

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TIMOTHY MARRET, Individually and For
Others Similarly Situated

v.

ARCHER-DANIELS-MIDLAND COMPANY

Case No. _____

Jury Trial Demanded

FLSA Collective Action
Pursuant to 29 U.S.C. § 216(b)

ORIGINAL COLLECTIVE ACTION COMPLAINT

SUMMARY

1. Timothy Marret (“Marret”) brings this collective action to recover unpaid overtime and other damages from Archer-Daniels-Midland Company (“ADM”) under the Fair Labor Standards Act (“FLSA”).

2. ADM employs Marret as one of its Day Rate Workers (defined below).

3. Marret and the other Day Rate Workers regularly work more than 40 hours a workweek.

4. But ADM does not pay Marret and its other Day Rate Workers overtime wages.

5. Instead, ADM misclassifies Marret and its other Day Rate Workers as exempt seamen and pays them a flat amount for each day worked, regardless of the total number of hours they worked in a workweek (a “day rate”).

6. But Marret’s and the other Day Rate Workers’ primary duties do not include aiding in the operation of a vessel as a means of transportation.

7. ADM’s uniform day rate pay scheme violates the FLSA by depriving non-exempt employees (Marret and the other Day Rate Workers) of overtime wages for all hours worked after 40 in a workweek.

JURISDICTION & VENUE

8. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this case involves a federal question under the FLSA, 29 U.S.C. § 216(b).

9. This Court has general personal jurisdiction over ADM because ADM resides in Illinois.

10. Specifically, ADM is headquartered in Chicago, Illinois.

11. Venue is proper because ADM is headquartered in Chicago, Illinois, which is in this District and Division. 28 U.S.C. § 1391(b)(1).

PARTIES

12. Marret has worked for ADM as a Fleet Deckhand in and around Mount Vernon, Indiana since approximately January 2021.

13. Throughout his employment, ADM has misclassified Marret as an exempt seaman and refused to pay him overtime wages.

14. Instead, ADM pays Marret a day rate with no overtime wages.

15. Marret's written consent is attached as **Exhibit 1**.

16. Marret brings this collective action on behalf of himself and all other similarly situated ADM employees who ADM paid under its illegal day rate pay scheme.

17. ADM misclassified each of these employees as exempt seamen and refused to pay them overtime wages.

18. Instead, ADM paid each of these employees a flat amount for each day they worked and failed to pay them overtime when they worked more than 40 hours in a workweek in willful violation of the FLSA.

19. The putative collective of similarly situated employees is defined as:

All ADM employees who were paid a day rate with no overtime pay at any time during the past 3 years (the "Day Rate Workers").

20. ADM is a Delaware corporation headquartered in Chicago, Illinois.

21. ADM can be served through its registered agent: **CT Corporation System, 208 South LaSalle Street, Suite 814, Chicago, Illinois 60604.**

FLSA COVERAGE

22. At all relevant times, ADM was an “employer” within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

23. At all relevant times, ADM was an “enterprise” within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

24. At all relevant times, ADM was an “enterprise engaged in commerce or in the production of goods for commerce” within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), because it had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials—such as cell phones, computers, and personal protective equipment—that have been moved in or produced for commerce.

25. At all relevant times, ADM has had an annual gross volume of sales made or business done of not less than \$1,000,000 each year.

26. At all relevant times, Marret and the other Day Rate Workers were ADM’s “employees” within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

27. At all relevant times, Marret and the other Day Rate Workers were engaged in commerce or in the production of goods for commerce.

28. ADM uniformly paid Marret and the other Day Rate Workers under its illegal day rate pay scheme.

29. ADM applied its illegal day rate pay scheme to Marret and the other Day Rate Workers regardless of any alleged individualized factors, such as specific job title or geographic location.

30. As a result of ADM's uniform day rate pay scheme, Marret and the other Day Rate Workers did not receive overtime wages when they worked more than 40 hours in a workweek.

31. ADM's uniform day rate pay scheme therefore violates the FLSA. 29 U.S.C. § 207(a) & (e).

FACTS

32. ADM bills itself as “a global leader in human and animal nutrition and the world's premier agricultural origination and processing company.”¹

33. To meet its business objectives, ADM hires workers, like Marret and the other Day Rate Workers, who provide loading and unloading services to its river barges.

