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CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
MIDLAND DIVISION

EMMANUEL S. MENDOZA, ON §  
BEHALF OF HIMSELF AND ALL §  
OTHERS SIMILARLY SITUATED, §

PLAINTIFF §

v. §

CA NO. 7:18-cv-221-DC

AFO BOSS, LLC, BUCHANAN §  
OILFIELD SERVICES, LLC, §  
BRENON YOUNG, §  
INDIVIDUALLY, AND RICHARD §  
LEE, INDIVIDUALLY, §

DEFENDANTS

PLAINTIFF'S FIRST AMENDED ORIGINAL COLLECTIVE ACTION COMPLAINT

Plaintiff Emmanuel Mendoza, on behalf of himself and all others similarly situated, files this First Amended Original Collective Action Complaint against Defendants AFO Boss, LLC, Buchanan Oilfield Services, LLC, Brenon Young and Richard Lee ("Defendants").

I. PRELIMINARY STATEMENT

1.1 This is an action for failure to pay overtime compensation brought under the Fair Labor Standards Act ("FLSA").

1.2 Defendants operate an oilfield disposal and waste processing facility in Midland, Texas. Defendants employ a number of hourly, non-exempt operators at this facility, including Plaintiff. These operators are paid every two weeks. During this two-week period, the operators work one week on followed by one week off. During the week they worked, Defendants' operators would work generally work seven 12-hour shifts, or 84 hours, although the actual number of hours worked would vary somewhat. Instead of paying their operators overtime premiums for all hours

worked over forty in a workweek, Defendants treated all hours as having been worked over the course of two weeks, in an attempt to minimize/eliminate their obligation to pay overtime premiums. For example, if an operator worked 84 hours in one week, Defendants would allocate 40 regular hours to week one and 40 regular hours to week two, and then pay an overtime premium on the remaining 4 hours. As such, Mr. Mendoza and the putative class are owed a half-time premium for all hours worked above forty per pay period, minus whatever hours were properly paid at time and one-half.

1.3 Emmanuel Mendoza, on behalf of himself and all others similarly situated, brings this collective action to recover overtime compensation, liquidated damages, attorney's fees, litigation expenses, costs of court, and pre-judgment and post-judgment interest under the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA").

1.4 For at least three years prior to the filing of this Complaint, Defendants willfully committed violations of the FLSA by failing to pay overtime premiums to their employees for hours worked in excess of forty hours per week.

## II. JURISDICTION AND VENUE

2.1 The Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this civil action arises under the Constitution, laws, or treaties of the United States; specifically, the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.* ("FLSA"). Jurisdiction is further conferred on this Court by 29 U.S.C. § 216(b) and by the provisions of 28 U.S.C. § 1337.

2.2 The Court has personal jurisdiction over Defendants AFO Boss, LLC, Buchanon Oilfield Services, LLC, Brenon Young and Richard Lee because these Defendants conduct business in Texas and have entered into relationships with Plaintiff in Texas and have committed actions in Texas that give rise to this cause of action.

2.3 Venue is proper in the Western District of Texas, Midland Division, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to the claims herein occurred in this District, and because Defendants are located in Midland, Texas.

### III. PARTIES

#### A. Plaintiff

3.1 Plaintiff Emmanuel Mendoza is an individual residing in New Mexico. His notice of consent was attached to Plaintiff's Original Collective Action Complaint as Exhibit A.

#### B. Defendants

3.2 Defendant AFO Boss, LLC has not registered with the Texas Secretary of State's office, although it lists itself as the employer on Mendoza's paychecks.

3.3 AFO Boss, LLC was an employer of Plaintiff and those similarly situated as defined by 29 U.S.C. §203(d).

3.4 Defendant Buchanan Oilfield Services, LLC is a domestic limited liability company with its primary office located in Midland, Texas.

3.5 Buchanan Oilfield Services, LLC was an employer of Plaintiff and those similarly situated as defined by 29 U.S.C. §203(d).

3.6 Buchanan Oilfield Services, LLC may be served with process by serving its registered agent for service of process, National Registered Agents, Inc., 1999 Bryan St., Suite 900, Dallas Texas 75201.

3.7 Brenon Young was an employer of Plaintiff and those similarly situated as defined by 29 U.S.C. §203(d).

3.8 Brenon Young can be served with process at 5118 FM 1379, Midland, Texas 79706, or at 3400 Marble Lane, Midland, Texas, 79707 or at 3700 N. Edwards St., Apt. 1415, Midland, Texas 79705.

