

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

MATTHEW BARNES, on behalf of himself
and all others similarly situated

Plaintiff,

vs.

SANDBOX TRANSPORTATION, LLC
Defendant.

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CIVIL ACTION NO: 7:18-cv-50

COMPLAINT
[Jury Trial Demanded]

Plaintiff Matthew Barnes, on behalf of himself and all others similarly situated for his Complaint against Sandbox Transportation, LLC states and alleges as follows:

SUMMARY

1. Sandbox Transportation, LLC (hereinafter “Sandbox” or “Defendant”) required and/or permitted Plaintiff Matthew Barnes, opt-in Plaintiff, and all other similarly situated employees (hereinafter “Plaintiffs”) to work in excess of forty hours per week but refused to compensate them properly for such hours.

2. Defendant’s conduct is in violation of the Fair Labor Standards Act (FLSA), which requires employers to compensate non-exempt employees for their overtime work. *See*, 29 U.S.C. § 207(a).

3. Plaintiffs are FLSA non-exempt workers who have been denied overtime pay required by law, for which they now seek recovery.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 201, Et. Seq. and 28 U.S.C. § 1331.

5. Venue is proper in the Western District of Texas because Defendant engages in business here and a substantial part of the events giving rise to Plaintiff's claim occurred here.

THE PARTIES

6. Defendant Sandbox Transportation, LLC is a domestic limited liability company with its principle place of business in Houston, Texas. Service of process may be had on Defendant through its registered agent: CT Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201 or wherever it may be found.

7. Plaintiff Matthew Barnes is a resident of Texas.

8. Opt-in Plaintiff Isaac Gott is a resident of Texas. Mr. Gott's written Consent to Join this action is attached as Exhibit "A."

9. The Class Members are Defendant's hourly paid operators who provide sandbox operation services employed at any time during the three-year time period immediately preceding the filing of this suit and who have not been compensated at the overtime premium rate for all hours worked in excess of 40 hours per week.

COVERAGE

10. Defendant Sandbox Transportation, LLC is an enterprise that engages in commerce or in the production of goods for commerce.

11. Defendant acted, either directly or indirectly, in the interest of an employer with respect to Plaintiffs.

12. Accordingly, Defendant is both a covered “enterprise” and an “employer” under the FLSA.

13. Defendant has had, and continues to have, an annual gross income of sales made or business done of not less than \$500,000.

14. In furtherance of Defendant’s business, Defendant’s employees handled, sold or otherwise utilized goods and materials and handled equipment that had been moved in or produced for such commerce.

REPRESENTATIVE ACTION ALLEGATIONS

15. Plaintiff has actual knowledge that other Class Members, in addition to the opt-in Plaintiffs, have been denied overtime pay for hours worked over forty hours in a workweek.

16. This Complaint may be brought and maintained as an "opt-in" collective action, pursuant to 29 U.S.C. § 216(b), for all claims asserted by the Representative Plaintiff because his claims are similar to the claims of the Class Members of the representative action.

17. The names and addresses of the putative members of this representative action are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

18. Although Defendant has suffered, permitted, and/ or required Plaintiff and Class Members to work in excess of forty hours per week, Defendant has denied them full compensation for their hours worked over forty.

19. Plaintiff and Class Members perform/performed the same or similar work.

20. Class Members are similar to Plaintiff in terms of pay structures and the denial of overtime pay and/or untimely payment of wages.

21. Defendant's failure to pay all or part of overtime compensation at the rates required by the FLSA or failure to tender pay checks resulted from a single decision, policy or plan and does not depend on the personal circumstances of the Class Members.

22. Plaintiff's experiences are typical of the experiences of the Class Members.

23. The specific job titles or precise job responsibilities of each Class Member do not prevent collective treatment.

24. All Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty during a workweek.

25. Although the issue of damages may be individual in character, there remains a common nucleus of liability facts.

26. The class of similarly situated plaintiffs is properly defined as follows:

- a. **All of Defendants' hourly paid operators who provide sandbox operation services employed at any time during the three-year time period immediately preceding the filing of this suit and who have not been compensated at the overtime premium rate for all hours worked in excess of 40 hours per week.**

FACTUAL ALLEGATIONS

27. Defendant is a logistics company that delivers sand, or proppant, directly to the frac sites of its customers in the oil and gas industry.

28. Plaintiff Barnes began working for Defendant on or about June 28, 2016 as an hourly paid operator and continued employment with Defendant through on or about February 25, 2018.

29. Opt-in Plaintiff Gott began working for Defendant on or about March 25, 2017 as an hourly paid operator and continued employment with Defendant through on or about February 18, 2018

30. Plaintiff and opt-in Plaintiff approximate that they each worked on average of 80 hours or more per week for Defendant.

31. Defendant compensated Plaintiff and opt-in Plaintiff their hourly wage for hour for every hour worked, regardless of the number of hours worked.

32. Plaintiff and opt-in Plaintiff did not receive overtime compensation for hours exceeding forty in a workweek in violation of the FLSA.

33. By way of example, for the October 16, 2017 pay period, Plaintiff Barnes worked 162 hours, of which 82 of those hours were overtime hours. Instead of compensating Plaintiff \$4,263.00, Defendant merely compensated him \$3,402.00. As a result, Defendant still owes Plaintiff Barnes an additional \$861.00

CAUSES OF ACTION
VIOLATION OF FAIR LABOR STANDARDS ACT (“FLSA”)

34. Plaintiff incorporates all allegations contained in the preceding paragraphs.

35. At all relevant times Plaintiff, opt-in Plaintiff, and Class Members have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, et seq.

