

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

**James Jacques**

Plaintiff

vs.

**Regency Field Services LLC and The  
Burnett Companies Consolidated,  
Inc.**

Defendants

Civil Action No. 3:14-cv-01227-P

Jury Demanded

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**Plaintiff James Jacques' First Amended Original Complaint**

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James Jacques (“**Plaintiff**”) brings this Fair Labor Standards Act (“**FLSA**”) suit against Regency Field Services LLC (**Defendant Regency**) and The Burnett Companies Consolidated, Inc. (“**Defendant Burnett**”) (Defendant Regency and Defendant Burnett each a “**Defendant**” and collectively “**Defendants**”) and shows as follows:

**A. 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, Defendants 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 because Plaintiff was instructed not to record all of the hours he was working.

**B. Parties.**

3. Plaintiff 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.

4. Plaintiff lives in the Northern District of Texas. Plaintiff’s consent to be a party plaintiff is attached as Exhibit A to this Complaint.

5. Defendant Regency Field Services LLC is a limited liability company doing business in Texas and has whose address is 2001 Bryan Street, Suite 3700, Dallas, Texas. Defendant Regency may be served by serving its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin, TX 78701.

6. Defendant Burnett Companies Consolidated, Inc is a Texas corporation, whose address is 9800 Richmond, Suite 800, Houston, TX 77042. Defendant Burnett may be served by serving its registered agent, Clarence A. Burnett at 9800 Richmond, Suite 800, Houston, TX 77042.

**C. Jurisdiction and Venue.**

7. Venue of this action is proper in this District and division because Defendants have sufficient contacts in this State and District to subject it to personal jurisdiction. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

8. Defendants each carry on substantial business in the District and have sufficient minimum contacts with this state to be subject to this Court's jurisdiction.

9. 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.

**D. Coverage.**

3. At all material times, Defendant Regency has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

4. At all material times, Defendant Regency has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

5. At all material times, Defendant Regency has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

6. At all material times, Defendant Regency 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).

7. At all material times, Defendant Burnett has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.

8. At all material times, Defendant Burnett has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

9. At all material times, Defendant Burnett has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

10. At all material times, Defendant Burnett 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).

11. 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.

**E. Factual Allegations**

12. Defendant Burnett is a staffing company that provides employment services to Defendant Regency. Defendant Regency is in the gas transfer business.

13. Defendant Regency hired Plaintiff and utilized the services of Defendant Burnett to administratively process Plaintiff's employment.

14. Defendant Regency: (1) possessed the power to hire and fire Plaintiff; (2) supervised and controlled employee the work schedule or conditions of employment of Plaintiff; (3) determined the rate and method of payment for Plaintiff; and (4) maintained employment records with regard to Plaintiff.

15. Prior to beginning employment with Defendant Regency, Plaintiff interviewed with management employees of Defendant Regency and was selected for the position by Defendant Regency's employees. Plaintiff's compensation was determined by employees of Defendant Regency and was agreed upon at \$55 per hour prior to Plaintiff been employed by Defendant Regency.

16. At all times during his employment by Defendant Regency, the hourly rate at which Plaintiff was compensated was determined by employees of Defendant Regency.

17. Plaintiff reported for work at Defendant Regency's office. Plaintiff interacted with Defendant Regency's employees and reported directly to Defendant Regency's supervisors. Plaintiff was required to follow the rules of employment and conduct of Defendant Regency.

18. Defendant Regency approved Plaintiff's time and electronically sent Plaintiff's time records to Defendant Burnett for payment by Defendant Burnett.

19. Defendant Regency issued Plaintiff a laptop computer and cell phone paid for by Defendant Regency.

20. Defendant Burnett also: (1) possessed the power to hire and fire Plaintiff; (2) supervised and controlled the work schedule or conditions of employment of Plaintiff; (3) determined the rate and method of payment for Plaintiff; and (4) maintained employment records with regard to Plaintiff.

