

they are entitled to unpaid overtime wages for all hours worked in excess of forty for each workweek, liquidated damages, costs, and attorneys' fees.

JURISDICTION AND VENUE

3. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 for the claims being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

4. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendant conducts business and can be found in the Eastern District of Missouri, and the cause of action set forth herein has arisen and occurred in part in the Eastern District of Missouri. Venue is also proper under 28 U.S.C. §1132(e)(2) because Defendant has substantial business contacts within Missouri.

PARTIES

5. Defendant Express Medical Transporters, Inc. ("EMT") is a Missouri corporation registered to do business and in good standing in the state of Missouri. Its registered agent is Affinity Registered Agent and Trust Services, Inc., 1610 Des Peres Rd., Ste. 100, St. Louis, Missouri 63131.

6. Defendant is engaged in interstate commerce by, among other things, providing medical transportation services. Defendant's website (www.rideemt.com) states: "With 10 locations in seven states, Express Medical Transporters ("EMT") is a nationally recognized provider of non-emergency medical and student transportation . . . with the goal of using transportation to enable people with special needs to live fuller, more active lives. EMT offers ambulatory, para-lift, and stretcher transportation

services to city, county, and federal agencies, hospitals, school districts, nursing homes, and other institutions with special-needs clientele.”

7. Upon information and belief, Defendant’s gross annual sales made or business done has been \$500,000 per year or greater at all relevant times.

8. Defendant is, and has been, an “employer” of the Plaintiff, and others similarly situated, and is engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(d).

9. The Defendant is, and has been, an “employer” of the Plaintiff, and others similarly situated, as defined in Mo.Rev.Stat. § 290.500(4).

10. Plaintiff Michael LaCurtis resides in St. Louis, Missouri.

11. Plaintiff, and others similarly situated, are current or former “employees” of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

12. Plaintiff, and all others similarly situated who are/were employed in the State of Missouri, are “employees” as defined in Mo.Rev.Stat. § 290.500(3).

13. Plaintiff brings this action on behalf of himself and other similarly situated employees pursuant to 29 U.S.C. § 216(b) and on behalf of himself and other similarly situated employees who worked within the state of Missouri pursuant Fed.R.Civ.P. 23. The classes of persons are defined further herein.

FACTUAL ALLEGATIONS

14. Defendant provides non-emergency medical and student transportation services for persons with special needs throughout the greater St. Louis metropolitan area and in numerous other states.

15. Plaintiff Michael LaCurtis was employed by Defendant as a driver from on or about January 10, 2012 to the present. While employed by Defendant, Plaintiff has

operated, in whole or in part, a van with a gross vehicle weight of 10,000 lbs. or less that was designed or used to transport eight or fewer individuals. Plaintiff operated this vehicle in transportation on public highways.

16. While employed with the Defendant, the Plaintiff and others similarly situated, were paid a flat hourly rate for work performed, however, they routinely work(ed) in excess of forty hours per workweek without being paid any overtime premium at one and one-half their regular rate of pay as required under the FLSA or Missouri wage laws for hours worked over forty per workweek. The weeks where this overtime pay was denied can be identified in Defendant's records. This centralized policy or practice was established, controlled, and implemented by Defendant.

17. Regardless of location, the Plaintiff and others similarly situated, have the same or similar primary job duties which are controlled by Defendant's centralized corporate policies and procedures.

18. Regardless of location, the Defendant classified the Plaintiff and others similarly situated as exempt from overtime compensation under the Motor Carrier Act exemption, 49 U.S.C. § 31502, as set forth in the FLSA, 29 U.S.C. § 213(b)(1) and the subsequent "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" ("SAFETEA-LUC) Technical Corrections Act of 2008, Pub.L.No. 110-244, Title III, § 306 (2008).¹

COUNT I
FLSA COLLECTIVE ACTION

19. Plaintiff, on behalf of himself and others similarly situated, re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

¹ Missouri's wage and hour laws adopt the federal exemptions to overtime pay. Mo.Rev.Stat. §§ 290.505.3. - .4.