34. ADM uniformly pays these employees (including Marret and the other Day Rate Workers) under its illegal day rate pay scheme.

35. While exact job titles and job duties may differ, these employees are subjected to the same or similar illegal pay practice—ADM's day rate pay scheme—for similar work.

36. For example, Marret has worked for ADM as a Fleet Deckhand in Indiana since approximately January 2021.

37. As a Fleet Deckhand, Marret's primary duties do not include aiding in the operation of the barges he loads as a means of transportation.

38. Rather, as a Fleet Deckhand, Marret spends the majority of his time performing non-seaman work.

39. Indeed, as a Fleet Deckhand, Marret's primary responsibilities include loading and unloading coal onto and off of ADM's barges from the dock using a belt line system in the Port of Indiana-Mount Vernon.

¹ <https://www.adm.com/en-us/about-adm/> (last visited February 9, 2024).

40. Thus, Marret spends far more than 20% of his work time performing these non-seaman duties.

41. Throughout his employment, Marret has typically worked 12 hours a day for 10 days on and 5 days off.

42. Marret works in accordance with the schedule set by ADM.

43. Despite knowing Marret regularly works overtime, ADM does not pay him overtime wages.

44. Instead, ADM pays Marret under its illegal day rate pay scheme.

45. Specifically, ADM pays Marret approximately \$238 each day he actually works, regardless of the number of hours he works that day (or that workweek) and fails to pay him overtime wages when he works over 40 hours in a workweek.

46. ADM pays its other Day Rate Workers according to the same illegal day rate pay scheme it imposes on Marret.

47. That is, just as with Marret, ADM pays its other Day Rate Workers on a day rate basis and fails to pay them overtime wages when they work more than 40 hours in a workweek.

48. Like Marret, the other Day Rate Workers typically work 12 hours a day for 10 days on and 5 days off.

49. And like Marret, the other Day Rate Workers work in accordance with the schedule set by ADM.

50. Despite knowing its Day Rate Workers regularly work overtime, ADM does not pay them overtime wages.

51. Instead, ADM pays its Day Rate Workers a flat amount for each day worked, regardless of the number of hours they worked that day (or that workweek) and fails to pay them overtime wages when they work more than 40 hours in a workweek in willful violation of the FLSA.

52. Despite misclassifying Marret and the other Day Rate Workers as exempt from overtime wages as seamen, these employees primarily perform non-seaman work.

53. That is, like Marret, the other Day Rate Workers' primary duties do not include aiding in the operation of the barges they load as a means of transportation.

54. Rather, like Marret, the other Day Rate Workers spend the majority of their time performing non-seaman work.

55. Indeed, like Marret, the other Day Rate Workers' primary responsibilities include loading and unloading coal onto and off of ADM's barges from docks using a belt line system in ports and harbors.

56. Thus, like Marret, the other Day Rate Workers spend far more than 20% of their work time performing these non-seaman duties.

57. Further, ADM never paid Marret and the other Day Rate Workers on a "salary basis."

58. ADM does not pay Marret and the other Day Rate Workers a guaranteed salary that is not subject to reduction based on the quality or quantity worked.

59. Rather, ADM only pays Marret and the other Day Rate Workers their set day rates for the actual days they work.

60. If Marret and the other Day Rate Workers do not work, they do not get paid.

61. Marret's and the other Day Rate Workers' day rates do not increase when they work more than 40 hours in a workweek.

62. Thus, ADM never paid Marret and the other Day Rate Workers on a "salary basis." *See Helix Energy Sols. Grp., Inc. v. Hewitt*, 598 U.S. 39, 143 S. Ct. 677, 685 (2023) ("Daily-rate workers, of whatever income level, are paid on a salary basis only through the test set out in § 604(b)"); *see also* 29 C.F.R. § 541.604.

63. Because ADM fails to pay Marret and the other Day Rate Workers on a “salary basis” and these employees spend a substantial amount of their work time performing non-seaman duties, they are all non-exempt employees entitled to overtime wages.

