

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

Luis Morales and Joey Lara, individually  
and on behalf of all others similarly  
situated,

Plaintiffs,

v.

Sports Venue Signs, LLC and Garry  
Waldrum

Defendants

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Case Number: \_\_\_\_\_

Jury Demanded

**Plaintiffs’ Original Complaint**

1. Plaintiffs Luis Morales and Joey Lara (hereinafter individually referred to as a “**Plaintiff**” and collectively as “**Plaintiffs**”) were employees pursuant to the economic reality (despite being misclassified classified as independent contractor) of Sports Venue Signs, LLC and Garry Waldrum (individually each a “**Defendant**” and collectively “**Defendants**”) and bring this action on themselves and other current and former employees (including misclassified independent contractors) similarly situated for overtime compensation and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216 (b) (“FLSA”).

2. During Plaintiffs’ employment with Defendants, they worked as scoreboard/arena sign fabricator/installers (“Fabricator/Installer”).

3. Plaintiffs performed their duties with Defendants in Dallas, Dallas County, which is within the jurisdiction of this Court.

4. This action is brought to recover from Defendants overtime compensation, liquidated damages, and cost and reasonable attorney's fees pursuant to the provisions of the FLSA.

#### **Parties**

5. Plaintiffs Morales and Lara were individuals who were employed by Defendants within the meaning of the FLSA within the three year period preceding the filing of this Complaint. Plaintiffs' respective consents to be a party plaintiff are being filed separately with the Court.

6. The "**Class Members**" are Defendants' current and former employees who, within the actionable time period, performed work as Fabricators/Installers for Defendants, paid on an hourly basis, and worked overtime hours during or after February 9, 2012 but were 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. The Class Members were incorrectly classified as independent contractors by Defendants.

7. Defendant Sports Venue Signs, LLC is a limited liability company with a principal place of business in Dallas County, Texas who can be served at 2580 Esters Blvd, Suite 200, DFW Airport, TX 75261.

8. Defendant Waldrum is an individual who can be served at 2580 Esters Blvd, Suite 200, DFW Airport, TX 75261.

### **Jurisdiction and Venue**

9. 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 Defendants maintain one or more offices in this district. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

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

11. Further, the acts and omissions that form the basis of the lawsuit (i.e., Defendants' failure to pay overtime compensation) occurred within this District.

12. 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.

13. 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.

### **Coverage**

14. At all material times, Defendant Waldrum has acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs.

15. At all material times, Defendant Waldrum has acted, directly or indirectly, in the interest of an employer with respect to the Class Members.

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

17. At all material times, Defendant Sports Venue Signs, LLC has acted, directly or indirectly, in the interest of an employer with respect to Plaintiffs.

18. At all material times, Defendant Sports Venue Signs, LLC has acted, directly or indirectly, in the interest of an employer with respect to the Class Members.

19. At all material times, Defendant Sports Venue Signs, LLC has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

20. At all material times, Defendant Sports Venue Signs, LLC has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

21. At all material times, Defendant Sports Venue Signs, LLC 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). Defendant's employees, including Plaintiffs and the Class Members, fabricate and install scoreboards and arena signs in various locations around the United States. The employees utilize tools and equipment that have traveled in interstate commerce in the performance of their duties and install scoreboards and arena signs that have traveled in interstate commerce.

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

23. Defendant Waldrum had authority to set corporate policy, participate in decisions regarding the payment of employees as well as participate in decisions regarding whether or not to pay overtime to Plaintiffs and the Class Members. In addition, Defendant Waldrum had operational control of significant aspects of the Defendant Sports Venue Signs, LLC's day-to-day functions and independently exercised control over the work situation. He had direct involvement in the day-to-day operation of Defendant Sports Venue Signs, LLC and had some direct responsibility for the supervision of the employees.

24. Defendant Waldrum: (a) possessed the power to hire and fire the employees; (b) supervised and controlled employee work schedules or conditions of employment; (c) determined the rate and method of payment; and (d) maintained employment records.

### **Factual Allegations**

25. Plaintiffs and the Class Members performed manual labor for Defendants.

26. Defendants manufacture, sell and install scoreboards and arena signs throughout the country. Defendants manufacture and install the scoreboards and arena signs through the use of hired laborers who Defendants treats as "independent contractors." In reality, the alleged independent contractors are actually employees of Defendants who are/were performing non-exempt work which is the fundamental service provided by Defendants.

27. The work performed for Defendants by Plaintiffs and the Class Members was completely controlled by Defendants.

28. The Plaintiffs and Class Members had no investment in the tools and equipment used to perform the work for Defendants.

29. Plaintiffs and the Class Members could only make more money by working more hours as they were paid solely on an hourly basis.

30. Plaintiffs and the Class Members acquired on the job training to develop the skill and initiative required in performing the job.

