construction Group, LLC and Gallagher Marketing Group, LLC and referred to herein as the “Gallagher Entities”).

9. Michael Gallagher and Daniel Gallagher are the individual owners and sole Members of the Gallagher Entities. Michael Gallagher holds himself out as the CEO and Daniel Gallagher holds himself out as President of the Gallagher Entities. Each is responsible for directing the illegal pay practices and/or the hiring and management of the Plaintiffs as described herein.

10. The Gallagher Entities are enterprises engaged in commerce or in the production of goods for commerce within the meaning of Section 203 (s)(1)(A) of the FLSA. 29 U.S.C. §203(s)(1)(A).

11. During the last two years, the Gallagher Entities’ annual gross volume of sales made or business done has each exceeded \$500,000, exclusive of excise taxes.

12. Defendants are the Plaintiffs’ “employer” as that term is defined by the FLSA. 29 U.S.C. § 203(d) and the Employee Classification Act.

13. Defendants are the Plaintiffs’ “employer” as defined by the IMWL. 820 ILCS 105/3(c) and the Illinois Wage Payment and Collection Act and the Employee Classification Act.

14. Plaintiffs were Defendants “employee” as that term is defined by the FLSA. 29 U.S.C. § 203(e)(1) and the Illinois Wage Payment and Collection Act.

15. Plaintiffs were Defendant’s “employee” as defined by the IMWL 820 ILCS, 105/3(d) and the Illinois Wage Payment and Collection Act.

16. Plaintiffs reserve the right to assert that others also acted as their employers as defined in the various wage laws and to add them as defendants to this action.

17. Each of the Plaintiffs performed work within this Judicial District to help renovate a large apartment complex. They performed manual labor and other construction related work.

18. Although each of the Plaintiffs was classified by the Defendants as “subcontractors”, they were in fact employees under each of the wage laws at issue in this lawsuit.

19. Within the past year, each of the Plaintiffs was paid an hourly rate for their work. Despite working over 40 hours per week in each individual work week, the Plaintiffs were not paid overtime premiums.

20. The Plaintiffs were fired from their job with the Defendants and were not paid their wages that were due to them as shown by the examples below:

21. Plaintiff Childs was not paid for work he performed during the month of October 2017.

22. Plaintiff Davis was not paid for 72 hours of work during the pay period of 10/15/17 through 10/28/17 and for 66 hours during the period of 10/29/17 and 11/11/17.

23. Plaintiff Goodwin was not paid for 8 days and 4 hours of work during October and November 2017.

24. Plaintiff Bell worked from 10/13/17 through 10/27/17 and was not paid for two weeks of work.

25. Plaintiff Sykes worked from approximately 9/22/17 through 11/15/17 and was not paid for approximately 125 hours of work.

26. Plaintiff Mietkiewicz worked from 10/15/17 through 11/15/17 and was not paid for approximately 112 hours of work.

27. Plaintiff Bearden worked from 10/9/17 through November 2, 2017 and is owed for approximately 107 hours of work.

28. Plaintiff Carson Gibson worked for the Defendants during October and November 2017 and was not paid for the period from 10-29-17 through 11-11-17.

29. All of the work performed was construction work assisting in the remodeling of apartment buildings.

COUNT I

Violation of the Employee Classification Act - Earned Wages and Employment Benefits (Plaintiffs Individually and on Behalf of All Similarly Situated Employees Pursuant to Fed. R. Civ. Pro. 23)

30. Plaintiffs incorporate and realleges paragraphs 1 through 29 as though fully set forth herein.

31. This Count arises from Defendants' violation of the ECA, 820 ILCS § 185/1 *et seq.*, for their failure to properly classify Plaintiffs as employees. Although the Defendants classified its workers as subcontractors, they in fact were employees.

32. During the course of their work, Defendants employed Plaintiffs in construction as defined by the ECA, 820 ILCS § 185/5.

33. During the course of their employment, Plaintiffs were Defendants' employees as defined by the ECA 820 ILCS § 185/10.

34. During the course of Plaintiffs' employment, Defendants classified and treated Defendants as subcontractors in that, among other things, Defendants failed to comply with the

requirements of paying overtime, failed to pay unemployment benefits as required by Illinois law; failed to provide workers' compensation coverage as required by Illinois law; and failed to provide Plaintiffs with other employment benefits due him as were provided to other employees.

35. Pursuant to 820 ILCS § 185/60, Plaintiffs are entitled to recover the amount of any wages, salary, employment benefits, or other compensation denied or lost to the person by reason of the violation, plus an equal amount in liquidated damages and attorney fees.

