

**FILED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE**

FEB 22 2011

Clerk, U. S. District Court  
Eastern District of Tennessee  
At Winchester

**THE SCOOP NEWSPAPER, INC. and )  
JACK HEFFINGTON, )**

**Plaintiffs/Counter-Defendants, )**

**vs. )**

**RICHARD T. HUDGINS, )**

**Defendant/Counter-Plaintiff. )**

Civil Action No. 4:11-cv- 13  
*Mattice Carter*

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**NOTICE OF REMOVAL**

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Comes now the Defendant, Richard T. Hudgins (the "Defendant"), by and through counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, and hereby gives notice that the above-styled action is removed from the Circuit Court of Bedford County, Tennessee, to this Court. As grounds for removal, the Defendant would state as follows:

1. On February 9, Plaintiffs, The Scoop Newspaper, Inc. and Jack Heffington ("Plaintiffs"), commenced this action by filing a complaint seeking damages and injunctive relief in the Circuit Court of Bedford County, Tennessee, which was docketed as case number 12224 (the "State Court Action").

2. Defendant was served with a summons and a copy of the complaint in the State Court Action on February 11, 2011.

3. Pursuant to 28 U.S.C. § 1446(a), all copies of all process and pleadings served upon Defendant in the State Court Action are attached hereto as **Collective Exhibit A**.

4. This notice of removal is filed within Thirty (30) days after Defendant was served with the summons and complaint in the State Court Action and the filing of the answer and counter-complaint and is therefore timely pursuant to 28 U.S.C. § 1446(b).

5. A copy of the written notice required by 28 U.S.C. § 1446(d) to be directed to the Clerk of the Circuit Court of Bedford County, Tennessee, is attached hereto as **Exhibit B**.

6. A copy of the written notice required by 28 U.S.C. § 1446(d) to be directed to counsel for Plaintiff is attached hereto as **Exhibit C**.

7. The Notice to the Clerk and the Notice to Plaintiff's Counsel will be filed in the appropriate court and served upon Plaintiffs subsequent to the filing of this notice of removal with this Court.

8. The grounds for removal of this action are as follows:

a. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Counter-Complaint is founded upon claims arising under the Constitution, laws or treaties of the United States.

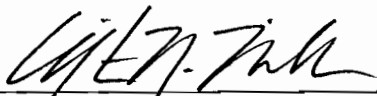
b. Specifically, Count I of the Counter-Complaint, which is the Defendant's principal claim for relief, is a claim for unpaid wages under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201-219 ("FLSA").

c. Count II, which is the Defendant's claim for wages under Tennessee Code Annotated Section 50-2-103, and Count III, which is the Defendant's claim for breach of contract, arise out of the same set of facts and is part of the same case and controversy as the FLSA claims. Therefore, this Court has supplemental jurisdiction over these claims pursuant to 28 U.S.C. § 1367(a).

9. Based on the foregoing grounds, this is a civil action over which the Court would have had original jurisdiction had it been filed initially in this Court, and removal to this Court is proper pursuant to 28 U.S.C. § 1441(b).

**RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of February 2011.

**HENRY, McCORD, BEAN, MILLER, GABRIEL  
& LaBAR, P.L.L.C.**

By:   
CLIFTON M. MILLER, BPR: #014958

By:   
JOHN R. LaBAR, BPR: #020843

Post Office Box 538  
300 North Jackson Street  
Tullahoma, Tennessee 37388  
(931) 455-9301

*Attorneys for Defendant/Counter-Plaintiff*


**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have this day forwarded a true and correct copy of the foregoing pleading to all parties at interest, or to counsel for all parties at interest, by placing the same in the United States Mail, postage prepaid, this the 22<sup>nd</sup> day of February 2011.

Andrew C. Rambo, Esq.  
104 Depot Street  
Post Office Box 129  
Shelbyville, Tennessee 37162-0129  
*Attorney for Plaintiffs/Counter-Defendants*

**HENRY, McCORD, BEAN, MILLER, GABRIEL  
& LaBAR, P.L.L.C.**

By: \_\_\_\_\_

  
JOHN R. LaBAR

STATE OF TENNESSEE  
SEVENTEENTH JUDICIAL DISTRICT  
CIRCUIT COURT OF BEFORD COUNTY

COPY

THE SCOOP NEWSPAPER, INC. and )  
JACK HEFFINGTON, )

Plaintiffs, )

vs. )

Case No. 12224

RICHARD T. HUDGINS, )

Defendant, )

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COUNTER-COMPLAINT

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Comes the Defendant, Richard T. Hudgins, assumes the role of Counter-Plaintiff and for his Counter-Complaint against the Plaintiffs/Counter-Defendants, The Scoop Newspaper, Inc. and Jack Heffington, in this cause would show unto the Court as follows:

1. Defendant/Counter-Plaintiff, Richard T. Hudgins ("Hudgins"), is a resident and citizen of the State of Tennessee whose residence is located at 210 Meadowbrook Street, Tullahoma, Tennessee 37388.