64. But ADM does not pay Marret and the other Day Rate Workers overtime wages when they work more than 40 hours in a workweek in willful violation of the FLSA.

COLLECTIVE ACTION ALLEGATIONS

65. Marret incorporates all other paragraphs by reference.

66. Like Marret, the other Day Rate Workers are victimized by ADM’s illegal day rate pay scheme.

67. Other Day Rate Workers worked with Marret and indicated they were paid in the same manner, performed similar work, and were subject to ADM’s same illegal day rate pay scheme.

68. Based on his experience, Marret is aware ADM’s illegal day rate pay scheme is imposed on the other Day Rate Workers.

69. The Day Rate Workers are similarly situated in the most relevant respects.

70. Even if their precise job titles and locations might vary, these differences do not matter for the purposes of determining their entitlement to overtime pay.

71. Rather, ADM’s uniform day rate pay scheme renders Marret and the other Day Rate Workers similarly situated for the purposes of determining their right to overtime pay.

72. Therefore, the specific job titles or precise job locations of the various Day Rate Workers do not prevent collective treatment.

73. ADM’s records reflect the number of days and/or hours the Day Rate Workers worked each workweek.

74. ADM’s records also show it paid the Day Rate Workers a day rate with no overtime wages when they worked more than 40 hours in a workweek.

75. Further, ADM's records reflect the Day Rate Workers spent more than 20% of their work time performing non-seaman job duties.

76. The backwages owed to Marret and the other Day Rate Workers can therefore be calculated using the same formula applied to the same records.

77. Even if the issue of damages were somewhat individual in character, the damages can be calculated by reference to ADM's records, and there is no detracting from the common nucleus of liability facts.

78. Therefore, the issue of damages does not preclude collective treatment.

79. Marret's experiences are therefore typical of the experiences of the other Day Rate Workers.

80. Marret has no interest contrary to, or in conflict with, the other Day Rate Workers that would prevent collective treatment.

81. Like each Day Rate Worker, Marret has an interest in obtaining the unpaid wages owed under federal law.

82. A collective action is superior to other available means for fair and efficient adjudication of this lawsuit.

83. Absent this collective action, many Day Rate Workers will not obtain redress for their injuries, and ADM will reap the unjust benefits of violating the FLSA.

84. Further, even if some of the Day Rate Workers could afford individual litigation, it would be unduly burdensome to the judicial system.

85. Indeed, the multiplicity of actions would create a hardship to the Day Rate Workers, the Court, and ADM.

86. Conversely, concentrating the litigation in one forum will promote judicial economy and consistency, as well as parity among the Day Rate Workers' claims.

87. Marret knows of no difficulty that will be encountered in the management of this litigation that would preclude its ability to go forward as a collective action.

88. As part of its regular business practices, ADM intentionally, willfully, and repeatedly violated the FLSA with respect to Marret and the other Day Rate Workers.

89. ADM's illegal day rate pay scheme deprived Marret and the other Day Rate Workers of the overtime wages they are owed under federal law.

90. There are many similarly situated Day Rate Workers who have been denied overtime pay in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

91. The Day Rate Workers are known to ADM, are readily identifiable, and can be located through ADM's business and personnel records.

**ADM'S FLSA VIOLATIONS WERE WILLFUL
AND/OR DONE IN RECKLESS DISREGARD OF THE FLSA**

92. Marret incorporates all other paragraphs by reference.

93. ADM knew it was subject to the FLSA's overtime provisions.

94. ADM knew the FLSA required it to pay non-exempt employees, including Marret and the other Day Rate Workers, overtime wages at rates not less than 1.5 times their regular rates of pay for all hours worked after 40 in a workweek.

95. ADM knew Marret and each Day Rate Worker worked more than 40 hours in at least one workweek during the relevant period.

96. ADM knew it paid Marret and the other Day Rate Workers on a daily basis.

97. ADM knew it paid Marret and the other the Day Rate Workers a day rate (with no overtime wages for hours worked over 40 in a workweek).

