

2. Defendant operates a residential and commercial garbage pickup and disposal business in East Texas. Defendant employed employees, including Named Plaintiff and the Class Members, to pick up trash and transport that trash to a landfill. Defendant paid Named Plaintiff and the Class Members a day rate, and did not pay overtime premiums for any hours worked over forty. Additionally, some Class Members' day rates were so low that their regular rate fell below minimum wage. As such, Defendant violated the FLSA by failing to pay Named Plaintiff and other non-exempt Class Members both minimum wages and overtime wages.
3. Because there are other putative Plaintiffs who are similarly situated to the Named Plaintiff with regard to the work performed and the Defendant's compensation policies, Named Plaintiff brings this action as a collective action pursuant to 29 U.S.C. § 216(b).

II. PARTIES

4. Named Plaintiff Kendell Hill is an individual residing in this Judicial District. His notice of consent is attached to Plaintiff's Original Collective Action Complaint as Exhibit A. At all relevant times, Hill was an "employee" of Defendant as defined by the FLSA. At all relevant times, Defendant was Hill's "employer" as defined by the FLSA.
5. Plaintiffs are Defendant's current and former employees who were paid a day rate and who were not paid overtime and/or minimum wages.
6. Defendant Ameri-Tex Services, Inc. is a domestic corporation formed and existing under the laws of the State of Texas. Clayton Vickers is the agent for service of process, and he can be served at 311 W. Main, Whitehouse, Texas 75791.
7. Defendant was an employer of Named Plaintiff and those similarly situated as defined by 29 U.S.C. §203(d).

III. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction in this matter because Named Plaintiff asserts claims arising under federal law. Specifically, Named Plaintiff asserts claims arising under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331. This Court also has personal jurisdiction over all parties to this action.
9. The Court has personal jurisdiction over Defendant because Defendant conducts business in Texas and has entered into relationships with Plaintiff in Texas and has committed actions in Texas that give rise to this cause of action.
10. Venue is proper in the Eastern District of Texas, Texarkana Division, pursuant to 28 U.S.C. § 1391(b), because Defendant is located in and does business in this Division, and Plaintiff was employed in this Division. Inasmuch as Defendant is subject to this Court's personal jurisdiction for purposes of this civil action, Defendant resides in this district and division. Venue in this Court is therefore proper under 28 U.S.C. § 1391(b).

IV. COVERAGE UNDER THE FLSA

11. At all relevant times, Defendant has acted, directly or indirectly, in the interest of an employer with respect to Named Plaintiff and the Class Members.
12. At all times hereinafter mentioned, Defendant has been an "employer" within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).
13. At all times hereinafter mentioned, Defendant has been engaged in an "enterprise" within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).
14. At all times hereinafter mentioned, 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 Defendant is an enterprise and 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).

15. At all times hereinafter mentioned, Named Plaintiff and Class Members were individual “employees” (as defined in Section 3(e)(1) of the FLSA, 29 U.S.C. § 203(e)(1)) who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §207 and whom Defendant at all relevant times “employ[ed],” within the meaning of Section 3(g) of the FLSA, 29 U.S.C. § 203(g).

V. FACTUAL ALLEGATIONS

16. Named Plaintiff and those similarly situated handled and otherwise worked on and/or with vehicles that have been moved in or produced for commerce as defined by 29 U.S.C. §203(b).
17. Defendant employed Named Plaintiff and those similarly situated during the three-year period preceding the filing of this Original Complaint. Named Plaintiff and those similarly situated would pick up trash in East Texas and transport this trash to a landfill located in East Texas.
18. Defendant paid Named Plaintiff and those similarly situated a day rate for all work performed each day. Defendant failed to pay Named Plaintiff and those similarly overtime premiums for any hours worked over forty per week. Additionally, certain members of the class were paid such a low day rate that their effective hourly rate dropped below minimum wage.
19. Named Plaintiff and those similarly situated were non-exempt employees.