36. Plaintiffs are also statutory damages in the amount of up to \$500 for each violation of the ECA, 820 ILCS § 185/60(a)(2). As such, for each day the Plaintiffs were misclassified, they will seek \$500.

WHEREFORE, Plaintiffs pray for a judgment against Defendants for all relief available under the ECA; liquidated damages as provided for by the ECA, 820 ILCS § 185/60(a)(1); compensatory damages as provided for by the ECA, 820 ILCS § 185/60(a)(2); statutory damages in the amount of up to \$500 for each violation of the ECA, 820 ILCS § 185/60(a)(2); reasonable attorneys' fees and costs of this action as provided by the ECA, 820 ILCS § 185/60; and such other and further relief as this Court deems appropriate and just.

COUNT II- FAIR LABOR STANDARDS ACT
(Collective Action)

37. The Plaintiffs re-alleges and incorporates paragraphs 1 through 36, as if fully set forth herein.

38. At all relevant times, Defendants employed and/or continued to employ Plaintiffs within the meaning of the FLSA.

39. Defendants have a policy and practice of not paying Plaintiffs the required overtime rate under the FLSA.

40. Under the FLSA, Plaintiffs were entitled to be paid one and one-half times their regular rate of pay by Defendants for each hour worked in excess of 40 hours each work week.

41. The overtime rate is computed by multiplying 1.5 times an employee's regular hourly rate, which includes all non-discretionary compensation paid to employees.

42. Defendants failed to compensate the Plaintiffs at the overtime rate for work performed in excess of 40 hours per week in violation of the FLSA. Specifically, the Plaintiffs during October and November 2017 worked in excess of 40 hours in individual work weeks and were not paid overtime premiums.

43. Plaintiffs also were not paid the applicable minimum wage during October and November 2017 when their paychecks were not paid to them.

44. Upon information and belief, Defendants' practices were not based upon Defendant's review of any policy or publication of the United States Department of Labor and therefore were willful and deliberate.

45. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).

46. Due to Defendants' violations of the FLSA, Plaintiffs have suffered damages and are entitled to recover damages from Defendant.

WHEREFORE, the Plaintiffs request the following relief:

- a.) A declaratory judgment that Defendants violated the overtime wage provisions of the FLSA as to the Plaintiffs;
- b.) A declaratory judgment that Defendants' violations were willful;
- c.) A judgment of unpaid overtime compensation;
- b.) A judgement of an additional equal amount as liquidated damages, pursuant to the FLSA;

- c.) Prejudgment interest; and
- d.) Reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

COUNT III - ILLINOIS MINIMUM WAGE LAW
(Plaintiffs Individually and on Behalf of All
Similarly Situated Employees Pursuant to Fed. R. Civ. Pro. 23)

47. Plaintiffs hereby alleges and incorporates Paragraph 1 through 45 of this Complaint, as is fully set forth herein.

48. This count arises from Defendants' violation of the overtime compensation provisions of the IMWL, 820 ILCS § 105/1 *et seq.*

49. Under the IMWL, Defendants were and remain obligated to compensate Plaintiffs at the required overtime rate for all hours worked in excess of 40 hours in any individual work week. Overtime compensation must be paid at a rate of not less than one and one-half times the regular rate of pay.

50. Plaintiffs were regularly permitted, encouraged and/or required to work in excess of 40 hours per week but was not compensated at the required one and one-half times regular hourly rate for such overtime work.

51. By failing to pay overtime compensation due to Plaintiffs, Defendants willfully, knowingly and/or recklessly violated the IMWL which requires overtime compensation of one and one-half times normal rate to be paid.

52. As a result of Defendants' policy and practice of withholding overtime compensation, Plaintiffs have been damaged in that they have not received wages due to him pursuant to the IMWL.

WHEREFORE, Plaintiffs pray for the following relief:

- a.) A declaratory judgment that Defendants violated the minimum wage provisions of the IMWL as to the Plaintiffs;
- b.) A declaratory judgment that Defendants' violations of the IMWL were willful;
- c.) A judgment to Plaintiff in the amount of unpaid wages;
- d.) A judgment to Plaintiff of punitive damages, including statutory interest of 2% per month, as provided by IMWL;
- e.) A judgment to Plaintiff of reasonable attorney's fees and costs incurred in filing this action; and
- f.) Such other and further relief as this Court deems appropriate and just.

