



less than one and one-half times the regular rate at which he is employed.” *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 (1945)(discussing the FLSA’s minimum wage and maximum hour protections generally); *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing the requirements of 29 U.S.C. § 207 (a)).

2. Defendant violated the FLSA by failing to pay its workers for all hours of work at the rates required by the FLSA. Plaintiff routinely worked in excess of 40 hours per week but was not paid overtime for doing this excessive work. Instead, Defendant misclassified its employees (“Plaintiff” and “Class Members,” as defined below) as exempt from the protections of the FLSA and failed to pay proper regard to the amount of hours Plaintiff and Class Members actually worked or guarantee proper payment of the minimum wage. Plaintiff brings this action as a collective action pursuant to 29 U.S.C. § 216(b).

## II. PARTIES

3. Plaintiff Cheryl Caldwell is an individual who was employed by Defendants within the meaning of the FLSA within the three-year period preceding the filing of this Complaint. Her consent to be a party in this action is attached as “Exhibit A.”

4. Plaintiff and “Class Members” are Defendants’ current and former workers who were misclassified as exempt from overtime, paid on a salary basis, and were not paid overtime pay for overtime work as required by the FLSA.

5. Corporate Defendant Reo Contractors, Inc. is a corporation authorized to do business and that does business in the state of Texas. It can be served with process through

its registered agent, Gregory B. Stessel, at 2009 Platinum Street, Garland, TX 75042, or wherever he may be found.

6. Defendant Kindale Pittman is an individual residing in Texas and can be served with process at 6900 Twin Ponds Dr., Plano, TX 75074-8769, or wherever he may be found.

7. Defendant Holly Kirk is an individual residing in Texas and can be served with process at 114 Curtis Ln., Quinlan, TX 75474-8704, or wherever she may be found.

### **III. JURISDICTION AND VENUE**

8. This Court has jurisdiction over this lawsuit because the suit arises under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

9. Venue is proper in the Northern District of Texas because the events forming the basis of the suit occurred in this District and one or more of the parties reside in this district.

### **IV. COVERAGE**

10. At all material times, Defendants have acted, directly or indirectly, in the interest of an employer or joint employer with respect to Plaintiff and Class Members.

11. At all times hereinafter mentioned, Defendants have been employers within the meaning of section 3(d) of the FLSA, 29 U.S.C. § 203(d).

12. At all times hereinafter mentioned, Defendants have been enterprises within the meaning of section 3(r) of the FLSA, 29 U.S.C. § 203(r).

13. At all times hereinafter mentioned, Defendants have been enterprises engaged in commerce or in the production of goods for commerce within the meaning of section 3(s) the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprises have 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 enterprises have had and have an annual gross volume of sales made or business done of not less than \$500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

14. At all times hereinafter mentioned, Plaintiff and Class Members were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206–207.

#### **V. FACTUAL ALLEGATIONS**

15. Defendant Reo Contractors, Inc. provides general contracting services for foreclosed properties in Texas and elsewhere. It conducts business throughout the United States and does more than \$500,000.00 per year in business.

16. Defendant Kindale Pittman is the immediate past President, Owner, and Director of Reo Contractors, Inc. In these capacities, he had the power to hire and fire Reo employees and had this power over Plaintiff during the course of her relevant employment. Defendant Pittman was in charge of Plaintiff's schedule, supervised her work, misclassified her as exempt from overtime, and had knowledge of the overtime hours worked by

Plaintiff, but failed to provide proper redress or lawful pay for this excessive work. In short, he is, in whole or in part, responsible for the overtime violations at issue in this lawsuit.

17. Defendant Holly Kirk is the Manager and immediate past Vice President of Reo Contractors, Inc. In these capacities, she has the power to hire and fire Reo employees and had this power over Plaintiff during the course of her relevant employment. Defendant Kirk was in charge of Plaintiff's schedule, supervised her work, misclassified her as exempt from overtime, and had knowledge of the overtime hours worked by Plaintiff, but failed to provide proper redress or lawful pay for this excessive work. In short, she is, in whole or in part, responsible for the overtime violations at issue in this lawsuit.

18. Plaintiff was employed by Defendants during the three years prior to the filing of this suit, from approximately May 2009 to July 2016, as a salaried, overtime-exempt employee.

19. At all times, Plaintiff was misclassified by Defendant as an exempt employee. However, Plaintiff's duties made her a non-exempt employee under the FLSA because Plaintiff:

- a. did not exercise discretion or independent judgment with respect to matters of significance or in performing her primary duties;
- b. did not have the authority to formulate, affect, interpret, or implement management policies or operating practices;
- c. did not carry out major assignments in conducting the operations of the business;

- d. did not perform work that affects business operations to a substantial degree;
- e. did not have the authority to commit the employer in matters that have significant financial impact;
- f. did not have the authority to waive or deviate from established policies and procedures without prior approval;
- g. did not have the authority to negotiate and bind the company on significant matters;
- h. did not provide consultation or expert advice to management;
- i. was not involved in planning long- or short-term business objectives;
- j. did not investigate or resolve matters of significance on behalf of management;  
and
- k. did not represent the employer in handling complaints, arbitrating disputes, or resolving grievances.

