

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Almuiz Altiep and Tafsir Shawkat,
individually and on behalf of all others
similarly situated

Plaintiffs

v.

Food Safety Net Services, LTD

Defendant

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Civil Action Number : _____

Jury Demanded

PLAINTIFFS' ORIGINAL COMPLAINT

Almuiz Altiep and Tafsir Shawkat (collectively, “**Plaintiffs**”), individually and on behalf of all other non-exempt laboratory technicians currently and formerly employed by Food Safety Net Services, LTD (“**Defendant**”), each of whom are similarly situated, bring this Fair Labor Standards Act (“**FLSA**”) suit against Defendant and show as follows:

A. Nature of Suit.

1. The FLSA was passed by Congress in 1938 as remedial legislation intended to benefit and protect workers. See *Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728,739 (1981); *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727 (1947). One of the primary purposes of the FLSA is to protect workers from “substandard wages and oppressive working hours.” *Barrentine*, 450 U.S. at 739; see 29 U.S.C. § 202(a), (b) (stating Congress’ intent to eliminate substandard labor conditions). “[T]he FLSA was designed to give specific minimum protections to *individual* workers and to ensure that *each* employee covered by the Act would receive ‘[a] fair day’s pay for a fair day’s work’ and would be protected from the evil of ‘overwork’ as well as ‘underpay.’” *Barrentine*, 450 U.S. at 739 (quoting *Overnight Motor Transp. Co. v. Missel*, 316 U.S. 572, 578 (1942) (quoting 81 Cong. Rec. 4983 (1937) (message of President Roosevelt))). 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. Defendant failed to pay Plaintiffs and the Class Members in accordance with the Fair Labor Standards Act. Specifically, Plaintiffs and the Class Members were non-exempt employees yet Defendant failed to pay Plaintiffs and the Class Members at time and one half their regular rate of pay for hours worked in a workweek in excess of forty hours.

B. Parties.

3. Almuiz Altiep is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Plaintiff lives in the Northern District of Texas. Almuiz Altiep’s consent to be a party plaintiff is attached as Exhibit A.
4. Tafsir Shawkat is an individual who was employed by Defendant within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Tafsir Shawkat’s consent to be a party plaintiff is attached as Exhibit B.
5. The “**Class Members**” are Defendant’s current and former employees who, within the actionable time period, were employed as laboratory technicians in Defendant’s laboratories at its Locations throughout the United States and not compensated at the statutory rate of one and one-half times their regular rate of pay for all hours worked more than forty (40) in a workweek.
6. Defendant is a domestic limited partnership, existing under the laws of Texas, whose corporate headquarters is located at 199 W. Rhapsody, San Antonio, TX 78216. Defendant maintains an office in this district. Defendant can be served by serving its registered agent Gary Messersmith, 1300 Post Oak Blvd, Suite 2000, Houston, TX 77056.

C. Jurisdiction and Venue.

7. Venue of this action is proper in this district because the events giving rise to the cause of action alleged herein occurred in this judicial district and Defendant maintains one or

more offices in this district. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

8. Defendant carries on substantial business in the Northern District of Texas and has sufficient minimum contacts with this state to be subject to this Court's jurisdiction.
9. Further, the acts and omissions that form the basis of the lawsuit (i. e., Defendant's failure to pay overtime compensation) occurred within this District.
10. This Court has jurisdiction over this case pursuant to the district court's federal question jurisdiction as set forth in 28 U.S.C. § 1331. Specifically, this case is brought pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as amended.
11. This Court has the authority to grant declaratory relief pursuant to the FLSA and the Federal Declaratory Judgment Act ("DJA"), 28 U.S.C. §§ 2201-02.

D. Coverage.

12. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs and the Class Members.
13. At all material times, Defendant has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
14. At all material times, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
15. At all material times, Defendant has 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).

16. At all times hereinafter mentioned, Plaintiffs were employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 - 207.

E. Factual Allegations

17. Defendant has operations throughout the United States in which it performs laboratory analysis to verify food quality and safety. Defendant's laboratories are located San Antonio, Texas; Dallas/Ft. Worth, Texas; Phoenix, Arizona; Green Bay, Wisconsin; Atlanta, Georgia; Columbus, Ohio; Fresno, California; and Los Angeles, California (each a "**Location**" and collectively the "**Locations**"). In its laboratories Defendant tests food products and environmental samples. Defendant's laboratories are open 24 hours a day, 7 days a week, year round.
18. The laboratory technicians employed by Defendant follow a signed series of processes, procedures or techniques in accordance with Defendant's Methods Manual, Quality Manual, Chemical Hygiene Plan, Safety Manual, and approved laboratory procedures.
19. The work performed by the laboratory technicians does not require the consistent exercise of discretion and/or judgment. To the contrary, the activities performed in the highly controlled laboratory must follow Defendant's established policies and procedures.
20. Plaintiffs and the Class Members were/are laboratory technicians employed by Defendant to perform work in its laboratories at the Locations.
21. Plaintiff Almuiz Altiep worked for Defendant as a laboratory technician from approximately December of 2011 until approximately June of 2013.
22. Plaintiff Tafsir Shawkat worked for Defendant as a laboratory technician from approximately December 2011 to approximately January 2013.
23. For the period of time between December 15, 2011 and May 15, 2012 for the work that Plaintiff Shawkat performed as a technician in the laboratory, Plaintiff Shawkat was paid on an hourly basis. Shawkat, however, was not paid for hours in excess of forty (40) hours per week for at the statutory rate of one and one-half times their regular rate of pay. He was only paid straight time. For work performed after May 15, 2012 Plaintiff Shawkat was paid a salary.