3.9 Richard Lee was an employer of Plaintiff and those similarly situated as defined by 29 U.S.C. §203(d).

3.10 Richard Lee can be served with process at 5118 FM 1379, Midland, Texas 79706 or at 3700 N. Edwards St., Apt. 1415, Midland, Texas 79705.

#### **IV. FLSA COVERAGE**

4.1 For purposes of this action, the “relevant period” is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

4.2 At all relevant times, Defendants AFO Boss, LLC and Buchanan Oilfield Services, LLC, each had gross operating revenue in excess of \$500,000.00.

4.3 At all relevant times, Defendants have been, and continue to be, an “employer” engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. § 203.

4.4 At all relevant times, Defendants employed “employees”, including Plaintiff and those similarly situated, within the meaning of the FLSA, 29 U.S.C. § 203.

4.5 At all relevant times, Defendants employed two or more persons in interstate commerce.

4.6 At all relevant times, Defendants AFO Boss, LLC and Buchanan Oilfield Services, LLC each have been an “enterprise” engaged in commerce as defined in 29 U.S.C. § 203.

4.7 At all relevant times, Plaintiff and those similarly situated were individually engaged in interstate commerce or in the production of goods for commerce while performing their job duties for Defendants.

4.8 At all relevant times, Defendants have been subject to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*

## V. FACTUAL ALLEGATIONS

5.1 Defendants employed Plaintiff during the three-year period preceding the filing of this Complaint. Specifically, Defendants employed Mr. Mendoza from March through July of 2018.

5.2 Each week they worked, Plaintiff and all those similarly situated consistently worked over forty hours per week. As stated above, Plaintiff and those similarly situated worked, on average, 84 hours per week during those weeks in which they performed work. However, Defendants failed to pay Plaintiff and all those similarly situated overtime premiums for the vast majority of hours worked over forty as they improperly allocated half of these hours to the second work week when Plaintiff and those similarly situated were actually not working at all.

5.3 Defendants maintained control, oversight, and direction over their operations, including employment practices.

5.4 Defendants maintained and exercised the power to hire, fire, and discipline Plaintiff and those similarly situated during their employment with Defendants.

5.5 Plaintiff and those similarly situated were required to comply with Defendants’ policies and procedures in performing their work during their employment with Defendants.

5.6 Defendants Young and Lee independently exercised control over the work performed by Plaintiff and those similarly situated.

5.7 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, are responsible for running the day-to-day operations of Defendants.

5.8 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, determined the wages to be paid to Plaintiff and those similarly situated.

5.9 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, determined the work to be performed by Plaintiff and those similarly situated and monitored and directed such work on a regular basis.

5.10 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, determined the locations where Plaintiff and those similarly situated would work.

5.11 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, determined the hours of Plaintiff and those similarly situated.

5.12 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, determined the conditions of employment for Plaintiff and those similarly situated.

5.13 Young and Lee, acting directly in the interest of AFO Boss, LLC and Buchanan Oilfield Services, LLC, maintained employment records on Plaintiff and those similarly situated.

5.14 Young and Lee possessed and, in fact, exercised the power to hire, fire and discipline Plaintiff and those similarly situated.

5.15 At all times relevant hereto, Defendants knew of, approved of, and benefited from the regular and overtime work of Plaintiff and those similarly situated. Plaintiff and those similarly situated were not exempt employees.

5.16 Defendants did not make a good faith effort to comply with the overtime provisions contained within the FLSA.

5.17 Defendants' actions were willful and in blatant disregard for the federally protected rights of Plaintiff and those similarly situated.

## VI. COLLECTIVE ACTION ALLEGATIONS

6.1 Other employees have been victimized by the pattern, practice, and policy of Defendants that is in violation of the FLSA. Plaintiff is aware that the illegal practices and policies of Defendants have been imposed on other workers.

6.2 Plaintiff brings his claim for relief on behalf of all persons who worked for Defendants as operators, including supervisors, and were classified as hourly non-exempt employees at any time three years prior to the filing of this lawsuit, to the entry of judgment in this lawsuit (Collective Class).

6.3 Defendants paid Plaintiff and the Collective Class on an hourly basis and suffered and permitted them to work more than forty hours per week. Defendants did not pay Plaintiff or the Collective Class overtime compensation for the vast majority of hours worked beyond forty per week.

