

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Civil Action No. _____

ASHLEY DROLLINGER, individually and
on behalf of similarly situated persons,

Plaintiff,

v.

NETWORK GLOBAL LOGISTICS,
LLC, ACTION COURIERS, INC. and
MEDICAL LOGISTIC SOLUTIONS, LLC,

Defendants.

CLASS AND COLLECTIVE ACTION COMPLAINT

Plaintiff Ashley Drollinger, individually and on behalf of all other similarly situated medical couriers, for his Complaint against Defendants, alleges as follows:

1. Defendants together have operated a medical courier service during times relevant in Colorado, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin and Wyoming.

2. Defendants employ medical couriers who use their own automobiles to deliver laboratory specimens, organs, blood, pharmaceuticals, patient records and other medical goods (collectively “medical items”). But, Defendants fail to reimburse those medical couriers for the cost of the business use of their vehicles, which causes the

medical couriers' net wages to fall below the federal and Montana minimum wages during some or all workweeks (nominal wages – unreimbursed automobile expenses = sub-minimum wage rates).

3. Plaintiff Ashley Drollinger brings this lawsuit as a collective action under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, and as a class action under the Montana Minimum Wage and Overtime Compensation Act (“MMWOCA”), Mont. Code Ann. § 39-3-401 *et seq.*, to recover unpaid minimum wages owed to himself and all similarly situated medical couriers employed by Defendants.

Jurisdiction and Venue

4. The FLSA authorizes court actions by private parties to recover damages for violation of their wage and hour provisions. Jurisdiction over Plaintiff’s FLSA claim is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 (federal question).

5. The MMWOCA authorizes court actions by private parties to recover damages for violation of its wage and hour provisions. Jurisdiction over Plaintiff’s MMWOCA claim is based on Mont. Code Ann. §§ 39-3-407 & 39-3-207 and 28 U.S.C. § 1367 (pendent claims).

6. Venue in this District is proper under 28 U.S.C. § 1391 because Defendants maintain their principal places of business within this District, Defendants perform medical courier services in this District, and a substantial part of the events giving rise to the claims herein occurred in this District.

Parties

7. Defendant Network Global Logistics, LLC is an Oregon limited liability company which maintains its principal place of business in Broomfield, Colorado, which is located within this District.

8. Defendant Action Couriers, Inc. is an Idaho corporation which maintains its principal place of business in Centennial, Colorado, which is located within this District.

9. Defendant Medical Logistic Solutions, LLC is a Colorado limited liability company which maintains its principal place of business in Centennial, Colorado, which is located within this District.

9. Upon information and belief, Defendants comprise a single integrated enterprise and jointly operate a medical courier service business as they maintain interrelated operations, centralized control of labor relations, common management, common ownership and common financial control.

10. Alternatively and / or cumulatively, Defendants constitute joint employers as they share power to hire and fire medical couriers, supervision and control of their work schedule or conditions of employment, determination of their rate and method of payment and / or reimbursement, and maintenance of their employment records.

11. Alternatively and / or cumulatively, upon information and belief because the work performed by the medical couriers simultaneously benefited both Defendants and / or directly or indirectly furthered their joint interests, Defendants are collectively the joint employers of the medical couriers under the FLSA's broad definition of "employer" and the MMWOCA's broad definition of "employ." 29 U.S.C. § 203(d); Mont. Code Ann. § 39-3-402(2).

12. Since approximately February 2015, Plaintiff Ashley Drollinger has been employed by Defendants in Montana as a medical courier. Plaintiff Drollinger's Consent to Become a Party Plaintiff under 29 U.S.C. § 216(b) is attached hereto as "Exhibit 1."

General Allegations

Defendants' Business

13. During the recovery period, Defendants have owned and operated a medical courier business in Colorado, Arizona, Arkansas, California, Florida, Georgia, Idaho, Illinois, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Wisconsin and Wyoming.

14. Defendants' medical courier service business delivers medical items from one location to another.

15. Defendants employ medical couriers to deliver the medical items using their personal automobiles.

Defendants' Fail to Reimburse for Vehicles Costs

16. Defendants require their medical couriers to maintain and pay for safe, legally-operable, and insured automobiles when delivering medical items.

17. Defendants' medical couriers incur costs for gasoline, vehicle parts and fluids, repair and maintenance services, insurance, depreciation, and other expenses ("automobile expenses") while delivering medical items for the primary benefit of Defendants.

18. Defendants maintain a policy of failing and refusing to reimburse their medical couriers for their automobile expenses incurred in driving on the job for Defendants' benefit. This policy applies to all of Defendants' medical couriers.