COUNT IV
VIOLATION OF THE ILLINOIS WAGE PAYMENT AND COLLECTION ACT
(Plaintiffs Individually and on Behalf of All
Similarly Situated Employees Pursuant to Fed. R. Civ. Pro. 23)

53. Plaintiff hereby alleges and incorporates Paragraphs 1 through 52 as is fully set forth herein.

54. This count arises from Defendants violation of the IWPCA, 820 ILCS 115.

55. 820 ILCS § 115/4 provides in part that “[a]ll wages earned by any employee during a semi-monthly or bi-weekly pay period shall be paid to such employee not later than 13 days after the end of the pay period in which such wages were earned.”

56. As a result of Defendants' policy and practice of withholding the final paychecks, Plaintiffs and similarly situated employees have been damaged in that they have not received wages due to them pursuant to the IWPCA when the payments are due.

57. 820 ILCS 115/14 provides the Plaintiff with statutory damages of 2% per month for when payments were not made and costs and all reasonable attorney's fees.

WHEREFORE, Plaintiffs request the following relief, individually and on behalf of similarly situated employees:

- A) Certification of a class of similarly situated Plaintiffs defined as all current and former hourly employees of Defendants in the State of Illinois. The relevant time period is for work performed within the ten years preceding this lawsuit to the day of trial;
- B) A declaratory judgment that Defendants violated the IWPCA as to the Plaintiffs and the Class;
- C) A declaratory judgment that Defendants' violations of the IWPCA were willful;
- D) A judgment to Plaintiffs and the Class in the amount of unpaid wages;
- E) A judgment to Plaintiffs and the Class of punitive damages as provided by IWPCA;
- F) A judgment to Plaintiffs and those similarly situated of reasonable attorneys' fees;
- G) Costs incurred in filing this action; and
- H) Such other and further relief as this Court deems appropriate and just.

By: /s/ David J. Fish
One of Plaintiff's Attorneys

JURY DEMAND

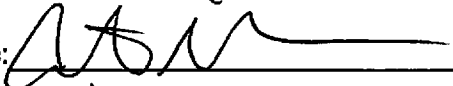
Plaintiffs demand trial by jury for all the issues pled in this Complaint so triable.

David J. Fish
Kimberly Hilton
John Kunze
THE FISH LAW FIRM, P.C.
200 E 5th Ave Suite 123
Naperville, IL 60563
T: 630-355-7590
F: 630-778-0400

NOTICE OF CONSENT/OPT IN
(Gallagher)

I was employed by Gallagher Construction/its related companies. By my signature below, I consent to join this lawsuit and I designate Anton Sykes and his attorneys, The Fish Law Firm, P.C. as my agents to make decisions on my behalf about the lawsuit, including how to prosecute the lawsuit, settlement (if any), attorneys' fees, (if any) and costs (if any), and all other decisions relating to this lawsuit. I agree to be bound by the outcome of this lawsuit, regardless of the outcome.

Name: Anton Sykes (Print Your Name)

Signature:  _____

Date: 11/24/17

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

c/o The Fish Law Firm, P.C.
200 E. 5th Ave., Suite 123
Naperville, IL 60563
Telephone: 630-355-7590
Fax: 630-778-0400
admin@fishlawfirm.com



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Name: COURTNEY DAVIS (Print Your Name)

Signature: C. Davis

Date: 11/21/17

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

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200 E. 5th Ave., Suite 123
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Name: Deante Bell (Print Your Name)

Signature: Deante Bell

Date: 11-21-17

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Name: Dantrell Childs (Print Your Name)

Signature: Dantrell Childs

Date: 11-21-17

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Name: Julius Goodman (Print Your Name)

Signature: Julius Goodman

Date: 11/21/17

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

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200 E. 5th Ave., Suite 123
Naperville, IL 60563
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Name: Caron Gibson (Print Your Name)

Signature: Caron L. Gibson

Date: 11-21-17


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Name: Tyrone G. Bearden (Print Your Name)

Signature: 

Date: Nov. 27^m 2017

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

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200 E. 5th Ave., Suite 123
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Name: Tremette Matthew J (Print Your Name)

Signature: Tremette Matthew J

Date: 11-21-14

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

**c/o The Fish Law Firm, P.C.
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Name: JAMAL J DAVIS (Print Your Name)

Signature: Jamal J Davis

Date: 11-22-17

RETURN THIS FORM BY MAIL, EMAIL OR FAX TO:

**c/o The Fish Law Firm, P.C.
200 E. 5th Ave., Suite 123
Naperville, IL 60563
Telephone: 630-355-7590
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Eight Plaintiffs Claim Gallagher Construction Group Misclassified Workers as Subcontractors](#)