20. Plaintiff files this action on behalf of himself and all others similarly situated. The proposed Collective Class for the FLSA claims is defined as follows (hereafter the “FLSA Collective”):

All persons who performed work as drivers while employed by Defendant who, in whole or in part, operated a motor vehicle since three years prior to the filing of this Complaint that (i) had a gross vehicle weight ratio of 10,000 lbs. or less, and (ii) and was designed or used to transport eight or fewer passengers.

21. Plaintiff has consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiff’s signed consent form is attached as Exhibit A.

22. During the applicable statutory period, Plaintiff and the FLSA Collective routinely worked in excess of forty (40) hours per workweek without receiving overtime compensation for their overtime hours worked in violation of the FLSA.

23. Plaintiff, and the FLSA Collective, are similarly situated in that they all have the same primary job duties, are all subject to Defendant’s same corporate policies and procedures governing their job duties, all routinely work in excess of forty hours per workweek, and are all subject to the same exemption pay policy of not paying any overtime compensation for hours worked in excess of forty per workweek.

24. Defendant is liable under the FLSA, 29 U.S.C. § 201, *et seq.*, for failing to properly compensate Plaintiff and the FLSA Collective for overtime equal to one and one-half their regular rate of pay for all hours worked in excess of forty per workweek.

25. Plaintiff and the FLSA Collective are victims of Defendant’s widespread, repeated, systematic and consistent illegal policies that have resulted in violations of their rights under the FLSA, and that have caused significant damage to Plaintiff and the FLSA Collective.

26. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) as Defendant knew, or showed reckless disregard for, the fact that its compensation practices were in violation of these laws.

27. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and the FLSA Collective have suffered, and will continue to suffer, a loss of income and other damages. Plaintiff and the FLSA Collective are entitled to liquidated damages and attorney's fees and costs incurred in connection with this claim.

28. The Plaintiff and the FLSA Collective have suffered from Defendant's common policies, and would benefit from the issuance of a Court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendant and are readily identifiable through Defendant's records.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and others similarly situated, pray for relief as follows:

- a) Designation of this action as a collective action on behalf of the FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- b) Judgment against Defendant finding it misclassified Plaintiff and the FLSA Collective as exempt;
- c) Judgment against Defendant for Plaintiff and the FLSA Collective for unpaid back wages, and back wages at the applicable overtime rates;
- d) An amount equal to their damages as liquidated damages;
- e) A finding that Defendant's violations of the FLSA are willful;
- f) All costs and attorneys' fees incurred prosecuting this claim;

- g) An award of prejudgment interest (to the extent liquidated damages are not awarded);
- h) Leave to add additional plaintiffs by motion, the filing of consent forms, or any other method approved by the Court;
- i) All further relief as the Court deems just and equitable.

COUNT II
RULE 23 CLASS UNDER MISSOURI WAGE LAWS

29. Plaintiff, on behalf of himself and others similarly situated, re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

30. Plaintiff brings his Missouri wage law (“MWL”) claim, Mo.Rev.Stat. 290.500, *et seq.*, as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of the following class (hereafter the “Missouri Class”):

All persons who performed work as drivers while employed by Defendant in the State of Missouri who, in whole or in part, operated a motor vehicle since two years prior to the filing of this Complaint that (i) had a gross vehicle weight ratio of 10,000 lbs. or less, and (ii) and was designed or used to transport eight or fewer passengers.

31. The MWL, Mo.Rev.Stat. §290.505.1 requires all employers to pay employees nothing less than one and one-half their regular rate of pay for all hours worked in excess of forty per workweek.

32. Defendant violated the MWL by failing to compensate Plaintiff and the Missouri Class overtime pay at the rate of one and one-half times their regular pay rate for hours worked in excess of forty per workweek.

33. Class action treatment of Plaintiff’s MWL claim is appropriate because, as alleged in paragraphs 34-39 *infra*, all of the Federal Rule of Civil Procedure 23 class action requisites are satisfied.

