

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION**

**MICHAEL DARLINGTON-WEST**  
**Plaintiff,**

**v.**

**MOTIONS, LLC,**  
**Defendant.**

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There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

**COMPLAINT AND JURY DEMAND**

Now Comes Plaintiff, Michael Darlington-West, by and through his attorney, Sandra Hanshaw Burink, and hereby states as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Plaintiff, Michael Darlington-West, is an individual and a citizen of the State of Michigan, County of Marquette, who was previously employed by Defendant.
2. Defendant, Motions, LLC. conducts business in the Western District of Michigan, Northern Division.

3. This is an action under the Fair Labor Standards Act and the Michigan Minimum Wage Law for failure to pay wages and failure to pay overtime.
4. This is also an action under the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq. for sexual harassment hostile environment and weight discrimination.
5. Plaintiff is a former employee of Defendant and covered under the Fair Labor Standards Act, Michigan Minimum Wage Law and the Elliott-Larsen Civil Rights Act.
6. Defendant is engaged in doing business through the operation of a commercial enterprise and is therefore a covered employer under the Fair Labor Standards Act.
7. This court has jurisdiction pursuant to 29 U.S.C. § 216 (b), which permits actions under the FLSA to be maintained in “any Federal or State Court of Competent Jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.”
8. This court has personal jurisdiction over Defendant as a corporation that conducts business in Michigan.
9. Venue is proper in this court as the cause of action arose in Marquette County, Michigan.

### **FACTUAL ALLEGATIONS**

10. Defendant employed Plaintiff as a personal trainer from in or about March 2015 until in or about June 2016.

11. During the times that Plaintiff was employed at Defendant, he was improperly paid on an hourly rate and was considered “non-exempt” under the Fair Labor Standards Act and Michigan Minimum Wage Law.
12. Plaintiff’s position did not fall within an exemption as defined by the Fair Labor Standards Act and Michigan Minimum Wage.
13. Plaintiff worked as a personal trainer and would be paid \$20.00 per hour for personal training; \$10.00 per half hour of personal training and \$10.00 per hour for group classes.
14. Plaintiff was also required to work approximately 10 additional hours each week making cold calls and was not paid any wages for the time required to make the cold calls.
15. In addition, Plaintiff was required to take mandatory training and was not paid for the training.
16. There were frequently times that Plaintiff and other employees were required to participate in after-hours activities that were unpaid. The activities were mandatory and a condition of his employment with Defendant.
17. Defendant did not pay time and a half for all hours over 40 in a week.
18. Plaintiff and other employees were required to purchase supplements and other items from the Defendant as a condition of employment and were required to deduct the cost of those items from his paycheck.
19. Throughout the course of Plaintiff’s employment, he was discriminated against and harassed by Defendant and its owner and agents.

20. By way of example, Plaintiff was told that he needed to “start sucking dick to get members in.”

21. The comments were sexual in nature and made Plaintiff very uncomfortable, creating a sexually hostile work environment.

22. Defendant also harassed and discriminated against Plaintiff based on his weight. Indeed, Defendant frequently made remarks about Plaintiff’s weight and told him that he needed to gain weight.

23. The comments by Defendant regarding his weight made Plaintiff uncomfortable and created a hostile work environment.

24. Plaintiff was at all times entitled to time and a half for all hours over 40 in a work week.

25. As a result of Defendant’s unlawful actions, Plaintiff was not properly paid and is owed for overtime pay and for unpaid wages.

26. As a result of Defendant’s unlawful actions, Plaintiff suffered lost wages, emotional distress damage, and attorney fees.

**COUNT I—VIOLTION OF FAIR LABOR STANDARDS ACT FOR FAILURE TO PAY OVERTME**

27. Plaintiff hereby incorporates by reference the preceding paragraphs.

28. At all times relevant herein, Plaintiff has been entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*

29. At all relevant times Defendant has been an employer engaged in interstate commerce or in the production of goods for commerce within the meaning of the FLSA 29 U.S.C. §203. At all relevant times Defendant has employed and continues to employ employees such as Plaintiff, who has been engaged in

interstate commerce within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times Defendant had gross operating revenues in excess of \$500,000.00.

30. The FLSA requires Defendant, as a covered employer, to compensate all non-exempt employees for all hours worked over 40 in a work week at a rate not less than one and a half times their regular rate of pay.

31. Plaintiff is entitled to overtime pay for all hours worked over 40 in a work week and he has unpaid overtime pay for which he is entitled to be compensated for.

32. Defendant violated the FLSA by failing to compensate Plaintiff at a rate of one and a half times his regular rate of pay for all hours worked over 40 in a work week. This violation of the FLSA was knowing and willful within the meaning of the FLSA, 29 U.S.C §201 *et seq.*

33. Defendant has neither acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA. As a result thereof, Plaintiff is entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime wages as described by section 16(b) of the FLSA, codified at 29 U.S.C. §215(b). Plaintiff is also entitled to all attorney fees and court costs necessitated in having to bring the instant action.

34. As a result of Defendant's violations of law, Plaintiff is entitled to recover attorney's fees, litigation expenses, court costs, pursuant to 29 U.S.C. §216(b), and other legal and equitable relief as the court deems proper.