19. During the applicable FLSA and MMWOCA limitations periods, the IRS business mileage reimbursement rate has ranged between \$.54 and \$.575 per mile. These figures represent a reasonable approximation of the average cost of owning and operating a vehicle for use in delivering medical items.

20. Defendants' systematic failure to reimburse automobile expenses constitutes a "kickback" to Defendants such that the hourly wages they pay to Plaintiff and Defendants' other medical couriers are not paid free and clear of all outstanding obligations to Defendants.

21. Defendants' failure to reimburse their medical couriers causes their net wages to fall beneath the federal and Montana's minimum wages.

Defendants' Failure to Reimburse Automobile Expenses Causes Minimum Wage Violations

22. Defendants' failure to reimburse its medical couriers for automobile expenses incurred on the job has caused systematic violations of the federal and Montana minimum wages.

23. Plaintiff Drollinger's workday averaged about 7.6 hours through about November 23, 2015 and his workdays have averaged about 8.25 hour per day since about November 24, 2015.

24. From February 2015 to November 2015, Defendants paid Plaintiff Drollinger approximately \$190.00 per workday.

25. Since December 2015, Defendants have paid Plaintiff Drollinger approximately \$18.75 per hour, plus approximately \$4.30 per hour to cover his “health and welfare” benefits as required under the McNamara-O’Hara Service Contract Act, 41 U.S.C. § 351 *et seq.*

26. The federal minimum wage has been \$7.25 per hour since July 24, 2009. 29 U.S.C. § 206(a).

27. Montana’s minimum wage was \$7.80 per hour in 2013, was \$7.90 per hour in 2014, and has been \$8.05 per hour since 2015. Mont. Code Ann. § 39-3-404; <http://erd.dli.mt.gov/labor-standards/wage-and-hour-payment-act/minimum-wage-history>.

28. Until about November 23, 2015, Defendants assigned Plaintiff to drive a daily route of approximately 400 miles, then Defendants adjusted Plaintiff’s daily route to encompass approximately 470 miles.

29. During most of Plaintiff Drollinger’s employment with Defendants, the IRS standard business mileage reimbursement rate was \$.575 per mile, which reasonably approximates the automobile expenses incurred in delivering medical items for Defendants. Using that IRS rate as a reasonable approximation of Plaintiff Drollinger’s automobile expenses, every mile driven on the job decreased his net wages by approximately \$.575. Considering that Plaintiff Drollinger drove approximately 400 miles per day on the job through about November 23, 2015, Defendants under-reimbursed him about \$230.00 (400 miles x \$.575 cost per mile) per workday during that time.

30. Using the same math, Defendants have under-reimbursed Plaintiff Drollinger about \$270.25 (470 miles x \$.575 cost per mile) per workday since December 2015.

31. Thus, through about November 23, 2015, Plaintiff Drollinger consistently “kicked back” to Defendants approximately \$230.00 per workday and he has “kicked back” to Defendants approximately \$270.25 per workday since that date.

32. Thus, from the beginning of Plaintiff Drollinger’s employment through about November 23, 2015, Plaintiff Drollinger received net wages of approximately **negative \$40.00 per day** (\$190.00 per day wages - \$230.00 automobile expenses), which equates to an approximate hourly wage rate of **negative \$5.26** (\$40.00 / 7.6 average hours per day).

33. Thus, from about November 24, 2015 to November 30, 2015, Plaintiff Drollinger received net wages of approximately **negative \$80.25 per day** (\$190.00 per day wages - \$270.25 automobile expenses), which equates to an approximate hourly wage rate of **negative \$9.73** (\$80.25 / 8.25 average hours per day).

34. Thus, since about December 1, 2015, Plaintiff Drollinger has received net wages of approximately **negative \$117.44 per day** ((8.15 hours per day x \$18.75 per hour) - \$270.25 automobile expenses), which equates to an approximate hourly wage rate of **negative \$14.23** (\$117.44 / 8.25 average hours per day).

35. All of Defendant’s medical couriers have had similar experiences to those of Plaintiff Drollinger. They were subject to the same reimbursement policy; received no reimbursements; incurred similar automobile expenses; and were paid similar wage rates before deducting unreimbursed business expenses.

36. Because Defendants paid their medical couriers a similar nominal hourly wage, and because the medical couriers incurred unreimbursed automobile expenses, the

medical couriers “kicked back” to Defendants an amount sufficient to cause minimum wage violations.

37. The net effect of these policies is that Defendants willfully fail to pay the federal and Montana minimum wages to their medical couriers. Defendants thereby enjoy ill-gained profits at the expense of those employees.