2. Plaintiff/Counter-Defendant, The Scoop Newspaper, Inc., is a Tennessee corporation doing business in Tennessee and whose principal place of business is located at 409 Elm Street, Shelbyville, Tennessee 37160. This Plaintiff/Counter-Defendant's registered agent for service of process is Jack Heffington located at 409 Elm Street, Shelbyville, Tennessee 37160.

Filed this 22 day of Feb 2011  
TERRILL A. BENT, CLERK  
COURT CLERK'S OFFICE  
BEFORD COUNTY, TENNESSEE

BY Jane Carr  
DEPUTY CLERK

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3. The Plaintiff/Counter-Defendant, Jack Heffington, is a resident and citizen of the State of Tennessee whose residence is located at 2127 Riverbend Road, Shelbyville, Tennessee 37160.

#### **JURISDICTION AND VENUE**

4. Hudgins re-states, re-avers, adopts, and re-alleges each and every allegation contained in the previous paragraphs as if fully rewritten or restated herein in their entirety.

5. This is an action pursuant to 29 U.S.C. §§ 201-219, the Fair Labor Standards Act of 1938, as amended (the "Act"), and as applied and modified by the Federal Portal-to-Portal Pay Act, 29 U.S.C. § 255.

6. This Court is a court of competent jurisdiction to hear this action pursuant to 29 U.S.C. § 216(b).

#### **COUNT I**

#### **CLAIM FOR UNPAID WAGES UNDER THE FAIR LABOR STANDARDS ACT**

7. Hudgins re-states, re-avers, adopts, and re-alleges each and every allegation contained in the previous paragraphs as if fully rewritten or restated herein in their entirety.

8. Hudgins is a former employee of The Scoop Newspaper, Inc.

9. Hudgins has consented to the bringing of this action as required pursuant to 29 U.S.C. § 216(b), and a copy of Hudgins' consent is attached hereto as **Exhibit A**.

10. At all times relevant, The Scoop Newspaper, Inc. was an "employer" subject to the Act, and was, and knew it was, required to comply with the Act.

11. At all times relevant, Hudgins was an "employee" subject to the Act.

12. All acts giving rise to this cause arose out of an employment relationship between Hudgins and The Scoop Newspaper, Inc. in Bedford County, Tennessee.

13. As of January 2011, Hudgins had been employed by The Scoop Newspaper, Inc. since June 1, 2007.

14. During Hudgins' employment with The Scoop Newspaper, Inc., the company failed and refused to pay its employees on time and on several occasions failed to pay its employees, including Hudgins, for several weeks.

15. During Hudgins' employment with The Scoop Newspaper, Inc., the company routinely failed to pay on time (or at all) independent contractors hired by the company for the production and sales of the company's publication, "*Show Ring Times*", including, but not limited to graphic designers, webmasters and sales representatives.

16. In addition, The Scoop Newspaper, Inc., during Hudgins' employment, routinely failed to pay its utility and phone bills, such that the utility and telephone providers were forced to discontinue service to the business.

17. Hudgins worked for The Scoop Newspaper, Inc. throughout December 2010 and during January 2011 until January 24, 2011.

18. From December 20, 2010 through January 21, 2011, Hudgins was not paid by The Scoop Newspaper, Inc. his normal hourly wage, nor was he paid any compensation whatsoever.

19. The Scoop Newspaper, Inc.'s failure to pay Hudgins during each of the final Five (5) weeks of his employment nor to pay Hudgins any compensation at all, created the result that Hudgins *de facto* was paid an hourly rate of pay below the then-current federal minimum wage

as established by Congress.

20. For each of the final five (5) weeks of his employment with The Scoop Newspaper, Inc., Plaintiff was entitled to receive his regular rate of compensation for all hours he worked.

21. The Scoop Newspaper's and Jack Heffington's failure and/or refusal to properly compensate Hudgins, or to provide Hudgins with any compensation at all, in accord with the federal statute was a willful violation of 29 U.S.C. § 207(a)(1) because The Scoop Newspaper's failure and/or refusal was done with knowing disregard of the existence and requirements of the Act in that Jack Heffington is an attorney with an active State of Tennessee License to Practice Law since 1972, and The Scoop Newspaper and Jack Heffington had no reasonable grounds for their failure to pay Hudgins.

22. As a result of The Scoop Newspaper's failure and/or refusal to comply with the Act, Hudgins has been compelled to employ attorneys to prosecute this cause.