20. Plaintiff was primarily responsible for taking direction from management, quality assurance inspectors, and field superintendents, typing up summaries of work to be performed based on that information, updating notes and files, answering phones, and carrying out other non-manual, clerical tasks assigned to her.

21. In this capacity, Plaintiff regularly worked 40 or more hours in a workweek at one of Defendants' places of business and during the last three years—the period covered by this lawsuit. In fact, Plaintiff often worked 44 to 46 hours or more in a given week. However, Plaintiff was not paid lawfully for doing this excess work. Defendant knew that

Plaintiff worked in excess of 40 hours per week and they allowed and directed her to do so without providing proper payment for these excess hours. Instead, Plaintiff was paid under a pay scheme that paid her a flat salary, without regard to the amount of overtime hours she actually worked and without paying her overtime pay for overtime work.

22. Plaintiff and Class Members were not lawfully compensated for all hours worked in excess of 40 in a workweek at the rates required by the FLSA because Defendants misclassified them as exempt from the overtime provisions of the FLSA. Plaintiff and Class Members routinely worked in excess of 40 hours per week but were not paid time-and-one-half their regular rates of pay for all of their excessive hours

23. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and Class Members. Defendants received complaints from Plaintiff or Class Members regarding these excessive hours and the failure to compensate for all hours worked but failed to redress these concerns, necessitating this lawsuit.

## **VI. COLLECTIVE ACTION ALLEGATIONS**

24. Plaintiff re-alleges and incorporates paragraphs 1–23 as if fully set forth herein.

25. Plaintiff and Class Members performed the same or similar job duties as one another and were/are paid under the same pay policy or practice in that they were paid on a salary basis, regularly worked more than 40 hours per week, and were improperly classified as exempt employees. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit. Rather, the same policy or practice

that resulted in the misclassification and non-payment of overtime pay for overtime hours worked that applied to Plaintiff applies/applied to all Class Members. All Class Members, regardless of their precise job title, requirements, or rates of pay, are entitled to overtime compensation for hours worked in excess of 40 hours per week because they were misclassified as exempt employees. Although the issue of damages may be individual in character, there is no detraction from the common nucleus of liability facts. The questions of law and fact are common to Plaintiff and Class Members.

26. Defendants were aware of their obligations to pay overtime to Plaintiff and Class Members and failed to do so. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay overtime compensation with respect to Plaintiff and Class Members.

**VII. CAUSE OF ACTION: FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FAIR LABOR STANDARDS ACT**

27. Plaintiff re-alleges and incorporates paragraphs 1–26 as if fully set forth herein.

28. During the relevant period, Defendants have violated and are violating the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 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 aforesaid, for workweeks longer than 40 hours without compensating such non-exempt employees for their work in excess of 40 hours per week at rates no less than one-and-one-half times the regular rates for which



they were employed. Defendants have acted willfully in failing to pay Plaintiff and Class Members in accordance with the law.

#### VIII. RELIEF SOUGHT

29. WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendants as follows:

a. For an Order pursuant to Section 16(b) of the FLSA finding Defendants liable for unpaid back wages due to Plaintiff (and those who may join in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those who may join the suit);

b. For an Order awarding Plaintiff (and those who may join in the suit) the costs of this action;

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

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

e. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

s/Travis Gasper

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**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of May, 2017, I electronically filed the foregoing document with the Court's ECF system. Service of this Complaint will be made on Defendants with summons to be issued by the Clerk per the Federal Rules of Civil Procedure.

s/Travis Gasper

**TRAVIS GASPER**

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**NOTICE OF CONSENT**

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I hereby consent to become a party plaintiff in the overtime lawsuit in which this consent is filed.

DocuSigned by:  
*Cheryl Caldwell*  
C465AC9A13024CD...  
Signature

4/27/2017

Date

Cheryl Caldwell

Printed Name

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
CHERYL CALDWELL
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)
J. Derek Braziel, Lee & Braziel LLP
1801 N. Lamar St., Ste. 325, Dallas, TX 75202
214.749.1400

DEFENDANTS
REO CONTRACTORS, INC., KINDALE PITTMAN, and HOLLY KIRK
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate 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
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excludes Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
TORTS
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Medical Malpractice
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Management Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Employee Retirement Income Security Act
IMMIGRATION
462 Naturalization Application
465 Other Immigration Actions
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS—Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729(a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

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 (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.
Brief description of cause:

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 06/09/2017 SIGNATURE OF ATTORNEY OF RECORD s/J. Derek Braziel

FOR OFFICE USE ONLY
RECEIPT # 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: [Former Employee Claims Reo Contractors Denies OT Pay](#)

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