

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

Clemente Rangel,	§	
	§	
Plaintiff,	§	
	§	CA No. 3:16-cv-2187
v.	§	
	§	
Lone Star Tank Rental Inc.	§	Jury Demanded
	§	
Defendant.	§	

PLAINTIFF’S ORIGINAL COMPLAINT

Clemente Rangel (“**Plaintiff**”) brings this Fair Labor Standards Act (“**FLSA**”) suit against Lone Star Tank Rental Inc. (“**Defendant**”) and shows as follows:

1. Nature of Suit.

1.1. 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)).

1.2. Defendant failed to pay Plaintiff in accordance with the Fair Labor Standards Act. Specifically, 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 because Plaintiff

was not compensated for “off-the-clock” hours he worked at home and away from the work location when he took telephone calls and texts during his on-call time.

2. Parties.

2.1. Plaintiff 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’s consent to be a party plaintiff is being filed separately with the Court.

2.2. Defendant is a Delaware corporation, registered to do business in Texas, whose office address is 1805 Howard Road, Waxahachie, TX 75165. Defendant may be served by serving its registered agent, Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company, 211 East 7th Street, Suite 620, Austin, TX 78701-3218.

3. Jurisdiction and Venue.

3.1. Venue of this action is proper in this District and division because Defendant has 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.

3.2. Defendant carries on substantial business in the District and has sufficient minimum contacts with this state to be subject to this Court’s jurisdiction.

3.3. 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.

4. Coverage.

- 4.1. At all material times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Plaintiff.
- 4.2. At all material times, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
- 4.3. 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).
- 4.4. 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).
- 4.5. 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. § 207.

5. Factual Allegations

- 5.1. Beginning in approximately October of 2013, Plaintiff was employed by Defendant as a hand/crew leader assigned out of Defendant's Kenedy, Texas office.
- 5.2. For all times relevant to this lawsuit Plaintiff was paid on an hourly basis.
- 5.3. Plaintiff's duties required him to perform manual labor and to coordinate or dispatch other crews.
- 5.4. For a period of time until approximately March of 2015 Plaintiff was paid approximately 15 hours a week extra for his dispatch duties. Beginning in March of 2015 Plaintiff was denied the extra hours pay but was required to continue to perform the dispatch duties and do so without pay.
- 5.5. Plaintiff was not paid for all the time he spent dispatching or coordinating other crews. Because he was not paid for all of his dispatch time Plaintiff was forced to work "off the clock."
- 5.6. As a dispatch person, Plaintiff was required to be on-call and required to perform duties after he clocked out. Plaintiff was not paid for the time he responded to work-related telephone calls and texts during his on-call status.
- 5.7. Defendant was aware of Plaintiff's duties and that he was not being paid for all the time he spent dispatching because Plaintiff discussed it with his supervisor, John Estrello. Plaintiff was told by Trey Ernst, the Operations Manager for Defendant, that he would not be paid for the dispatch hours.

5.8. Plaintiff routinely worked more than 40 hours a week as part of his job duties and did so during many workweeks included in the three years prior to the filing of this Complaint. For example, during the workweek covering December 28, 2015 to January 3, 2016 Plaintiff was paid for 51.12 working hours (including some overtime hours) and 8 holiday hours; yet, he worked additional hours “off the clock.” Plaintiff was not allowed to record these hours and was not paid for these hours. Thus, he was not paid for all the hours he worked and he was denied overtime pay during that week.

5.9. Despite the fact that Plaintiff worked more than forty (40) hours per week, Defendant 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 because Defendant failed to include work performed by Plaintiff after his normal shift ended.

5.10. Defendant violated Title 29 U.S.C. § 207 in that Plaintiff worked in excess of forty (40) hours per week for his period of employment with Defendant and no payments, or insufficient payments and/or provisions for payment, have been made by Defendant to properly compensate Plaintiff at the statutory rate of one and one-half times Plaintiffs regular rate for all hours worked in excess of forty (40) hours per work week as provided by the FLSA.

5.11. 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.

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

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

6.2. 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. Defendant's failure to do so is in violation of 29 U.S.C. §207.

6.3. Defendant's actions in this regard were/are willful and/or showed/show reckless disregard for the provisions of the FLSA as evidenced by its 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 but failed to do so with regard to hours which it knew Plaintiff was working.

6.4. Due to the intentional, willful, and unlawful acts of Defendant, Plaintiff suffered and continues to suffer damages and lost compensation for time worked over forty (40) hours per week, plus liquidated damages.

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

7. Demand for Jury.

7.1. Plaintiff demands a jury trial on all matter so triable.

8. Prayer.

8.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that he recovers from Defendant, the following:

- 8.1.1. 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;
- 8.1.2. An award of liquidated damages as a result of the Defendant's willful failure to pay wages and overtime compensation pursuant to 29 U.S.C § 216;
- 8.1.3. Reasonable attorney's fees, expert fees, costs, and expenses of this action as provided by the FLSA;
- 8.1.4. Pre-judgment and post-judgment interest at the highest rates allowed by law;
- 8.1.5. Such other relief as to which Plaintiff may be entitled.

Respectfully submitted:

By: /s/ Chris R. Miltenberger
Chris R. Miltenberger
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Designated as Lead Attorney

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