

No. _____

Ton Bui, individually and on behalf of all others similarly situated	§	In the County Court at Law
	§	
Plaintiffs	§	
	§	
vs.	§	County Court No. _____
	§	
Sonogenic Ultrasound Services, Inc. and Afaq Zaheer	§	
	§	
Defendants	§	Tarrant County, Texas

Plaintiff's Original Petition

Plaintiff Ton Bui, individually and on behalf of all other non-exempt ultrasound technologists currently and formerly employed by Sonogenic Ultrasound Services, Inc. and Afaq Zaheer (collectively, “**Defendants**”), each of whom are similarly situated (“**Plaintiff**” and “**Class Members**” herein) brings this Fair Labor Standards Act (“FLSA”) suit against Defendants and shows as follows:

A. Discovery Control Plan.

Plaintiff intends to conduct discovery under Level 2 of Texas Rule of Civil Procedure 190.2 because this suit involves only monetary relief aggregating more than \$50,000.00 excluding court costs, prejudgment interest, and attorney fees.

B. Nature of Suit.

1. The FLSA was passed by Congress in 1938 in an attempt to eliminate low wages and long hours and to correct conditions that were detrimental to the health and well-being of workers. To achieve its humanitarian goals, the FLSA “limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for his employment in excess of 40 hours at a rate not less than one and one-half times the regular rate at which he is employed.” *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).
2. Defendants failed to pay Plaintiff in accordance with the Fair Labor Standards Act. Specifically, Plaintiff was misclassified as a contractor instead of as a non-exempt

employee, and as a result, Defendant failed to pay Plaintiff at time and one half his regular rate of pay for hours worked in a workweek in excess of forty hours.

C. Parties.

3. Plaintiff Ton Bui is an individual who was employed by Defendants within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Plaintiff lives in Tarrant County, Texas.
4. The "Class Members" are other non-exempt ultrasound technologists who were misclassified as contractors by Defendants, within the actionable time period.
5. Defendant Sonogenix Ultrasound Services, Inc. ("**Defendant Sonogenix**") is a corporation, existing under the laws of Texas, whose office address is 860 Hebron Parkway, Suite 804, Lewisville, Texas 75057. Defendant Sonogenix may be served by serving its registered agent, Afaq Zaheer at 4202 Jessica Lane, Carrollton, Texas 75010.
6. Defendant Afaq Zaheer ("**Defendant Zaheer**") is an individual living in the State of Texas. Defendant Zaheer may be served at 4202 Jessica Lane, Carrollton, Texas 75010.

D. Jurisdiction and Venue.

7. This Court has jurisdiction over the claim because state courts have concurrent jurisdiction with federal courts on cases filed under the Fair Labor Standards Act. 29 U.S.C. §216(b). In addition, Plaintiff's damages are within the Court's jurisdictional limit.
8. Venue is proper in this court pursuant to Texas Civil Practice and Remedies Code § 15.002(a), because the actions giving rise to this lawsuit occurred in Tarrant County, Texas.
9. All conditions precedent have been performed or have occurred.

E. Coverage.

10. At all material times, Defendants have acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

11. At all material times, Defendants have been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
12. At all material times, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
13. At all material times, Defendants have been 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), in that said enterprise has 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 has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).
14. Defendant Zaheer had and has authority to set corporate policy, participate in decisions regarding the classification of employees and the payment of overtime as well as participate in decisions regarding whether or not to pay Plaintiff overtime. In addition, Defendant Zaheer had and has operational control of significant aspects of the Defendant Sonogenic's day-to-day functions and independently exercised control over the work situation. He had and has direct involvement in the day-to-day operation of Defendant Sonogenic and had and has some direct responsibility for the supervision of the employees.
15. Defendant Zaheer acts, and has acted, directly or indirectly, in the interests of an employer in relation to Plaintiff.
16. At all times hereinafter mentioned, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 -207.

F. Factual Allegations

17. Defendants have operations throughout the Dallas/Fort Worth Metroplex through which Defendants provide ultrasound services to patients. In connection with this business, Defendants provide the following services: ultrasound scans and digital imagining scans.
18. Defendants provide the ultrasound services through their use of a network of alleged "independent contractors." In reality, the alleged independent contractors are actually

employees of Defendants who are performing non-exempt work which is the fundamental service provided by Defendants.

