

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

Pamela Littlefield and Rita K. Decker,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

Case No. 18-2535

Legacy Flooring LW LLC,

Defendant.

COLLECTIVE ACTION COMPLAINT UNDER THE FLSA

Plaintiffs Pamela Littlefield and Rita K. Decker (“Plaintiffs”), on behalf of themselves and all others similarly situated, by and through their attorneys, bring this action against Legacy Flooring LW LLC (“Defendant” or “Legacy”), for damages and other relief relating to violations under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”). Plaintiffs allege as follows:

I. JURISDICTION

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).
2. Venue is proper in the United States District Court for the Western District of Tennessee pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this district.

II. FACTS

A. Parties

3. Plaintiff Littlefield is an adult resident of Shelby County, Tennessee.

4. Plaintiff Littlefield was employed by and worked for Defendant as a store account manager from June 26, 2017 to approximately June 30, 2018.

5. Since July 9, 2018, Defendant has classified Ms. Littlefield as an “independent contractor” estimator although she has performed the same duties as her role as a store account manager.

6. At all relevant times, Ms. Littlefield was qualified as an employee under the FLSA, 29 U.S.C. § 203(e)(1).

7. Plaintiff Decker is an adult resident of Fayette County, Tennessee.

8. Plaintiff Decker has been employed by and worked for Defendant as a store account manager since June 26, 2017.

9. At all relevant times, Ms. Decker was qualified as an employee under the FLSA, 29 U.S.C. § 203(e)(1).

10. Defendant Legacy Flooring LW LLC is a North Carolina company that does business in Tennessee, Mississippi, Arkansas and throughout the United States. Its principal office is located at 1111 Haynes St., Ste. 100, Raleigh, NC 27604. At all relevant times herein, Defendant was an “employer” of the Plaintiffs within the meaning of the FLSA, 29 U.S.C. § 203(d).

B. Factual Allegations

11. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

12. Defendant provides flooring installation services to Lowe’s Home Improvement

stores throughout the United States. Specifically, Defendant provides the estimation, design and installation services for flooring products purchased at Lowe's retail locations.

13. Plaintiffs and similar situated store account managers and independent contractor estimators (as defined below as the Putative Collective) worked for Defendant during the relevant time period as store account managers and independent contractor estimators.

i. FLSA Coverage

14. Defendant is and, at all times hereinafter mentioned, was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1)(A) in that said enterprise at all times hereinafter mentioned had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise had an annual gross volume of sales made or business done of not less than \$500,000.

15. Upon information and belief, Defendant earns in excess of \$500,000 annually.

ii. Non-exempt Status

16. Defendant hired Plaintiffs and similarly situated store account managers to create detailed CAD diagrams for flooring installation jobs.

17. After a flooring job (carpet, tile, hardwood, etc.) is sold by a sales associate at Lowe's, Plaintiffs and similarly situated store account managers are assigned to the job. Plaintiffs contact the customer to set a time to measure the room requiring new flooring and drive to the customer's home. Plaintiffs then perform measure estimates, take moisture readings, check for vapor barrier, conduct lead tests and take photos or videos of the site.

18. In February 2018, Defendant started assigning time slots and customers to Plaintiffs

and similarly situated store account managers.

19. After completing the measurements, Plaintiffs and similarly situated store account managers prepare digital CAD technical drawings of the area where the flooring is to be installed.

20. After a job is completed, Plaintiffs and similarly situated store account managers schedule and complete post-installation inspections for punch work or work orders for customer complaints.

21. During the applicable statutory period, Plaintiffs and similarly situated store account managers' job duties were such that they should have been paid overtime compensation for all hours worked over forty (40) in a work week. Plaintiffs and similarly situated store account managers' job duties were such that they did not perform exempt duties during the applicable statutory period. For example, they did not customarily and regularly direct the work of two (2) or more full-time employees of Defendant. They did not have the authority to hire and fire other employees, nor did Plaintiffs and similarly situated store account managers ever recommend that Defendant's employees be fired or disciplined. Further, their primary duties did not require them to exercise discretion or independent judgment on significant business matters.

iii. Failure to Pay Overtime Compensation

22. Plaintiffs and other similarly situated store account managers have worked over forty (40) hours in certain workweeks over the past three years.

