

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

**PAUL FRITZ, individually and on behalf
of all others similarly situated,**

Post Office Box 51
McFarland, Wisconsin 53558

Plaintiffs,

Case No. 3:09-cv-000086

vs.

DHL EXPRESS (USA), INC.,

c/o C T Corporation System
8040 Excelsior Drive, Suite 200
Madison, Wisconsin 53717

W&A CARGO MANAGEMENT, INC.,

d/b/a W.H.I.I.,
PO Box 1384
Hurst, Texas 76053-1384

W.H.I.I., LLC,

c/o Nevada Corporation Services LTD
4231 Dant Boulevard
Reno, Nevada 89509-7020

AARON WHITE,

316 East Scotland Drive
Irving, Texas 75062-8603

NATHAN WHITE,

7527 Bradford Pear Drive
Irving, Texas 75063

and

CHRIS HOLZKAMPER,

8200 Fenwick Drive
North Richland Hills, Texas 76180

Defendants.

SECOND AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This is a collective and class action brought by Individual and Representative Plaintiff Paul Fritz on his own behalf and on behalf of the members of the proposed classes identified below. Plaintiff and the putative class members were employed by a company that held itself out as “W.H.I.I.” and which contracted with DHL Express (USA), Inc. W.H.I.I. is not and has never been an entity registered to do business in Wisconsin. The owners of the entities appearing to do business as W.H.I.I., in Wisconsin are Aaron White, Nathan White, and Chris Holzkamper. The entities appearing to do business as W.H.I.I. are W&A Cargo Management, Inc (“W&A”), and W.H.I.I, LLC. These entities are referred to collectively throughout this complaint as “W.H.I.I.”

Defendant Aaron White was the sole owner and operator of W.H.I.I. LLC. Defendants Nathan White, and Chris Holzkamper were vice presidents of W.H.I.I. LLC and the sole owners and operators of W&A. Defendants Aaron White, Nathan White, and Chris Holzkamper are employers under the FLSA. These six Defendants are referred to collectively as “Defendants.”

Plaintiff and the putative class members have been or are employed by Defendants as drivers. Defendants misclassified Plaintiff and putative class members as “exempt” and therefore denied Plaintiff and putative class members payment of overtime wages as required by state and federal wage and hour laws. Plaintiff and putative class members are similarly situated under Federal Rule of Civil Procedure 23 and the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

2. This Court has original jurisdiction to hear this complaint and to adjudicate the

claims stated herein under 28 U.S.C. § 1331, this action being brought under the Fair Labor Standards Act, 29 U.S.C. § 201, et. seq. The court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in the United States District Court for the Western District of Wisconsin because Defendants operate a facility in this district and because the events giving rise to these claims occurred in this district.

PARTIES

4. Individual and representative Plaintiff Paul Fritz ("Fritz"), the Named Plaintiff, is an adult resident of McFarland, Wisconsin. Fritz was employed as a driver by Defendants in Madison, Wisconsin, during the applicable statute of limitations. Fritz brings these claims on behalf of the Rule 23 Classes and Collective Class.

5. Fritz brings this action on behalf of himself and on behalf of other similarly situated employees pursuant to 29 U.S.C. § 216(b). Fritz's consent form was filed as Exhibit A to the Complaint. (Dkt. 1). **The Collective Class** of similarly situated employees is defined as:

All persons who are or have been employed as DHL Express drivers for W.H.I.I. in Wisconsin at any time during the past three years and who were denied payment of overtime wages.

6. Fritz brings this action on behalf of himself and the Overtime Class and Meal Period Class pursuant to Fed. R. Civ. P. 23. **The Overtime Class** is defined as:

All persons who have been or are employed as DHL Express drivers for W.H.I.I. in Wisconsin at any time during the past two years and were denied overtime wages.

The Meal Period Class is defined as:

All persons who have been or are employed as DHL Express drivers for W.H.I.I. in Wisconsin at any time during the past two years and

who were denied wages for “on duty” meal periods.”

7. Defendant W&A is a foreign company with its principal place of business in Irving, Texas. W&A operates as a contractor for DHL Express (USA), Inc. and employs drivers who deliver DHL Express (USA), Inc. packages. Upon information and belief, W&A is solely in the business of contracting with DHL Express (USA), Inc. to deliver packages and does so under the name W.H.I.I. W&A is an employer within the meaning of 29 U.S.C. § 203(d).

8. Defendant W.H.I.I., LLC, upon information and belief is a foreign corporation with its principal place of business in Lake Tahoe, Nevada. W.H.I.I. is solely in the business of contracting with DHL Express (USA), Inc. to deliver packages. W.H.I.I. is an employer within the meaning of 29 U.S.C. § 203(d).