19. Plaintiff was employed by Defendants as a non-exempt "Ultrasound Technologist."
20. Plaintiff worked in this capacity from approximately August 3, 2011 through the present.
21. Although Defendants reported Plaintiff's income on an IRS Form 1099, Plaintiff was Defendants' employee at all times relevant hereto.
22. As a non-exempt "Ultrasound Technologist" for all work he performed for Defendants. Plaintiff was paid (1) on a per-scan ("piece-rate") basis; and (2) a flat fee gas and travel for scans located at certain locations.
23. From at least August of 2011 and continuing through the present, Plaintiff worked in excess of forty (40) hours per week for which Plaintiff was not compensated at the statutory rate of one and one-half times Plaintiffs regular rate of pay, including, but not limited to, time spent driving during the workday, and post-shift work processing inspections and doing paperwork.
24. Defendants misclassified Plaintiff as an independent contractor, despite the fact that Plaintiff:
 - a. was not required to possess any advanced skill or knowledge to perform his work for Defendants;
 - b. was required by Defendants to perform his job in a particular manner, on which Defendants trained him;
 - c. was economically dependent on Defendants;
 - d. assisted Defendants in carrying out their principal business;
 - e. was not required to make any substantial financial investment in his employment;
 - f. received all assignments, routes and schedules from Defendants;
 - g. was required to and did in fact sign a covenant not to compete which allegedly prevents Plaintiff from working for competing businesses of Defendants during

the term of Plaintiff's employment by Defendants and for two years thereafter at the conclusion of Plaintiff's employment by Defendants; and

- h. was unable to enhance/increase his wages other than by performing additional inspections.
25. Under the aforementioned piece-rate pay methodology, Plaintiff was paid solely by the number of ultrasound scans he completed.
 26. Plaintiff, and those similarly situated to him, routinely worked in excess of forty (40) hours per week as part of their regular job duties.
 27. Despite the fact that Plaintiff, and those similarly situated to him, worked more than forty (40) hours per week, Defendants failed to pay Plaintiff, and those similarly situated to him, overtime compensation at a rate of one and one-half times his regular rate of pay for hours worked over forty (40) in a workweek.
 28. Defendant has employed and continue to employ other individuals as non-exempt "Ultrasound Technologists," paid solely per scan completed, whose income is reported on IRS Form 1099 on a piece-rate basis, who performed and continue to perform the same or similar job duties under the same pay policies as Plaintiff.
 29. With regard to Plaintiff Defendants have violated Title 29 U.S.C. § 207 from August 3, 2011 through the present, in that:
 - a. Plaintiff worked in excess of forty (40) hours per week for his period of employment with Defendants;
 - b. No payments, or insufficient payments and/or provisions for payment, have been made by Defendants to properly compensate Plaintiff at the statutory rate of one and one-half times Plaintiffs regular rate for those hours worked in excess of forty (40) hours per work week as provided by the FLSA; and
 - c. Defendant has failed to maintain proper time records as mandated by the FLSA.
 30. Plaintiff has retained the Law Office of Chris R. Miltenberger, PLLC to represent him in this litigation and has agreed to pay the firm a reasonable fee for its services.

G. Collective Action Allegations.

31. Plaintiff and the Class Members were all non-exempt employees of Defendants and performed the same or similar job duties as one another in that they performed ultrasound scans on behalf of Defendants.
32. All of these individuals were and are paid in the same manner, solely on a piece-rate basis, per scan completed.
33. All of these individuals were misclassified as independent contractors despite the fact that they:
 - a. were not required to possess any advanced skill or knowledge to perform their work for Defendants;
 - b. were required by Defendants to perform their job in a particular manner, on which Defendants trained them;
 - c. were economically dependent on Defendants;
 - d. assisted Defendants in carrying out Defendants' principal business;
 - e. were not required to make any substantial financial investment in their employment;
 - f. received all assignments, routes and schedules from Defendants;
 - g. were required to and did in fact sign a covenant not to compete which allegedly prevents them from working for competing businesses of Defendants during the term of their employment by Defendants and for two years thereafter at the conclusion of their employment by Defendants; and
 - h. were unable to enhance/increase their wages other than by performing additional inspections.
34. Further, Plaintiff and the Class Members were subjected to the same pay provisions in that they were all paid per scan but were not compensated at a rate one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.
35. Thus, the Class Members are owed overtime wages for the same reasons as Plaintiff.

36. Defendants' failure to compensate its ultrasound technologists for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice applicable to all of Defendants' non-exempt ultrasound technologists.
37. This policy or practice was applicable to Plaintiff and the Class Members. Application of this policy or practice does/did not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime to Plaintiff applied and continues to apply to all Class Members. Accordingly, the Class Members are properly defined as:
- a. **All piece-rate paid ultrasound technologists and other individuals working for Defendants providing ultrasound technology services, who worked for Defendants within the last three years, whose income was reported on IRS Form 1099, who worked in excess of 40 hours in one or more workweeks and were not compensated at one and one-half times their regular rate of pay for all hours worked in excess of 40 hours in one or more workweeks.**
38. Defendants knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and the Class Members.
39. Defendants did not act in good faith and/or have reasonable grounds for a belief that their actions did not violate the FLSA nor did they act in reliance upon any of the following in formulating their pay practices: (a) case law; (b) the FLSA, 29 U.S.C. § 201, et seq.; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.
40. During the relevant period, Defendants violated the FLSA by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, as aforesaid, for one or more workweeks without compensating such employees for their work at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.
41. Defendants have acted willfully in failing to pay Plaintiff and the Class Members in accordance with the law.
42. Defendant has failed to maintain accurate records of Plaintiff's and the Class Members' work hours in accordance with the law.

