

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ORPHEUS GRANT, individually and on behalf of all other persons similarly situated who were employed by AM COMMUNICATIONS LTD, AM COMMUNICATIONS LLC.; AM COMMUNICATIONS OF OHIO LLC; and/or any other entities affiliated with or controlled by AM COMMUNICATIONS, LTD.; AM COMMUNICATIONS LLC; and AM COMMUNICATIIONS OF OHIO LLC;

Plaintiffs,

-against-

AM COMMUNICATIONS, LTD.; AM COMMUNICATIONS LLC; AM COMMUNICATIONS OF OHIO LLC; and any related entities,

Defendants.

COMPLAINT

COLLECTIVE ACTION and CLASS ACTION

JURY TRIAL

Docket No.: 3:20-CV-1526 (DNH/ML)

Plaintiff Orpheus Grant (the “Named Plaintiff”), by his attorneys Gattuso & Ciotoli, PLLC; and Virginia & Ambinder, LLP, allege upon knowledge to themselves and upon information and belief as to all other matters as follows:

PRELIMINARY STATEMENT

1. This action is brought pursuant to the Fair Labor Standards Act (hereinafter referred to as “FLSA”), 29 U.S.C. §§ 206, 207, and 216(b); New York Labor Law § 190 *et seq.*, New York Labor Law §§ 650 *et seq.* and 663; 12 New York Codes, Rules and Regulations (hereinafter referred to as “NYCRR”) §§ 137-1.2 and 137-1.3 to recover unpaid minimum wages, overtime compensation, and related damages owed to the Named Plaintiff and all similarly situated persons (collectively “Plaintiffs”) who are presently or were formerly employed by AM COMMUNICATIONS, LTD.; and/or AM COMMUNICATIONS LLC; and/or AM

COMMUNICATIONS OF OHIO LLC; and/or any other entities affiliated with or controlled by AM COMMUNICATIONS, LTD.; AM COMMUNICATIONS LLC; and/or AM COMMUNICATIONS OF OHIO LLC; (hereinafter “AM” or “Defendants”) in trades and occupations entitled to receive overtime compensation.

2. Beginning in 2014 and continuing through the present, Defendants have engaged in a policy and practice of depriving its employees of the applicable straight time wages and overtime wages for work they performed as mandated by federal and state law.

3. Beginning in 2014 and continuing through the present, Defendants have engaged in a policy and practice of requiring its employees to regularly work in excess of forty (40) hours per week, without providing overtime compensation as required by the applicable federal and state laws.

4. Defendants failed to provide proper wage notices to Plaintiffs in violation of state law.

5. Defendants have applied the same employment policies, practices and procedures to all Plaintiffs that worked for Defendants at all of Defendants’ locations throughout the United States.

6. Named Plaintiff has initiated this action seeking for himself, and on behalf of all similarly situated employees, all compensation, including straight time wages, minimum wages, and overtime compensation of which they were deprived, plus interest, damages, and attorneys' fees and costs.

JURISDICTION

7. Jurisdiction of this Court is invoked pursuant to FLSA, 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 of the claims brought under New York Labor Law.

8. The statute of limitations under FLSA, 29 U.S.C. § 255(a), for willful violations is three (3) years.

9. The statute of limitations under New York Labor Law § 198(3) is six (6) years.

VENUE

10. Venue for this action in the Northern District of New York under 28 U.S.C. § 1391(b) is appropriate because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of New York.

CLASS ALLEGATIONS

11. Named Plaintiff realleges and incorporates by reference all the allegations set forth above.

12. This action is properly maintainable as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b), and as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.

13. This action is brought on behalf of Named Plaintiff and a class consisting of similarly situated employees who worked for Defendants as cable television and internet installation technicians throughout the United States.

14. Named Plaintiff and potential plaintiffs who elect to opt-in as part of the collective action are all victims of Defendants' common policy and/or plan to violate the FLSA by failing to pay for all hours worked and overtime compensation at one and one-half the regular hourly rate for hours in excess of 40 per week.

15. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 100 employees. In addition, the names of all potential members of the putative class are not known.

16. The questions of law and fact common to the putative class predominate over any questions affecting only individual members. These questions of law and fact include, but are not limited

to: (1) whether Defendants failed to pay wages owed for all hours worked; (2) whether Defendants properly accounted for and paid all hours worked; (3) whether Defendants paid overtime compensation when owed; and (4) whether Defendants failed to provide New York Plaintiffs with proper wage notices during the time of their employment.

17. The claims of the Named Plaintiff are typical of the claims of the putative class members. Named Plaintiff and putative class members were all subject to Defendants' policies and willful practice of failing to account for and pay all hours worked, including overtime compensation, and other wage violations.

18. Named Plaintiff and his counsel will fairly and adequately protect the interests of the putative class. Named Plaintiff has retained counsel experienced in complex wage and hour collective and class-action litigation.

19. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The individual Named Plaintiff and putative class action members lack the financial resources to adequately prosecute separate lawsuits against Defendants. A class action will also prevent unduly duplicative litigation resulting from inconsistent judgments pertaining to Defendants' policies.

THE PARTIES

20. Named Plaintiff Orpheus Grant is an individual who is currently a resident of Broome County, New York, and was employed by Defendant(s) out of Defendants' Rochester, New York location as a technician from approximately December 2018 until September 2020.

21. Upon information and belief, Defendant AM COMMUNICATIONS, LTD. is a foreign limited liability corporation authorized to do business within the State of New York, with a principal place of business at 5707 State Route 309, Galion, Ohio 44833.

22. Upon information and belief, Defendant AM COMMUNICATIONS LLC is a domestic limited liability company organized and existing under the laws of the State of New York and authorized to do business in New York, with a principle place of business in Niagara County, New York.

23. Upon information and belief, Defendant AM COMMUNICATIONS OF OHIO, LLC. is a foreign limited liability corporation authorized to do business within the State of New York, with a principal place of business at 5707 State Route 309, Galion, Ohio 44833.

24. At all times relevant to this action, Defendants constituted Plaintiffs' employers as defined by NYLL §§ 2(6), 190(3), and 651(6), and 29 U.S.C. § 203, *et seq.*.

FACTS

25. Plaintiffs repeat and re-allege the foregoing allegations hereof.

26. This action is properly maintainable as a collective action pursuant to the FLSA, 29 U.S.C. § 216(b) and as a Class Action under Rule 23 of the Federal Rules of Civil Procedure.

27. This action is brought on behalf of Plaintiff and a putative class and collective consisting of similarly situated employees who worked for Defendants as cable television and internet installation technicians, and other employees performing similar tasks in furtherance of Defendants' operations.

28. While working for Defendants, Plaintiff and other similarly situated employees were regularly required to perform work for Defendants without receiving pay for all hours worked including overtime compensation for hours in excess of 40 in a week, as required by applicable federal and state law.

29. Named Plaintiff worked for Defendants from approximately December 2019 through October 9, 2020.

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