9. Defendant DHL Express (USA), Inc. is a Delaware corporation with its principal place of business in Plantation, Florida. Upon information and belief, Defendant DHL Express (USA), Inc. is in the business of providing package delivery throughout the United States, and contracts with individuals and companies, such as W.H.I.I. to carry those packages. Defendant DHL Express (USA), Inc. is an employer within the meaning of 29 U.S.C. § 203(d). Defendant DHL Express (USA), Inc.’s registered agent of service is CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

10. Defendant Nathan White was an officer, owner, and operator of W&A and an officer and operator of W.H.I.I., LLC during the applicable statute to limitations. White is an employer within the meaning of the FLSA, 29 U.S.C. § 203(d).

11. Defendant Chris Holzkamper (“Holzkamper”) was an officer, owner, and operator of W&A and an officer and operator of W.H.I.I., LLC during the applicable statute to

limitations. Holzkamper is an employer within the meaning of the FLSA, 29 U.S.C. § 203(d).

12. Defendant Aaron White was an officer, owner, and operator of W.H.I.I., LLC during the applicable statute of limitations and is an employer within the meaning of the FLSA, 29 U.S.C. § 203(d).

CLASS ALLEGATIONS

13. Fritz brings the Second and Third Claims for Relief on his own behalf and on behalf of the Classes pursuant to Rule 23 (a) and (b) of the Federal Rules of Civil Procedure. **The “Overtime Class”** is defined as:

All persons who have been or are employed as DHL Express drivers for W.H.I.I. in Wisconsin at any time during the past two years and were denied overtime wages.

The “Meal Period Class” is defined as:

All persons who have been or are employed as DHL Express drivers for W.H.I.I. in Wisconsin at any time during the past two years and who were denied wages for “on duty” lunch periods.

14. The persons in the Classes identified above are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, upon information and belief, Defendants have employed approximately 150 persons who satisfy the definition of each Class.

15. There are questions of law and fact common to the Rule 23 Classes that predominate over any questions solely affecting individual members of the Class, including but not limited to:

- (a) Whether Defendants unlawfully failed to pay overtime compensation in violation of and within the meaning of Wisconsin Statute § 103.03 and Wisconsin Administrative Code § DWD 274.03;

- (b) Whether Defendants unlawfully failed to pay employees for “on duty” meal periods in violation of and within the meaning of Wisconsin Administrative Code § 272.04.
- (c) Whether the Named Plaintiff and the Overtime Class are exempt from overtime compensation under Wisconsin Law;
- (d) Whether Defendants employed the Named Plaintiff and members of the Rule 23 Classes within the meaning of Wisconsin Law; and
- (e) The proper measure of damages sustained by each Class;

16. Fritz’s claims are typical of those of the Classes. Fritz, like other Class members, was subjected to Defendants’ policy and practice of refusing to pay overtime in violation of Wisconsin law. Fritz, like other Class members, was subjected to Defendants’ policy and practice of refusing to pay wages for work performed during “on duty” lunch periods. Fritz’s job duties were and are typical of those of other Class members.

17. Fritz will fairly and adequately protect the interests of the Classes and has retained counsel experienced in complex wage and hour litigation.

18. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against a large corporate defendant, particularly those with relatively small claims.

19. Class certification of the Second and Third Claims for Relief are appropriate under Fed. R. Civ. P. 23(b)(3), because questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants’ common and uniform policies and practices denied the Class the overtime

pay to which they are entitled and wages earned during “on duty” meal periods which they are entitled. The damages suffered by the individual Class members are small compared to the expense and burden of individual prosecution of this litigation. In addition, class certification is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants’ practices.

20. Fritz intends to send notice to all members of the Wisconsin Rule 23 Class to the extent required by Rule 23.

FIRST CLAIM FOR RELIEF:
FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF THE FLSA

21. Fritz individually and on behalf of the Collective Class alleges and incorporates by reference the allegations in the preceding paragraphs.

22. Defendants are employers within the meaning of the 29 U.S.C. § 203(d), and (g).

23. The FLSA requires each covered employer to compensate all non-exempt employees at a rate of not less than one and one-half times their regular rate of pay for work performed in excess of forty (40) hours per workweek.

24. During the applicable statute of limitations, Plaintiff and members of the putative Collective Class performed work in excess of forty (40) hours per week without receiving overtime compensation for all hours worked, including hours worked during the thirty (30) minute lunch period which was automatically deducted from their pay.

25. These practices violate the FLSA including, but not limited to, 29 U.S.C. § 207. As a result of these violations, Plaintiff and members of the putative Collective Class have suffered a wage loss.

26. Defendants knew or showed reckless disregard for the fact that it failed to pay Plaintiff

and members of the putative Collective Class overtime compensation in violation of the FLSA.