31. Plaintiffs and the Class Members worked only for Defendants and for an extended period of time; they were not engaged just to perform a set job.

32. Plaintiffs and the Class Members routinely worked more than forty hours a week for Defendants.

33. As employees and not independent contractors, Plaintiffs and the Class Members are/were entitled to be paid time and one half of their regular rates of pay for each hour worked in excess of forty (40) per workweek.

34. In the course of employment with Defendants, Plaintiffs and the Class Members were not paid time and one half of their regular rate of pay for all hours worked in excess of forty (40) per week during one or more workweeks.

35. Instead, Defendants paid Plaintiffs and the Class Members on a straight hourly rate, with no additional compensation for the overtime hours they worked because Defendants misclassified Plaintiffs and the Class Members as independent contractors. As a

result, the only compensation Plaintiffs and the Class Members received was the hourly rate compensation they generated from the work they performed.

36. The records, if any, concerning the number of hours actually worked, and the compensation actually paid to Plaintiffs and the Class Members are in the possession and custody of Defendants.

37. Plaintiffs have retained the undersigned counsel to represent them in this action. Pursuant to 29 U.S.C. § 216 (b), Plaintiffs are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

38. Defendants have 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 Defendants 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. Defendants have failed to maintain proper time records as mandated by the FLSA.

### **Collective Action Allegations**

39. Plaintiffs 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 all performed manual labor fabricating and installing scoreboards and arena signs.

40. All of these individuals are/were and are paid in the same manner, i.e., a flat hourly rate. The individuals were not paid proper overtime compensation.

41. All of these individuals are/were deprived of overtime pay even though they routinely worked in excess of forty (40) hours in a workweek.

42. Further, Plaintiffs and the Class Members are/were subjected to the same pay provisions in that they are/were all paid on a straight hourly basis 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.

43. Thus, the Class Members are owed overtime wages for the same reasons as Plaintiffs.

44. Defendants' 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.

45. 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.

46. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiffs and the Class Members. Defendants treated some individuals as employees and other



individuals as independent contractors despite the fact that the duties and work conditions of each of the two groups were the same.

47. 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 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.

48. Defendants have failed to maintain accurate records of Plaintiffs' and the Class Members' work hours in accordance with the law.

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

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

50. 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.

51. 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.

52. At all times material hereto, Defendants failed, and continues to fail, to maintain proper time records as mandated by the FLSA.

53. To date, Defendants continue to fail to pay Plaintiffs and the Class Members their FLSA mandated overtime pay.

54. 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 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 they knew, or should have known, such was, and is due.

55. Defendants have failed to properly disclose or apprise Plaintiffs and the Class Members of their rights under the FLSA.

56. Due to the intentional, willful, and unlawful acts of Defendants, 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.

57. Plaintiffs are entitled to an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

### **Demand for Jury Trial**

58. Plaintiffs demand a jury trial.

**Prayer for Relief**

59. Wherefore, Plaintiffs, individually and on behalf of the Class Members, respectfully requests 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 Plaintiffs and 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. An order requiring Defendants to turn over to Plaintiffs, at Defendants' expense, a detailed investigative accounting for the number of overtime-eligible hours actually worked by the Plaintiffs and all the putative Class Members;

c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

d. An order for injunctive relief ordering the Defendants to end all of the illegal wage practices alleged herein pursuant to the FLSA and related laws and regulations;

e. An order imposing a Federal Monitor to be put in place for 5 years at Defendants' expense with the power to subpoena, observe and report and ensure Defendants' compliance with the FLSA.

f. A finding that Defendants' actions are willful under the FLSA;

- g. An award of unpaid wages and overtime compensation due under the FLSA and continuing until the time of trial;
- h. An award of liquidated damages as a result of the Defendants' failure to pay wages and overtime compensation pursuant to the FLSA and continuing until the time of trial;
- i. An award of prejudgment and post judgment interest;
- j. An award of costs and expenses of this action together with reasonable attorneys' and expert fees;
- k. Incentive awards for the lead Plaintiffs;
- l. Leave to add additional Plaintiffs by motion, the filing of written consents, or any other method approved by the Court;
- m. Equitably tolling of the statute of limitations for the Class Members effective the date of the filing of this Complaint; and
- n. Such other and further relief as this Court deems just and proper.

Respectfully submitted:

The Law Office of Chris R. Miltenberger, PLLC

By:           /s/ Chris R. Miltenberger          

Chris R. Miltenberger

Texas State Bar Number 14171200

1340 N. White Chapel, Suite 100

Southlake, Texas 76092-4322

817-416-5060 (office)

817-416-5062 (fax)

[chris@crmlawpractice.com](mailto:chris@crmlawpractice.com)

Attorney for Plaintiffs Luis Morales and Joey  
Lara