Class and Collective Action Allegations

38. Plaintiff brings Count I as an “opt-in” collective action claim on behalf of similarly situated medical couriers pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

39. The FLSA claim may be pursued by those who opt-in to this case pursuant to 29 U.S.C. § 216(b).

40. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a collective basis challenging Defendants’ practice of failing to pay employees federal minimum wage. The number and identity of other plaintiffs yet to opt-in may be ascertained from Defendants’ records, and potential plaintiffs may be notified of the pendency of this action via mail.

41. Plaintiff and all of Defendants’ medical couriers are similarly situated in that:

- a. They have worked as medical couriers for Defendants;
- b. They have delivered medical items using automobiles not owned or maintained by Defendants;
- c. Defendants required them to maintain these automobiles in a safe, legally-operable, and insured condition;
- d. They incurred costs for automobile expenses while delivering medical items for the primary benefit of Defendants;

- e. They were subject to similar automobile expenses;
- f. They were subject to similar pay rates; and
- g. They were subject to the same policy of failing to reimburse for automobile expenses, resulting in wages below the federal minimum wage in some or all workweeks.

42. Plaintiff brings Count II as a class action pursuant to Fed. R. Civ. P. 23, on behalf of himself and as the Class Representative of the following persons (the "Class"):

All current and former medical couriers employed by Defendants in the State of Montana at any time during the 180 days preceding the filing of this Complaint.

43. Count II, if certified for class-wide treatment, is brought on behalf of all similarly situated persons who do not opt-out of the Class.

44. Plaintiff's state law claim asserted in Count II satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of a class action pursuant to Fed. R. Civ. P. 23.

45. The Class sought in Count II satisfies the numerosity standard as it consists of at least one hundred persons who are geographically dispersed and, therefore, joinder of all Class members in a single action is impracticable.

46. Questions of fact and law common to the Class sought in Count II predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendants' actions include, without limitation:

- a. They have worked as medical couriers for Defendants delivering medical items;

- b. They have delivered medical items using automobiles not owned or maintained by Defendants;
- c. Defendants required them to maintain these automobiles in a safe, legally-operable, and insured condition;
- d. They incurred costs for automobile expenses while delivering medical items for the primary benefit of Defendants;
- e. They were subject to similar automobile expenses;
- f. They were subject to similar pay rates; and
- g. They were subject to the same policy of failing to reimburse for automobile expenses, resulting in wages below the federal minimum wage in some or all workweeks.

47. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claim.

48. Plaintiff's claim is typical of those of the Class sought in Count II in that:

- a. Plaintiff and the Class have worked as medical couriers for Defendants delivering medical items;
- b. Plaintiff and the Class have delivered medical items using automobiles not owned or maintained by Defendants;
- c. Defendants required Plaintiff and the Class to maintain these automobiles in a safe, legally-operable, and insured condition;

- d. Plaintiff and the Class incurred costs for automobile expenses while delivering medical items for the primary benefit of Defendants;
- e. Plaintiff and the Class were subject to automobile expenses;
- f. Plaintiff and the Class were subject to similar pay rates; and
- g. They were subject to the same policy of failing to reimburse for automobile expenses, resulting in wages below the federal minimum wage in some or all workweeks.

49. Plaintiff is an adequate representative of the Class sought in Count II because he is a member of that Class and his interest does not conflict with the interest of the members of the Class he seeks to represent. The interests of the members of the Class sought in Count II will be fairly and adequately protected by Plaintiff and the undersigned counsel, who have extensive experience prosecuting complex wage and hour, employment, and class action litigation.

50. Maintenance of the claim asserted in Count II as a class action is superior to other available methods for fairly and efficiently adjudicating the controversy as members of the Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this Court due to the relatively small recoveries per member of the Class, and there are no material difficulties impairing the management of a class action.

51. It would be impracticable and undesirable for each member of the Class sought in Count II who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and

could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class members.

**COUNT I: Violation of the FLSA by Failing
to Reimburse Automobile Expenses**

52. Plaintiff reasserts and re-alleges the allegations set forth above.

53. At all relevant times herein, Plaintiff and all other similarly situated medical couriers have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

54. Section 13 of the FLSA, 29 U.S.C. § 213, exempts certain categories of employees from federal minimum wage obligations, but none of the FLSA exemptions apply to Plaintiff or other similarly situated medical couriers.

55. The FLSA regulates, among other things, the payment of minimum wage by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. §206(a).

56. Defendants are subject to the FLSA's minimum wage requirements because they are an enterprise engaged in interstate commerce, and their employees are engaged in commerce.