23. Plaintiff Littlefield regularly worked between fifty (50) and sixty (60) hours per week without receiving overtime compensation.

24. Plaintiff Decker regularly worked between sixty (60) and eighty (80) hours per week without receiving overtime compensation.

25. During these weeks, Defendant did not provide Plaintiffs or similarly situated store

account managers with overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours worked over forty.

26. Instead, Defendant compensates Plaintiffs and similarly situated store account managers on a salary basis.

27. Plaintiff Littlefield was compensated on a salary basis with a salary of approximately \$35,000 annually, which equates to approximately \$673.08 per week.

28. Plaintiff Decker was compensated on a salary basis with a salary of approximately \$33,000 annually, which equates to approximately \$634.62 per week.

iv. Plaintiff Littlefield / Employee Status / Misclassification

29. On or around June 22, 2018, Defendant provided Plaintiff Littlefield with an “Independent Contractor Agreement” and told her that if she wanted to continue working in July 2018, she would need to sign the agreement and work as an “independent contractor”/estimator.

30. The Agreement, attached hereto as Exhibit A, contains a list of job requirements.

31. Plaintiff Littlefield began working as an independent contractor estimator on or around July 9, 2018 at the Lowe’s store in Bartlett, Tennessee. The job was the same as her previous job as a store account manager. The only differences are her manner of compensation and title of “independent contractor” estimator.

32. While working as an independent contractor estimator, Defendant continued to assign and schedule jobs to Plaintiff Littlefield.

33. Plaintiff Littlefield did not have the ability to accept or reject jobs or customers.

34. Defendant continued to provide Plaintiff Littlefield and similarly situated independent contractor estimators with the tools and equipment necessary to take measurements and complete the CAD designs, including a tablet, distal/laser, moisture meter and level.

35. Defendant continued to require Plaintiff Littlefield and similarly situated independent contractor estimators to document their work in Defendant's online system.

36. Defendant provides Plaintiff Littlefield and similarly situated independent contractor estimators with a weekly paycheck consisting of the jobs performed for the previous week. For each job, Plaintiff Littlefield and similarly situated independent contractor estimators earn \$28.00 per job.

37. Plaintiff Littlefield and similarly situated independent contractor estimators are not in business for themselves; rather, they are integral to Defendant's business.

38. Plaintiff Littlefield and similarly situated independent contractor estimators work over forty hours in certain workweeks.

39. Specifically, while working as an independent contractor estimator, Plaintiff Littlefield continued to work in excess of forty (40) hours per workweek and typically worked between fifty (50) and sixty (60) hours per week.

40. During these weeks, Defendant did not provide Plaintiff or similarly situated independent contractor estimators with overtime compensation at a rate of one-and-one-half times their regular rate of pay for all hours worked over forty. Instead, they receive \$28.00 per job completed.

41. As a result of its actions and the conduct described above, Defendant has violated the provisions of the FLSA, 29 U.S.C. §§ 201 *et seq.*, specifically §207(a)(1), with respect to Plaintiffs and similarly situated store account managers and similarly situated independent contractor estimators.

42. Further, by failing to accurately record, report, and/or preserve records of all hours worked by Plaintiffs and similarly situated store account managers and independent contractor

estimators, Defendant has failed to make, keep, and preserve records with respect to Plaintiffs and similarly situated store account managers and independent contractor estimators sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*

43. The foregoing conduct on the part of Defendant 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 with respect to Plaintiffs and similarly situated store account managers and independent contractor estimators were in violation of federal law.

III. COLLECTIVE ACTION ALLEGATIONS

44. Plaintiffs re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

45. Plaintiffs file this action on behalf of themselves and all similarly situated individuals. The proposed FLSA Putative Collective is defined as follows:

- A. All persons who worked as store account managers or in similar positions for Defendant at any time since three years prior to the filing of this Complaint; and
- B. All persons who worked as an independent contractor estimator, store account manager, or in similar positions for Defendant at any time since three years prior to the filing of this complaint.