98. ADM knew it did not pay Marret and the other Day Rate Workers on a "salary basis."

99. ADM knew it did not pay Marret and the other Day Rate Workers any guaranteed salary that was not subject to reduction based on the number of days worked.

100. ADM knew that any base “salary” Marret and the other Day Rate Workers purportedly received was not “reasonably related” to their actual earnings.

101. Thus, ADM knew its day rate pay scheme did not satisfy the “salary basis” test.

102. ADM knew Marret’s and the other Day Rate Workers’ primary duties did not include aiding in the operation of a vessel as a means of transportation.

103. ADM knew Marret’s and the other Day Rate Workers’ primary responsibilities include loading and unloading coal onto and off of ADM’s barges from docks using a belt line system in ports and harbors.

104. ADM knew Marret and the other Day Rate Workers spent the majority of their time performing non-seaman work.

105. Thus, ADM knew, should have known, or recklessly disregarded whether Marret and the other Day Rate Workers spent more than 20% of their working time performing non-seaman duties.

106. Nonetheless, ADM uniformly misclassified Marret and the other Day Rate Workers as exempt and refused to pay them overtime wages.

107. ADM’s decision to misclassify Marret and the other Day Rate Workers as exempt employees was neither reasonable, nor was it made in good faith.

108. Likewise, ADM’s failure to pay Marret and the other Day Rate Workers overtime was neither reasonable, nor was its decision not to pay these employees overtime made in good faith.

109. ADM knew, should have known, or showed reckless disregard for whether its conduct described in this Complaint violated the FLSA.

110. ADM knowingly, willfully, and/or in reckless disregard carried out this illegal day rate pay scheme that systematically deprived Marret and the other Day Rate Workers of overtime wages for their hours worked after 40 in a workweek in violation of the FLSA.

111. Indeed, ADM has been sued previously for failing to pay workers overtime in violation of the FLSA and analogous state wage and hour laws. *See, e.g., Bowman, et al. v. Archer-Daniels-Midland Co.*, No. 3:13-CV-00026 (S.D. Iowa); *Hartman, et al. v. Archer-Daniels-Midland Co.*, No. 3:10-CV-00135 (S.D. Iowa).

CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES UNDER THE FLSA

112. Marret incorporates all other paragraphs by reference.

113. Marret brings his FLSA claims as a collective action on behalf of himself and the other Day Rate Workers.

114. ADM violated, and is violating, the FLSA by employing non-exempt employees (Marret and the other Day Rate Workers) in a covered enterprise for workweeks longer than 40 hours without paying such employees overtime wages at rates not less than 1.5 times their regular rates of pay for the hours they worked after 40 in a workweek.

115. ADM's unlawful conduct harmed Marret and the other Day Rate Workers by depriving them of the overtime wages they are owed.

116. Accordingly, ADM owes Marret and the other Day Rate Workers the difference between the rate actually paid and the proper overtime rate.

117. Because ADM knew, or showed reckless disregard for whether, its day rate pay scheme violated the FLSA, ADM owes Marret and the other Day Rate Workers these wages for at least the past 3 years.

118. ADM is also liable to Marret and the other Day Rate Workers for an amount equal to all their unpaid overtime wages as liquidated damages.

119. Finally, Marret and the other Day Rate Workers are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

JURY DEMAND

120. Marret demands a trial by jury.

RELIEF SOUGHT

WHEREFORE, Marret, individually and on behalf of the other Day Rate Workers, seeks the following relief:

- a. An Order designating this lawsuit as a collective action and authorizing notice to the Day Rate Workers allowing them to join this action by filing a written notice of consent;
- b. An Order finding ADM liable to Marret and the other Day Rate Workers for unpaid overtime wages owed under the FLSA, plus liquidated damages in an amount equal to their unpaid wages;
- c. A Judgment against ADM awarding Marret and the other Day Rate Workers all their unpaid wages, liquidated damages, and any other penalties available under the FLSA;
- d. An Order awarding attorneys' fees, costs, and expenses;
- e. Pre- and post-judgment interest at the highest applicable rates; and
- f. Such other and further relief as may be necessary and appropriate.

Dated: February 9, 2024

Respectfully submitted,

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