34. The Missouri Class includes over fifty individuals and, as such, is so numerous that joinder of all class members is impracticable.

35. Plaintiff LaCurtis is a member of the Missouri Class, and his MWL claim is typical of the claims of other Missouri Class members. For example, Plaintiff and the Missouri Class members share an identical legal and financial interest in obtaining a judicial finding that Defendant violated the MWL when it failed to pay them overtime compensation for hours worked over 40 in a single workweek. Plaintiff has no interests that are antagonistic to or in conflict with the Missouri Class's collective interest in obtaining such a judicial finding.

36. Plaintiff will fairly and adequately represent the interests of the Missouri Class, and he has retained competent and experienced counsel who will effectively represent the interests of the Missouri Class.

37. Questions of law and fact are common to the class. The Plaintiff and the Missouri Class have been subjected to the common business practices described in paragraphs 16-18, 32, *supra*, and the success of their claims depends on the resolution of common questions of law and fact. Common questions of fact include whether the Defendant paid any overtime premium for hours worked in excess of forty per work week and whether the Plaintiff and the Missouri Class worked in excess of forty hours per work week. Common questions of law include, *inter alia*, whether Defendant's companywide practice of denying Plaintiff and the Missouri class overtime pay under the MWL, and classifying them as exempt from overtime compensation, violated the MWL.

38. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual Missouri Class

members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendant and/or because adjudications with respect to individual class members would, as a practical matter, be dispositive of the interests of non-party Missouri Class members.

39. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact, as referenced in paragraph 37 *supra*, predominate over any questions affecting only individual Missouri Class members. In the absence of class litigation, such common questions of law and fact would need to be resolved in multiple proceedings, making class litigation superior to other available methods for the fair and efficient adjudication of this litigation.

40. As the direct and proximate result of Defendant's unlawful conduct, Plaintiff and the Missouri Class have suffered, and will continue to suffer, a loss of income in the form of lost overtime pay. In turn, under Mo.Rev.Stat. § 290.527, Plaintiff and the Missouri Class are entitled to liquidated damages, attorney's fees and costs incurred in connection with this claim.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and the Missouri Class, seek the following relief:

- a) Designation of this action as a class action under FED.R.CIV.P. 23 on behalf of the Missouri Class and issuance of notice to said members apprising them of the pendency of this action;
- b) Designation of Michael LaCurtis as Representative Plaintiff of the Missouri Class;
- c) Designation of Brendan J. Donelon and Daniel W. Craig, of the law offices of Donelon, P.C. as the attorneys representing the Missouri Class;
- d) A declaratory judgment that the practices complained of herein are unlawful under the MWL;

- e) An injunction against Defendant and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendant, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- f) An award of damages for overtime compensation due the Plaintiff and Missouri Class, including liquidated damages allowed under the MWL to be paid by Defendant;
- g) Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- h) Pre-Judgment and Post-Judgment interest, as provided by law; and
- i) Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

Respectfully Submitted,



/s/ Brendan J. Donelon

Brendan J. Donelon, E.D.Mo. 197776

Daniel W. Craig, E.D.Mo. 5209499

420 Nichols Road, Suite 200

Kansas City, Missouri 64112

Tel: (816) 221-7100

Fax: (816) 709-1044

brendan@donelonpc.com

dan@donelonpc.com

ATTORNEYS FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI**

MICHAEL LaCURTIS, on behalf of)
Himself and others similarly situated,)
)
Plaintiff,)
)
vs.)
)
EXPRESS MEDICAL TRANSPORTERS)
INC.)
)
Defendant.)

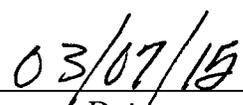
Case no.: 15-cv-0427

CONSENT TO JOIN

I, Michael LaCurtis, hereby consent to join this collective action matter brought under § 216(b) of the Fair Labor Standards Act.



Signature - Michael LaCurtis



Date