46. Plaintiffs have consented in writing to be a part of this action pursuant to 29 U.S.C. § 216(b). Plaintiffs' signed consent forms are attached as Exhibit B. As this case proceeds, it is likely that other individuals will file consent forms and join as "opt-in" plaintiffs.

47. During the applicable statutory period, Plaintiffs and the Putative Collective routinely worked in excess of forty (40) hours per workweek without receiving proper overtime compensation for their overtime hours worked.

48. Defendant is liable under the FLSA for failing to properly compensate Plaintiffs and the Putative Collective.

49. Accordingly, notice should be sent to all similarly situated store account managers and independent contractor estimators. There are numerous store account managers and estimators who have suffered from Defendant's practice of denying overtime pay and who would benefit from the issuance of court-authorized notice of this lawsuit and the opportunity to join. Those similarly situated store account managers and independent contractor estimators are known to Defendant and are readily identifiable through their records.

IV. COUNT I
FEDERAL OVERTIME VIOLATIONS
(Fair Labor Standards Act, 29 U.S.C. § 201, et seq.)
*On Behalf of Plaintiffs and Similarly Situated Store Account Managers and
Independent Contractor Estimators*

50. Plaintiffs, individually and on behalf of similarly situated store account managers and independent contractor estimators, re-allege and incorporate by reference the above paragraphs as if fully set forth herein.

51. The FLSA requires covered employers to pay non-exempt employees no less than one-and-one-half times their regular rate of pay for all hours worked in excess of forty (40) in a work week. 29 U.S.C. § 207.

52. Defendant is a covered "enterprise" as defined by the FLSA, 29 U.S.C. § 203(r)(1), and is engaged in commerce within the meaning of the FLSA, § 203(b), (s)(1).

53. Plaintiffs and the Putative Collective qualify as non-exempt covered employees. 29 U.S.C. § 203(e)(1).

54. Plaintiffs and the Putative Collective have worked more than forty (40) hours per week for Defendant during the applicable time period.

55. Defendant has not properly compensated Plaintiffs or the Putative Collective for all of their overtime hours as required by the FLSA.

56. Defendant does not and has not made a good-faith effort to comply with the FLSA as it relates to the compensation of Plaintiffs and the Putative Collective.

57. Defendant knew Plaintiffs and the Putative Collective worked overtime without proper compensation, and it willfully failed and refused to pay Plaintiffs and the Putative Collective with wages at the required overtime rates. 29 U.S.C. § 255.

58. Defendant's willful failure and refusal to pay Plaintiffs and the Putative Collective's overtime wages for time worked violates the FLSA. 29 U.S.C. § 207.

59. As a direct and proximate result of these unlawful practices, Plaintiffs and the Putative Collective suffered and continue to suffer wage loss and are therefore entitled to recover unpaid overtime wages for up to three years prior to the filing of their claims, liquidated damages or prejudgment interest, attorneys' fees and costs, and such other legal and equitable relief as the Court deems just and proper.

V. PRAYER FOR RELIEF

60. WHEREFORE, Plaintiffs, individually and on behalf of the Putative Collective, pray for relief as follows:

- A. Designation of this action as a collective action on behalf of Plaintiffs and those similarly situated and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all those similarly situated 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 that Plaintiffs and those similarly situated are non-exempt employees entitled to the protection of the FLSA;
- C. Judgment against Defendant for violation of the overtime provisions of the FLSA;

- D. Judgment that Defendant's violations as described above were willful;
- E. An award in an amount equal to Plaintiffs' and those similarly situated's unpaid back wages at the applicable overtime rate;
- F. An award to Plaintiffs and those similarly situated for liquidated damages and civil penalties where provided by law;
- G. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. § 216 and/or other applicable laws;
- H. An award of prejudgment interest and post-judgment interest as provided by law;
- I. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court; and
- J. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

Respectfully submitted,

/s/ William B. Ryan
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ATTORNEYS FOR PLAINTIFFS AND THE
PUTATIVE COLLECTIVE ACTION

Dated: 8.3.18