SECOND CLAIM FOR RELIEF:
FAILURE TO PAY OVERTIME COMPENSATION
IN VIOLATION OF WISCONSIN LAW

27. Fritz individually and on behalf of the Overtime Class alleges and incorporates by reference the allegations in the preceding paragraphs.

28. The foregoing conduct, as alleged, violates Wisconsin Statute § 103.03 and Wisconsin Administrative Code § DWD 274.03.

29. At all relevant times, Defendants have been, and continue to be, an “employer” within the meaning of Wisconsin Statute § 103.001. At all relevant times, Defendants have employed, and/or continue to employ, “employee[s],” including, Fritz and the members of the putative Overtime Class, within the meaning of Wisconsin Statute § 103.001.

30. Wisconsin Statute § 103.02 and Wisconsin Administrative Code § DWD 274.03 require an employer, such as Defendants, to pay overtime compensation to all non-exempt employees. Fritz and members of the Overtime Class are not exempt from overtime pay requirements under Wisconsin law.

31. At all relevant times, Defendants had a policy and practice of failing and refusing to pay overtime pay to Fritz and the Overtime Class members for their hours worked in excess of forty (40) hours per workweek.

32. As a result of Defendants’ willful failure to pay overtime wages earned and due to Fritz and the Overtime Class members, Defendants have violated, and continue to violate, Wisconsin Statutes §§ 103.03, 109.03 and Wisconsin Administrative Code § DWD 274.03.

33. Fritz, on behalf of himself and members of the putative Overtime Class, seek recovery of attorneys' fees, costs, and expenses of this action to be paid by Defendants, as provided by Wisconsin Statute § 109.03(6).

34. Fritz, on behalf of himself and members of the putative Overtime Class, seeks damages in the amount of the unpaid wages earned and due as provided by Wisconsin Statute §§ 103.03 and 109.03 and Wisconsin Administrative Code § DWD 274.03, and any penalties due under Wisconsin Statute § 109.11, as well as such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

THIRD CLAIM FOR RELIEF:
FAILURE TO PAY WAGES FOR ON DUTY MEAL PERIODS
IN VIOLATION OF WISCONSIN LAW

35. Fritz individually and on behalf of the Meal Period Class alleges and incorporates by reference the allegations in the preceding paragraphs.

36. At all relevant times, Defendants have been, and continue to be, an "employer" within the meaning of Wisconsin Statute § 103.001, and Wisconsin Administrative Code § DWD 272.01. At all relevant times, Defendants have employed, and/or continue to employ, "employee[s]," including Fritz, and each of the members of the putative Meal Period Class, within the meaning of Wisconsin Statutes §§ 103.001, 109.01.

37. Wisconsin Administrative Code § DWD 272.01 requires an employer, such as Defendants, to pay employees for "on duty" meal periods.

38. At all relevant times, Defendants had a policy and practice of automatically deducting a thirty (30) minute meal period from employees' daily pay regardless of whether the employee was free from work for at least thirty (30) minutes.

39. Fritz and members of the putative Meal Period Class regularly were not provided at least thirty (30) minutes free from work during their meal periods and were not compensated for the thirty (30) minute meal period.

40. As a result of Defendants' failure to pay Fritz and putative Meal Period Class members wages for these "on duty" meal periods, Defendants have violated, and continue to violate, Wisconsin Statute §§ 103.03, 109.03 and Wisconsin Administrative Code § DWD 272.04.

41. Fritz, on behalf of himself and members of the putative Meal Period Class, seeks recovery of attorneys' fees, costs, and expenses of this action to be paid by Defendants, as provided by Wisconsin Statute § 109.03(6).

42. Fritz, on behalf of himself and members of the putative Meal Period Class, seeks damages in the amount of the unpaid wages and overtime wages earned and due as provided by Wisconsin Statute §§ 103.02 and 109.03 and Wisconsin Administrative Code § DWD 272.04, and any penalties due under Wisconsin Statute § 109.11, as well as such other legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Paul Fritz, on behalf of himself and all members of the Collective Class, Overtime Class, and Meal Period Class pray for the following relief:

A. An order designating this action as a collective action on behalf of the Collective Class and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals;

B. An order certifying this action as a class action on behalf of the proposed Classes;

C. An order designating Paul Fritz as Named Plaintiff and as a Representative of these Classes;

D. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;

E. An order finding that Defendants violated the FLSA and Wisconsin wage and hour law;

F. An order finding that these violations were willful;

G. Judgment against Defendants in the amount equal to the Plaintiff's and the Collective Class' unpaid back wages at the applicable overtime rate;

H. An award in the amount of all liquidated damages and penalties as provided under Wisconsin Law and the FLSA;

I. An award in the amount of all costs and attorneys' fees incurred in prosecuting these claims; and

J. Such further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury.

Dated: September 11, 2009

HAWKS QUINDEL, S.C.

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