57. Under Section 6(a) of the FLSA, 29 U.S.C. § 206(a), employees have been entitled to be compensated at a rate of at least \$7.25 per hour since July 24, 2009. *Id.*

58. As alleged herein, Defendants have failed to reimburse medical couriers their automobile expenses causing their wages to fall beneath the federal minimum wage.

59. Defendants knew or should have known that their pay and reimbursement policies, practices and methodology result in failure to compensate medical couriers at the federal minimum wage.

60. Defendants, pursuant to their policy and practice, violated the FLSA by refusing and failing to pay federal minimum wage to Plaintiff and other similarly situated employees.

61. Plaintiff and all similarly situated medical couriers are victims of a uniform and employer-based compensation and reimbursement policy. This uniform policy, in violation of the FLSA, has been applied, and continues to be applied, to all Defendants' medical couriers.

62. Plaintiff and all similarly situated employees are entitled to damages equal to the minimum wage minus actual wages received after deducting reasonably approximated automobile expenses within three years from the date each Plaintiff joins this case, plus periods of equitable tolling, because Defendants acted willfully and knew, or showed reckless disregard for, whether their conduct was unlawful.

63. Defendants have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA, and as a result, Plaintiff and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid minimum wages under 29 U.S.C. § 216(b). Alternatively, should the Court find Defendants acted in good faith and with reasonable grounds to believe their actions were lawful, Plaintiff and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

64. As a result of the aforesaid willful violations of the FLSA's minimum wage provisions, minimum wage compensation has been unlawfully withheld by Defendants from Plaintiff and all similarly situated employees. Accordingly, Defendants are liable under 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

WHEREFORE, Plaintiff and all similarly situated medical couriers demand judgment against Defendants and request: (1) compensatory damages; (2) liquidated damages; (3) attorneys' fees and costs as allowed by Section 16(b) of the FLSA; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

**COUNT II: Violation of the MMWOCA by Failing
to Reimburse Automobile Expenses**

65. At all relevant times herein, Plaintiff and the Class have been entitled to the rights, protections, and benefits provided under the MMWOCA including, but not limited to, the right to receive Montana's minimum wage rate. Mont. Code Ann. § 39-3-401 *et seq.*

66. The MMWOCA exempts certain categories of employees from Montana's minimum wage obligations, but none of those exemptions apply to Plaintiff or other similarly situated medical couriers. Mont. Code Ann. § 39-3-406.

67. During all times relevant to this action, Defendants "employed" Plaintiff and the Class within the meaning of the MMWOCA. Mont. Code Ann. § 39-3-402(2).

68. During all times relevant to this action, Plaintiff and the Class were Defendants' "employees" within the meaning of the MMWOCA. Mont. Code Ann. § 39-3-402(3).

69. Montana employees have been entitled to be compensated at a rate of at least \$7.80 per hour in 2013, \$7.90 per hour in 2014, and \$8.05 per hour since 2015. Mont. Code Ann. § 39-3-404; <http://erd.dli.mt.gov/labor-standards/wage-and-hour-payment-act/minimum-wage-history>.

70. As alleged herein, Defendants have failed to pay their medical couriers in Montana the minimum wage required by the MMWOCA after deduction of unreimbursed automobile expenses incurred in performing their jobs for Defendants.

71. Defendants, pursuant to their policy and practice, violated the MMWOCA by refusing and failing to pay Montana's minimum wage to Plaintiff and the Class.

72. Plaintiff and the Class are entitled to damages equal to the Montana minimum wage minus actual wages received after deducting reasonably approximated automobile expenses within three years from the date each Plaintiff was last employed by Defendants because Defendants have engaged in repeated violations. Mont. Code Ann. §§ 39-3-407 & 39-3-207(3).

73. Plaintiff and the Class are entitled to recover an additional amount up to 110% of the wages due and unpaid. Mont. Code Ann. §§ 39-3-407, 39-3-206 & 39-3-207.

74. Plaintiff and the Class are entitled to recover their reasonable attorneys' fees and costs in pursuing the claim. Mont. Code Ann. §§ 39-3-407 & & 39-3-214.

75. Plaintiff and the Class are entitled to pre-judgment and post-judgment interest as provided by law.

WHEREFORE, Plaintiff and the Class demand judgment against Defendants and pray for: (1) compensatory damages; (2) statutory damages pursuant to Mont. Code Ann. §§ 39-3-407, 39-3-206 & 39-3-207; (3) costs of litigation and attorney's fees as

provided by law; (4) pre-judgment and post-judgment interest as provided by law; and
(5) such other relief as the Court deems fair and equitable.

Demand for Jury Trial

Plaintiff hereby requests a trial by jury of all issues triable by jury.

Dated: February 9, 2016

Respectfully submitted,

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