

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

Christian Gonzalez, individually and on behalf of all others similarly situated, Plaintiff, v. Western Transportation, Inc., Defendant.	CA No.: Jury Demanded
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PLAINTIFF’S ORIGINAL COMPLAINT

Christian Gonzalez (“**Plaintiff**”), individually and on behalf of all other non-exempt “Field Supervisors” (Defendant improperly classified them as exempt) currently and formerly employed by Western Transportation, Inc. (“**Defendant**”), each of whom are similarly situated, brings 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 Plaintiff and the Class Members in accordance with the Fair Labor Standards Act. Specifically, Plaintiff and the Class Members should have been classified as non-exempt employees yet Defendant treated them as exempt and failed to pay Plaintiff 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. Christian Gonzalez 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. Christian Gonzalez's consent to be a party plaintiff is being filed with the Court.

4. The "**Class Members**" are Defendant's current and former employees who, within the actionable time period, were employed as Field Supervisors for Defendant at its Locations in Texas, New Mexico, Kansas, Louisiana, Oklahoma, and other locations in the United States. They were and are 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.

5. Defendant is a corporation, existing under the laws of Texas, whose corporate headquarters is located at 501 S US Hwy 81/287 Bus., P.O. Box 660, Decatur, TX 76234. Defendant maintains an office in this district. Defendant can be served by serving its registered agent R. Blake Sandford, 501 U.S. Highway 81 South, Decatur, TX 76234.

C. Jurisdiction and Venue.

6. 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 regional offices in this District and Division. Venue exists in the judicial district pursuant to 28 U.S.C. § 1391.

7. Defendant carries on substantial business in the Northern District of Texas, has a regional office in this Division and has sufficient minimum contacts with this state to be subject to this Court's jurisdiction.

8. 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.

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.

10. 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.

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

12. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to 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). Defendant's employees utilize tools and equipment that have traveled in interstate commerce in the performance of their duties.

16. At all times hereinafter mentioned, Plaintiff was an employee who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206 - 07.

E. Factual Allegations

17. Defendant provides fuel services to the oil field industry in Texas, Oklahoma, Kansas, New Mexico and Louisiana.

18. Plaintiff was employed by Defendant as a Field Supervisor. Although called “supervisors” the Plaintiff and Class Members did not qualify for the “executive” exemption of the FLSA. The employees do not hire or fire employees, and their primary duties are NOT the management of the enterprise or of a customarily recognized department or subdivision of Defendant. The field supervisors spend the overwhelming majority of their time on traditional non-exempt duties, i.e., driving, cleaning, repairing and maintaining vehicles and delivering fuel. Specifically Plaintiff has no responsibility for:

- a. Interviewing, selecting, and training employees;
- b. Setting and adjusting pay and work hours;
- c. Maintaining production or sales records;
- d. Hiring or firing employees;
- e. Appraising employee productivity and efficiency;
- f. Handling employee complaints and grievances;
- g. Disciplining employees;
- h. Planning and controlling the budget; or
- i. Monitoring or implementing legal compliance measures.

19. The employees do not qualify for the “administrative” exemption of the FLSA. The employees’ primary duty is NOT the performance of office or non-manual work directly related to the management or general business operations of the Defendant or Defendant’s employees.

20. The field supervisors employed by Defendant perform manual labor shuttling drivers and employees to job sites, delivering motor oil, anti-freeze, diesel fuel additive to customers, delivering food and ice to employees on job sites, cleaning the bunk house/living quarters of Defendant’s employees and repairing trucks and equipment used to deliver products to customers. These tasks are routine and do not require the exercise of independent judgment or discretion.

21. Plaintiff Gonzalez worked for Defendant as a field supervisor during the three years preceding this lawsuit.

22. For the work Plaintiff performed as a field supervisor, Plaintiff and the Class Members were/are paid on a salary basis.

23. During his employment, Plaintiff 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.

24. Plaintiff and the Class Members routinely worked in excess of forty (40) hours per week as part of their regular job duties.

25. Despite the fact that Plaintiff and the Class Members worked more than(40) hours per week, Defendant failed to pay Plaintiff 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.

26. 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 Plaintiff. These other individuals are the Class Members.

27. Defendant has violated Title 29 U.S.C. § 207 in that:

a. Plaintiff 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 Plaintiff 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.

28. Plaintiff and the Class Members are/were all non-exempt employees of Defendant and performed the same or similar job duties as one another in that they all performed manual labor shuttling drivers and employees to job sites, delivering motor oil, anti-freeze, diesel fuel additive to customers, delivering food and ice to employees on job sites, cleaning the bunk house/living quarters of Defendant's employees and repairing trucks used to deliver products to customers.

29. All of these individuals are/were and are paid in the same manner, i.e., a salary basis. The individuals were not paid proper overtime compensation.

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

31. Further, Plaintiff and the Class Members are/were subjected to the same pay provisions in that they are/were all paid on a salary 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.

32. Thus, the Class Members are owed overtime wages for the same reasons as Plaintiff.

33. Defendant's failure to compensate Plaintiff 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 Plaintiff and the Class Members.

34. 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.

35. Defendant 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.

36. 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.

37. Defendant has failed to maintain accurate records of Plaintiff's 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.

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

39. Plaintiff 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.

40. During the relevant period, Defendant violated § 207 of 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. At all times material hereto, Defendant failed, and continues to fail, to maintain proper time records as mandated by the FLSA.

42. To date, Defendant continues to fail to pay Plaintiff and the Class Members their FLSA mandated overtime pay.

43. 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 Plaintiff 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.

44. Defendant has failed to properly disclose or apprise Plaintiff and the Class Members of their rights under the FLSA.

45. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff 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.

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

H. Jury Demand.

47. Plaintiff demands a trial by jury herein.

I. Relief Sought.

48. Wherefore, Plaintiff, 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 Plaintiff 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 Defendant to turn over to Plaintiff, at Defendant's expense, a detailed investigative accounting for the number of overtime-eligible hours actually worked by the Plaintiff 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 Defendant 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 Defendant's expense with the power to subpoena, observe and report and ensure Defendant's compliance with the FLSA.

f. A finding that Defendant's 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 Defendant's 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 Plaintiff (s);
- 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:

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