**COUNT II—VIOLTION OF FAIR LABOR STANDARDS ACT FOR FAILURE TO PAY WAGES**

35. Plaintiff hereby incorporates by reference the preceding paragraphs.

36. At all times relevant herein, Plaintiff has been entitled to the rights, protections and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*
37. At all relevant times Defendant has been an employer engaged in interstate commerce or in the production of goods for commerce within the meaning of the FLSA 29 U.S.C. §203. At all relevant times Defendant has employed and continues to employ employees such as Plaintiff, who has been engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times Defendant had gross operating revenues in excess of \$500,000.00.
38. The FLSA requires Defendant, as a covered employer, to compensate all non-exempt employees for all hours worked.
39. Plaintiff is entitled to compensation for time worked, including making cold calls, attending mandatory training and after hours events.
40. Defendant violated the FLSA by failing to compensate Plaintiff for hours worked. This violation of the FLSA was knowing and willful within the meaning of the FLSA, 29 U.S.C §201 *et seq.*
41. Defendant has neither acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA. As a result thereof, Plaintiff is entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime wages as described by section 16(b) of the FLSA, codified at 29 U.S.C. §215(b). Plaintiff is also entitled to all attorney fees and court costs necessitated in having to bring the instant action.

42. As a result of Defendant's violations of law, Plaintiff is entitled to recover attorney's fees, litigation expenses, court costs, pursuant to 29 U.S.C. § 216(b), and other legal and equitable relief as the court deems proper.

**COUNT III—VIOLATION OF THE WORKFORCE OPPORTUNITY WAGE ACT, MCL**

**408.411 et seq. FOR FAILURE TO PAY WAGES**

43. Plaintiff hereby incorporates by reference the preceding paragraphs.

44. Plaintiff was an employee and Defendant was his employer as defined by the Workforce Opportunity Wage Act, MCL 408.411 et seq.

45. At all times Plaintiff was entitled to be paid for time worked.

46. Defendant violated the Act by failing to pay Plaintiff for all hours worked.

47. Defendant's violation was knowing and willful.

48. As a result of Defendant's actions, Plaintiff is entitled to recover back wages, attorney fees and liquidated damages, together with whatever damages the court deems just.

**COUNT IV—VIOLATION OF THE WORKFORCE OPPORTUNITY WAGE ACT,**

**MCL 408.411 et seq. FOR FAILURE TO PAY OVERTIME**

49. Plaintiff hereby incorporates by reference the preceding paragraphs.

50. Plaintiff was an employee and Defendant was his employer as defined by the Workforce Opportunity Wage Act, MCL 408.411 et seq.

51. At all times Plaintiff was entitled to be paid for time and a half for all hours in which he worked more than 40 hours in a work week.

52. Defendant failed to pay Plaintiff overtime pay as required by the Act.

53. Defendant's violation was knowing and willful.

54. As a result of Defendant's actions, Plaintiff is entitled to recover back wages, attorney fees and liquidated damages, together with whatever damages the court deems just.

**COUNT V—VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL  
37.2101 et seq., FOR HOSTILE WORK ENVIRONMENT SEXUAL  
HARASSMENT**

55. Plaintiff hereby incorporates by reference the preceding paragraphs.

56. At all material times, Plaintiff was an employee, and Defendant was his employer, covered by and within the meaning of the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

57. Plaintiff was sexually harassed by Defendant's agents and employees throughout the course of his employment.

58. This sexual harassment has included, but is not limited to, unwelcome comments and conduct of an offensive and sexual nature directed at Plaintiff and the creation of a hostile work environment.

59. The actions of Defendant and its agents, representatives, and employees were intentional.

60. The conduct of Defendant's agents and employees in sexually harassing Plaintiff constitutes sexual discrimination in violation of MCL 37.2101 et seq.



61. As a direct and proximate result of Defendant's unlawful actions against Plaintiff as described, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity; loss of career opportunities; loss of reputation and esteem in the community; mental and emotional distress; and loss of the ordinary pleasures of life.

**COUNT VI—VIOLATION OF THE ELLIOTT-LARSEN CIVIL RIGHTS ACT, MCL 37.2101 et seq., FOR WEIGHT DISCRIMINATION**

62. Plaintiff hereby incorporates by reference the preceding paragraphs.

63. At all material times, Plaintiff was an employee, and Defendant was his employer, covered by and within the meaning of the Michigan Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

64. Plaintiff's weight was at least one factor that made a difference in Defendant's decision to harass Plaintiff.

65. Had Plaintiff been larger, he would not have been harassed and discriminated against.

66. Defendant, through its agents, representatives, and employees, was predisposed to discriminate on the basis of weight and acted in accordance with that predisposition.

67. Defendant, through its agents, representatives, and employees, treated Plaintiff differently from similarly situated heavier employees in the terms and conditions of employment, based on unlawful consideration of weight.

68. Defendant's actions were intentional in disregard for Plaintiff's rights and sensibilities.

69. As a direct and proximate result of Defendant's unlawful actions, Plaintiff has sustained injuries and damages including, but not limited to, loss of earnings and earning capacity; loss of career opportunities; humiliation and embarrassment; mental and emotional distress; and loss of the ordinary pleasures of everyday life, including the right to pursue gainful occupation of choice.

WHEREFORE, Plaintiff demands:

- a. Judgment against Defendant in an amount equal to Plaintiff's unpaid overtime pay;
- b. Judgment against Defendant in an amount equal to Plaintiff's unpaid compensation for on call time;
- c. A Finding that Defendant violated the FLSA by failing to compensate Plaintiff for time and a half for all hours worked over 40 in a work week;
- d. A finding that Defendant violated the FLSA by failing to compensate Plaintiff for his on-call time worked;
- e. A finding that Defendant's violations of the FLSA was willful;
- f. An equal amount to the unpaid overtime and unpaid on-call time as liquidated damages pursuant to 29 U.S.C § 216(b);
- g. All costs and reasonable attorney's fees incurred prosecuting this claim pursuant to 29 U.S.C. § 216(b);

- h. An award of pre-and post-judgment interest as provided by law; and
- i. As such other relief as the Court deems just and equitable.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: 10/11/15

s/ Sandra Hanshaw Burink

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