36. Defendant’s failure to pay overtime compensation to Plaintiff and Class Members violates the FLSA.

37. Plaintiff, opt-in Plaintiff, and Class Members are not exempt from the right to receive the appropriate overtime pay under the FLSA.

38. As a result of Defendant's failure to compensate its employees, including Plaintiff, opt-in Plaintiff, and Class Members, Defendant has violated—and continues to violate—the FLSA, 29 U.S.C. §§ 206(a)(1)(C) and 207(a)(1).

39. Accordingly, Plaintiff, opt-in Plaintiff, and Class Members are entitled to complete compensation for hours worked.

40. Additionally, Plaintiff, opt-in Plaintiff, and Class Members are entitled to an amount equal to their unpaid overtime wages, liquidated damages, as well as reasonable attorneys' fees and costs of this action as provided by 29 U.S.C. § 216(b).

41. Defendant has acted neither in good faith nor with reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, and as a result, Plaintiff, opt-in Plaintiff, and Class Members are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime wages described pursuant to 29 U.S.C. § 216(b).

42. Alternatively, should the Court find Defendant acted in good faith and that it had reasonable grounds to believe that its actions and omissions were not a violation of the FLSA, Plaintiffs are entitled to an award of prejudgment interest at the applicable legal rate.

43. Plaintiff, opt-in Plaintiff, and Class Members are entitled to have the limitations period extended to three years because Defendant's actions were willful. 29 U.S.C. § 216(b).

44. WHEREFORE, Plaintiff demands judgment against Defendant plus costs, reasonable attorney's fees, and such other remedies as the court deems just and appropriate.

PRAYER

WHEREFORE, Plaintiff respectfully requests judgment be entered in his favor awarding him and Class Members:

1. overtime compensation for all unpaid hours worked in excess of forty hours at the

- rate of one and one-half times their regular rate;
2. an equal amount as liquidated damages as allowed under the FLSA;
 3. damages accrued up to three years;
 4. reasonable attorneys' fees, costs, and expenses of this action as provided by the FLSA;
 5. pre-judgment and post judgment interest at the highest rates allowed by law; and
 6. such other relief as to which Plaintiff, opt-in Plaintiff, and Class Members may be entitled.

Respectfully submitted,

GOLDBERG & LOREN, PA

By: /s/ James M. Loren, Esq.

James M. Loren

Attorney-in-charge

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George Z. Goldberg

FL Bar No. 031186

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ggoldberg@goldbergdohan.com

Attorneys for Plaintiff

CONSENT TO JOIN PURSUANT TO 29 U.S.C. §216(b)

Name: _____

1. I hereby consent and agree and opt-in to become a plaintiff in the lawsuit brought under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.*, to recover unpaid overtime and/or minimum wage compensation from my _____current / _____former employer.

2. I hereby agree to be bound by any adjudication of this action by the Court, whether it is favorable or unfavorable. I further agree to be bound by any collective action settlement herein approved by my attorneys and approved by this Court as fair, adequate, and reasonable.

3. I intend to pursue my claim individually, unless and until the Court certifies this case as a collective action. I agree to serve as a class representative if the court approves. If someone else serves as a class representative, then I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, the manner of conducting the litigation, the entering of an agreement with the Plaintiff's counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

4. In the event the case is certified and then decertified, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

5. I hereby designate the Law Offices of Goldberg & Loren, P.A. to represent me in this action.

Date: _____


Isaac Gott (Mar 3, 2018)

Signature

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFF

Matthew Barnes, on behalf of himself and all others similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)
TAYLOR COUNTY, TEXAS

DEFENDANTS

Sandbox Logistics, LLC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES USE THE LOCATION OF THE TRACT OF LAND INVOLVED
HARRIS COUNTY, TEXAS

(c) ATTORNEYS (FIRM NAME, ADDRESS AND TELEPHONE NUMBER)

GOLDBERG & LOREN, P.A.
3102 Maple Avenue – Suite 450
Dallas, TX 75201
Tel. (954) 585-4878

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicates Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | PTF | DEF | Incorporated or Principal Place of Business in This State | PTF | DEF |
| Citizen of Another State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORT		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liab.	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug-Related Seizure of Prop. 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards <input type="checkbox"/> 730 Labor/Mgmt. Reporting <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodity/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Econ. Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determ. Equal Access/Justice <input type="checkbox"/> 950 Const. of State Statute <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Eject. <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Prop.	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus and Other <input type="checkbox"/> 550 Other		FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional Statutes unless diversity)
29 USC § 201 Et Seq **Brief Description of Cause** overtime violations

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A **CLASS ACTION** **DEMAND \$** CHECK YES only if demanded in complaint: **JURY DEMAND: YES NO**
 UNDER F.R.C.P. 23

VIII. RELATED CASE(S) IF ANY None (See instructions) **JUDGE** **DOCKET NO.**

DATE **SIGNATURE OF ATTORNEY OF RECORD**

March 19, 2018

FOR OFFICE USE ONLY:
Receipt No. _____ Amount: _____ Applying IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Wage and Hour Suit Against Sandbox Transportation Lands in Colorado Federal Court](#)