21. Defendant Burnett and Defendant Regency were joint employers of Plaintiff.

22. Plaintiff was employed by Defendants as a non-exempt employee.

23. Plaintiff was employed by Defendants to provide "recruiting" services.

24. Plaintiff worked in this capacity from September 2011 to February of 2014.

25. Plaintiff was paid by Defendants on an hourly basis.

26. Plaintiff's regular rate of pay was \$55.00 per hour.

27. Plaintiff's overtime rate of pay was \$82.50 per hour.

28. Plaintiff was not paid a salary by Defendants.

29. Plaintiff was not paid on a "salary basis" as defined in 29 C.F.R. § 541.602(a).

30. There was no predetermined amount of compensation Plaintiff was to receive each workweek.

31. There was no guaranteed amount of compensation Plaintiff was to receive each workweek.

32. Plaintiff was paid overtime at time and one half his regular rate of pay for **some** of the hours he worked for Defendants

33. In most of the work weeks during which Plaintiff worked more than 40 hours, Plaintiff was only paid for 40 hours regardless of the number of hours he actually worked.

34. Plaintiff routinely worked in excess of forty (40) hours per week as part of his regular job duties.

35. On multiple occasions, Plaintiff informed Defendants that he routinely was working more than 40 hours per week.

36. Defendants were aware that Plaintiff routinely worked more than 40 hours in most if not all workweeks.

37. Despite the fact that Defendants were aware that Plaintiff was working more than 40 hours each week, Defendants did not compensate Plaintiff for all the extra hours of work performed.

38. Defendants failed to pay Plaintiff overtime compensation at a rate of one and one-half times his regular rate of pay for all hours worked over forty (40) in a workweek.

39. With regard to Plaintiff, Defendants have violated 29 U.S.C. § 207 in that:

- a. Plaintiff worked in excess of forty (40) hours per week for his period of employment with Defendants; and
- 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 Plaintiff's regular rate for all hours worked in excess of forty (40) hours per work week as provided by the FLSA.

40. 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.

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

41. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

42. Plaintiff was 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 in a workweek.

43. Defendants failed to pay Plaintiff at the statutory rate of one and one-half times Plaintiff's regular rate of pay for all the hours worked in excess of forty (40) hours in a workweek.



44. Defendants' actions in this regard were willful and/or showed reckless disregard for the provisions of the FLSA as evidenced by their knowledge of the requirement to pay the statutory rate of one and one-half times Plaintiff's regular rate of pay for the hours worked in excess of forty (40) hours per weeks (Defendants paid overtime in some weeks but not all weeks) and their failure to do so with regard to hours which they knew Plaintiff was working.

45. Defendants 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 its 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.

46. 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.

47. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

**G. Demand for Jury.**

Plaintiff demands a jury trial.

**H. Prayer.**

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

- a. Overtime compensation for all unpaid hours worked in excess of forty hours in any workweek at the rate of one-and-one-half times his regular rate;
- b. All unpaid wages and overtime compensation;
- c. An award of liquidated damages pursuant to 29 U.S.C § 216;
- d. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- e. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- f. Such other relief as to which Plaintiff may be entitled.

Respectfully submitted:

The Law Office of Chris R. Miltenberger, PLLC

By:           /s/ Chris R. Miltenberger          

Chris R. Miltenberger

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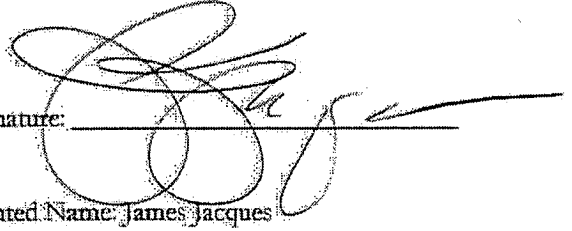
Attorney for Plaintiff

# Exhibit A

**CONSENT TO BE PARTY PLAINTIFF**

I consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act from The Burnett Companies Consolidated, Inc. and other entities/ individuals who are determined to be employers under the Fair Labor Standards Act and their affiliates.

Date: 3/31/14

Signature:   
Printed Name: James Jacques

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Consent to be Party Plaintiff

**Exhibit A to Complaint**