43. As a collective action, Plaintiff seeks this Court's appointment and/or designation as representative of a group of similarly situated individuals as defined herein.

H. Cause of Action: Failure to Pay Wages in Accordance with the Fair Labor Standards Act.

44. Each and every allegation contained in the foregoing paragraphs 1-43 is re-alleged as if fully rewritten herein.
45. Plaintiff was, and is, entitled to be paid at the statutory rate of one and one-half times Plaintiff's regular rate of pay for those hours worked in excess of forty (40) hours.
46. At all times material hereto, Defendants failed, and continue to fail, to maintain proper time records as mandated by the FLSA.
47. To date, Defendants continue to fail to pay their ultrasound technologists and similarly situated employees their FLSA mandated overtime pay, despite Defendants' recognition that the ultrasound technologist position is non-exempt and entitled to same.
48. Defendants' actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by their continued failure to compensate Plaintiff at the statutory rate of one and one-half times Plaintiffs regular rate of pay for the hours worked in excess of forty (40) hours per weeks when they knew, or should have known, such was, and is due.
49. Defendants have failed to properly disclose or apprise Plaintiff of Plaintiff's rights under the FLSA.
50. Due to the intentional, willful, and unlawful acts of Defendants, Plaintiff suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.
51. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

I. Demand for Jury.

Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

J. Reporter Demand.

Plaintiff requests the Official Court Reporter for this Court perform all the duties of the office, as set forth in Section 52.046 of the Government Code of the State of Texas, and as set forth in Rule 13 of the Rules of Appellate Procedure, including reporting all testimony and trial proceedings, voir dire examinations and jury arguments.

K. Reservation of Rights.

Plaintiff specifically reserves the right to bring additional causes of action against Defendant and to amend this Petition as necessary.

L. Request for Disclosure.

Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2 (a) - (k) to be produced at the Law Office of Chris R. Miltenberger, 430 N. Carroll, Suite 120, Southlake, Texas 76092.

M. Prayer.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that he recover from Defendants, the following:

- a. Compensation for all hours worked at a rate not less than the applicable minimum wage;
- b. Overtime compensation for all unpaid hours worked in excess of forty hours in any workweek at the rate of one-and-one-half times their regular rates;

- c. All unpaid wages and overtime compensation;
- d. An award of liquidated and/or punitive damages as a result of the Defendant's willful failure to pay wages and overtime compensation pursuant to 29 U.S.C § 216;
- e. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- f. Pre-judgment and post-judgment interest at the highest rates allowed by law;
- g. For an order revoking any license enabling Defendant to operate in Texas and revoking any certificate authorizing Defendant to do business in Texas if any judgment rendered in this case has not been satisfied within three (3) months from the date of filing said final judgment; and
- h. Such other relief as to which Plaintiff may be entitled.

Dated this 26th day of March, 2013.

Respectfully submitted,

THE LAW OFFICE OF CHRIS R. MILTENBERGER, PLLC



s/ Chris R. Miltenberger

BY: CHRIS R. MILTENBERGER

Texas Bar Number: 14171200

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Attorney for Plaintiff

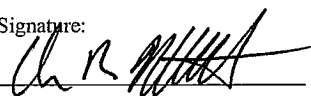
CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED **TON BUI, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED V. SONOGENIC ULTRASOUND SERVICES, INC AND AFAO ZAHEER**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment motion for modification or enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: <u>Chris R. Miltenberger</u> Email: <u>chris@crmlawpractice.com</u> Address: <u>430 N. Carroll, Suite 120</u> City/State/Zip: <u>Southlake, Texas 76092</u> Telephone: <u>817-296-0422</u> Fax: <u>817-416-5062</u> State Bar No: <u>14171200</u>	Plaintiff(s)/Petitioner(s): <u>Ton Bui</u> Defendant(s)/Respondent(s): <u>Sonogenic Ultrasound Services, Inc.</u> <u>Afaq Zaheer</u>	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Signature: 	[Attach additional page as necessary to list all parties]	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <input type="checkbox"/> Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: _____ <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <input type="checkbox"/> Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <input type="checkbox"/> Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children <input type="checkbox"/> Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Paternity/Parentage <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input checked="" type="checkbox"/> Other Employment: FLSA	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<input type="checkbox"/> Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings	<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____		

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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