6.4 Though their job titles may vary, the members of the Collective Class were all hourly, non-exempt employees who were not paid for all hours worked over forty.

6.5 Plaintiff's experiences are typical of the experiences of other similarly situated employees.

6.6 Defendants' operations with respect to Plaintiff and the Collective Class and wages paid to Plaintiff and the Collective Class are substantially similar, if not identical.

6.7 Defendants' pattern of failing to pay overtime compensation as required by the FLSA results from Defendants' general application of policies and practices, and does not depend on the personal circumstances of the Plaintiff and the Collective Class.

6.8 Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

6.9 Plaintiff brings these claims for relief for violations of the FLSA as a collective action pursuant to 29 U.S.C. § 216(b). Plaintiff brings these claims on his behalf and on behalf of those similarly situated who have not been fully compensated under the FLSA for all work performed, time spent, and activities conducted for the benefit of Defendants.

6.10 Plaintiff requests that Defendants identify all prospective members of the Collective Class in order that proper notice of their right to consent to participation in this collective action may be distributed, including their names, dates of employment, job titles, last known addresses, and telephone numbers.

6.11 Plaintiff Emmanuel Mendoza seeks to represent those members of the above-described group who, after appropriate notice of their ability to opt into this action, have provided consent in writing to be represented by Plaintiff's counsel as required by 29 U.S.C. § 216(b).

#### **VII. JOINT EMPLOYER DOCTRINE**

7.1 All Defendants acted as joint employers of Plaintiff and those similarly situated by sharing the ability to directly and immediately control or co-determine essential terms and conditions of employment such as hiring, firing, discipline, supervision and direction.

#### **VIII. CAUSE OF ACTION: VIOLATION OF THE FLSA**

##### **Failure to Pay Overtime Wages**

8.1 Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully set forth herein.

8.2 Plaintiff and all others similarly situated are non-exempt employees.

8.3 As non-exempt employees under the FLSA, if Plaintiff and all others similarly situated worked over forty hours in a workweek, they were entitled to overtime pay at a rate that is not less than one and one-half the regular rates of pay at which they are employed.

8.4 Over the course of the relevant period, Plaintiff and all others similarly situated routinely worked in excess of forty hours per week.

8.5 Even though Plaintiff and all others similarly situated routinely worked in excess of forty hours per week, Defendants failed to pay them at least one and one-half their regular rates of pay for any hours they worked in excess of forty per week.

8.6 Defendants have violated 29 U.S.C. § 201 *et seq.* by failing to pay Plaintiff and all others similarly situated overtime premiums for those hours worked over forty per workweek.

8.7 No excuse, legal justification or exemption excuses Defendants' failure to pay Plaintiff and all others similarly situated overtime compensation for hours worked over forty in a workweek.

8.8 Defendants have failed to make a good faith effort to comply with the FLSA. Instead, Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice regarding overtime compensation.

8.9 Plaintiff and the Collective Class seek all unpaid overtime compensation and an additional equal amount as liquidated damages, as well as reasonable attorney's fees, costs, and litigation expenses, including expert witness fees, as provided by 29 U.S.C. § 216(b), along with pre- and post-judgment interest at the highest rate allowed by law.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff Emmanuel Mendoza, on behalf of himself and all others similarly situated, respectfully prays that Defendants AFO Boss, LLC, Buchanan Oilfield Services, LLC, Brenon Young and Richard Lee be cited to appear, and that, upon trial of this matter, Plaintiff and the Collective Class recover the following against Defendants, jointly and severally:

- a. Actual damages for the full amount of their unpaid overtime compensation;

- b. Liquidated damages in an amount equal to their unpaid overtime compensation;
- c. Reasonable attorney's fees, costs and expenses of this action, including expert witness costs, as provided by the FLSA;
- d. Pre-judgment and post-judgment interest at the highest rates allowed by law; and
- e. Such other and further relief, at law or in equity, as this Honorable Court may find proper.

Respectfully submitted,

/s/ Douglas B. Welmaker  
Douglas B. Welmaker  
Attorney-in-Charge  
State Bar No. 00788641  
Moreland Verrett, PC  
2901 Bee Cave Rd, Box L  
Austin, Texas 78746  
Phone: (512) 782-0567  
Fax: (512) 782-0605  
Email: [doug@morelandlaw.com](mailto:doug@morelandlaw.com)

**ATTORNEY FOR PLAINTIFF**