23. Hudgins will conduct discovery to determine if the actions as alleged by him could give rise to a class action against The Scoop Newspaper, Inc. for violations of the Act as described, and will move to amend his complaint accordingly if appropriate to set out a complaint for class representation with Hudgins designated as the class representative.

## COUNT II

### VIOLATION OF TENNESSEE STATUTE – FAILURE TO PAY EMPLOYEE WAGES

24. Hudgins re-states, re-avers, adopts, and re-alleges each and every allegation contained in the previous paragraphs as if fully rewritten or restated herein in their entirety.



25. The Scoop Newspaper, Inc. willfully violated Tennessee Code Annotated Section 50-2-103 by its failure and/or refusal to properly compensate Hudgins, or to provide Hudgins with any compensation at all for each of the final Five (5) weeks of his employment with The Scoop Newspaper.

26. The Scoop Newspaper, Inc. by and through its owner, Jack Heffington, an attorney with an active State of Tennessee License to Practice Law since 1972, was done with knowing disregard of the existence and requirements of the law, and The Scoop Newspaper, Inc. had no reasonable grounds to believe that it complied with the law.

27. As a result of The Scoop Newspaper's failure and/or refusal to comply with the wage regulations set forth by statute, Hudgins has been compelled to employ attorneys to prosecute this cause.

28. Hudgins will conduct discovery to determine if the actions as alleged in his Complaint could give rise to a class action against The Scoop Newspaper, Inc. for violations of Tennessee law as described, and will move to amend his complaint accordingly if appropriate to set out a complaint for class representation with Hudgins designated as the class representative.

### COUNT III

#### BREACH OF CONTRACT

29. Hudgins re-states, re-avers, adopts, and re-alleges each and every allegation contained in the previous paragraphs as if fully rewritten or restated herein in their entirety.

30. In carrying out its contractual requirements pursuant to the employment contract by and among Hudgins and The Scoop Newspaper, Inc., The Scoop Newspaper, Inc. failed to

provide Hudgins with any compensation at all for each of the final Five (5) weeks of his employment with The Scoop Newspaper.

31. The Scoop Newspaper, Inc.'s failure to pay Hudgins is a violation of the terms of the employment contract and has caused Hudgins damages.

32. As a result of The Scoop Newspaper, Inc.'s breach of the employment contract as set forth above, Hudgins has been forced to incur expenses to employ attorneys to prosecute this cause.

33. Hudgins has suffered damages as a result of The Scoop Newspaper, Inc.'s breach of the employment contract for which he is entitled to recover.

#### **PRAYERS FOR RELIEF**

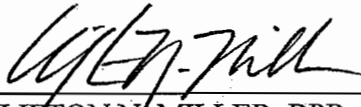
**IN WITNESS WHEREOF**, with respect to all Counts set forth in this Complaint, Hudgins demands judgment against The Scoop Newspaper, Inc. and Jack Heffington as follows:


1. That proper process be issued upon The Scoop Newspaper, Inc. and Jack Heffington and that they be required to answer within the time period allotted by law.
2. That the Defendant/Counter-Plaintiff have and recover an amount equal to the wages and compensation he should have been paid during the term of his employment with The Scoop Newspaper, Inc.
3. Prejudgment interest on all unpaid back pay.
4. An amount equal to the unpaid back pay as liquidated damages pursuant to 29 U.S.C. § 216(b).
5. All costs and fees connected with the prosecution of this action, plus a reasonable attorney's fee pursuant to 29 U.S.C. § 216(b).

6. That Hudgins recover all court costs.
7. That this Court enter an Order granting Hudgins a judgment against The Scoop Newspaper, Inc. and Jack Heffington for any other damages or losses suffered by Hudgins as a result of the actions described herein.
8. For such other, further, special, extraordinary and general relief to which Hudgins is entitled under the circumstances of this cause.

**RESPECTFULLY SUBMITTED** this 22nd day of February 2011.

**HENRY, McCORD, BEAN, MILLER, GABRIEL  
& LaBAR, P.L.L.C.**

By:   
CLIFTON N. MILLER, BPR: #014958

By:   
JOHN R. LaBAR, BPR: #020843  
Post Office Box 538  
Tallahoma, Tennessee 37388  
(931) 455-9301

*Attorneys for Richard T. Hudgins*


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I, the undersigned, hereby certify that I have this day forwarded a true and correct copy of the foregoing pleading to all parties at interest, or to counsel for all parties at interest, by placing the same in the United States Mail, postage prepaid, this the 22<sup>nd</sup> day of February 2011.

Andrew C. Rambo, Esq.  
104 Depot Street  
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*Attorney for Plaintiffs/Counter-Defendants*

**HENRY, McCORD, BEAN, MILLER, GABRIEL  
& LaBAR, P.L.L.C.**

By: \_\_\_\_\_



JOHN R. LaBAR