20. Defendant maintained control, oversight, and direction over its operations, including employment practices. Defendant maintained and exercised the power to hire, fire, and discipline Plaintiff and those similarly situated during their employment with Defendant.
21. Named Plaintiff and those similarly situated were required to comply with Defendant's policies and procedures in performing their work during their employment with Defendant.
22. At all times relevant hereto, all Defendant knew of, approved of, and benefited from the regular and overtime work of Named Plaintiff and those similarly situated.
23. Defendant did not make a good faith effort to comply with the minimum wage and overtime provisions contained within the FLSA.
24. Defendant's actions were willful and in blatant disregard for the federally protected rights of Named Plaintiff and those similarly situated.

VI. COLLECTIVE ACTION ALLEGATIONS

25. Named Plaintiff and the Class Members have performed—and are performing—the same or similar job duties as one another in that they assist in collecting and transporting trash to a landfill on behalf of Defendant. Further, Named Plaintiff and the Class Members were subjected to the same pay provisions in that they were not paid minimum wage and/or they were not paid overtime premiums for all hours worked over forty in a workweek. Thus, the Class Members are owed the full minimum wage for all hours worked under forty in a week without regard to their individualized circumstances. The Class Members are also owed one and one-half the full minimum wage and/or one and one-half their regular hourly rate (in the event their regular rate is above minimum wage) for all hours worked over forty in a week without regard to their individualized circumstances.

26. Defendant has a policy or practice of not paying their drivers and assistants minimum wage and/or overtime wages. This policy or practice is and has been, at all relevant times, applicable to the Named Plaintiff and all Class Members. Application of this policy or practice does not depend on the personal circumstances of the Named Plaintiff or those joining this lawsuit. Rather, the same policy or practice that resulted in the non-payment of minimum wages and overtime compensation to Named Plaintiff also applied to all Class Members. Accordingly, the “Class Members” are properly defined as:

All current and former employees of Defendant who were paid a day rate and who were not paid minimum and/or overtime wages.

VII. CAUSES OF ACTION

COUNT I

FAILURE TO PAY MINIMUM WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT

27. During the relevant period, Defendant has violated and is violating Section 6 of the FLSA, 29 U.S.C. §§ 206 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as stated herein above and not paying them the statutorily mandated minimum wage.

28. Plaintiffs are entitled to the full minimum wage for all hours worked for Defendant.

29. Defendant has acted willfully in failing to pay Plaintiffs in accordance with applicable law.

COUNT II

FAILURE TO PAY OVERTIME WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT

30. During the relevant period, Defendant has violated and is violating Section 7 of the FLSA, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA as stated herein above, for workweeks longer than 40 hours without compensating such employees for all of their work in

excess of forty hours per week at rates no less than one-and-one-half times their regular rates for which they were employed. Defendant has acted willfully in failing to pay Plaintiffs in accordance with applicable law.

31. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which their employees are paid are applicable to the Named Plaintiff or Class Members.

VIII. PRAYER FOR RELIEF

WHEREFORE, cause having been shown, Plaintiffs pray for an expedited order certifying a class and directing notice to putative class members pursuant to 29 U.S.C. § 216(b) and, individually, and on behalf of any and all such class members, on trial of this cause, judgment against Defendant as follows:

a. For an Order pursuant to Section 16(b) of the FLSA, 29 U.S.C. §216(b), finding Defendant liable for unpaid back wages due to Named Plaintiff (and those who may join in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Named Plaintiff (and those who may join the suit);

c. For an Order awarding Named Plaintiff (and those who may join in the suit) the taxable costs and allowable expenses of this action;

d. For an Order awarding Named Plaintiff (and those who may join in the suit) attorneys' fees; and

e. For an Order awarding Named Plaintiff (and those who may join in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law;

f. For an Order awarding Named Plaintiff declaratory and injunctive relief as necessary to prevent the Defendant's further violations, and to effectuate the purposes, of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*; and

g. For an Order granting such other and further relief, at law or in equity, as may be necessary and/or appropriate.

Respectfully submitted,

MORELAND VERRETT, P.C.

/s/ Douglas B. Welmaker

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