24. For the work Plaintiffs performed as technicians in the laboratory, Plaintiffs and the Class Members at times appear to have been paid on a salary basis.
25. During their employment, Plaintiffs and the Class Members worked in excess of forty (40) hours per week for which they were not compensated at the statutory rate of one and one-half times their regular rate of pay.
26. Plaintiffs and the Class Members routinely worked in excess of forty (40) hours per week as part of their regular job duties.
27. Despite the fact that Plaintiffs and the Class Members worked more than(40) hours per week, Defendant failed to pay Plaintiffs and the Class Members overtime compensation at a rate of one and one-half times their regular rates of pay for hours worked over forty (40) in a workweek.
28. Defendant has employed and continues to employ numerous other individuals who performed and continue to perform the same or similar duties under the same or similar pay policies as Plaintiffs. These other individuals are the Class Members.
29. Defendant has violated Title 29 U.S.C. § 207 in that:
 - a. Plaintiffs and the Class Members worked in excess of forty (40) hours per week during one or more weeks of employment;
 - b. No payments, or insufficient payments and/or provisions for payment, have been made by Defendant to properly compensate Plaintiffs and the Class Members at the statutory rate of one and one-half times the 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.

F. Collective Action Allegations.

30. Plaintiff and the Class Members are/were all non-exempt employees of Defendants and performed the same or similar job duties as one another in that they performed technical services in Defendant's laboratories at Defendant's Locations.
31. All of these individuals are/were and are paid in the same manner, either in what appears to be a salary basis or at other times on an hourly basis. Under neither pay scheme were the individuals paid proper overtime compensation.
32. All of these individuals are/were deprived of overtime pay even though they routinely worked in excess of forty (40) hours in a workweek.
33. Further, Plaintiff and the Class Members are/were subjected to the same pay provisions in that they are/were all paid hourly or on a salary 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.
34. Thus, the Class Members are owed overtime wages for the same reasons as Plaintiffs.
35. Defendant's failure to compensate Plaintiffs and the Class Members at a rate one and one-half times their regular rate of pay 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 Plaintiffs and the Class Members.
36. Application of this policy or practice does/did not depend on the personal circumstances of Plaintiffs or those joining this lawsuit. Rather, the same policy or practice which resulted in the non-payment of overtime to Plaintiffs applied and continues to apply to all Class Members.
37. Defendant knowingly, willfully, or with reckless disregard carried out its illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiffs and the Class Members.
38. Defendant did not act in good faith and/or have reasonable grounds for a belief that its actions did not violate the FLSA nor did it 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.

39. Defendant has failed to maintain accurate records of Plaintiffs' and the Class Members' work hours in accordance with the law.

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

40. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.
41. Plaintiffs and the Class Members were, and are, entitled to be paid at the statutory rate of one and one-half times their regular rate of pay for those hours worked in excess of forty (40) hours in a workweek.
42. During the relevant period, Defendant 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.
43. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.
44. To date, Defendant continues to fail to pay Plaintiffs and the Class Members their FLSA mandated overtime pay.
45. Defendant's 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 Plaintiffs and the Class Members at the statutory rate of one and one-half times their regular rate of pay for the hours worked in excess of forty (40) hours in a workweek when it knew, or should have known, such was, and is due.
46. Defendant has failed to properly disclose or apprise Plaintiffs and the Class Members of their rights under the FLSA.

47. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiffs and the Class Members suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours in a workweek, plus liquidated damages.
48. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

H. Jury Demand.

49. Plaintiffs demand a trial by jury herein.

I. Relief Sought.

50. Wherefore, Plaintiffs, individually and on behalf of the Class Members, respectfully request that this Court grant the following relief for the time period beginning three years prior to the date of the filing of this suit and continuing to the date of trial:
 - a. Designation of this action as a collective action on behalf of the Class Members and promptly issue a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals, appraising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual consents to participate in the suit pursuant to 29 U.S.C. §216(b);
 - b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;
 - c. A finding that Defendant's actions are willful under the FLSA;
 - d. An award of unpaid wages and overtime compensation due under the FLSA and continuing until the time of trial;
 - e. An award of liquidated damages as a result of the Defendant's failure to pay wages and overtime compensation pursuant to the FLSA and continuing until the time of trial;
 - f. An award of prejudgment and post judgment interest;

- g. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- h. Such other and further relief as this Court deems just and proper.

Respectfully submitted:

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