

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

**LAURA DENNIS, MICHELLE GARRETT,
AND ALL OTHERS SIMILARLY SITUATED
UNDER 29 USC § 216(B),
*Plaintiffs,***

v.

**LEGACY BULK TRUCKING CO., LLC,
JOHN PAUL PLEMONS, Individually, and
LORA PLEMONS, Individually,
*Defendants.***

Civil Action No. _____

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs Laura Dennis and Michelle Garrett, each individually and on behalf of all others similarly situated, file this Original Complaint against the above-named Defendants and in support states the following:

I. SUMMARY

This is a collective action brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiffs and Defendants’ other dispatchers worked for Defendants performing truck dispatching and coordinating services and regularly worked well in excess of 40 hours per workweek. Instead of paying overtime as required by the FLSA, Defendants paid these workers primarily on an hourly basis and improperly treated them as “exempt” from the FLSA.

II. PARTIES

1. Plaintiff Laura Dennis is an individual who worked for Defendants at Blooming Grove, Texas and resides in this District. Her consent to participate is attached to this Complaint as **Exhibit A**.

2. Plaintiff Michelle Garrett is an individual who worked for Defendants at Blooming Grove, Texas and resides in this District. Her consent to participate is attached to this Complaint as **Exhibit B**.

3. The “Class Members” are Defendants’ current and former dispatchers who were paid primarily on a salaried basis and who, regardless of precise title used for their position, performed similar duties and worked within the three years preceding this Complaint’s filing.

4. Defendant Legacy Bulk Trucking, LLC (hereinafter, “Legacy”), may be served through its registered agent John P. Plemons at 8445 N.W. County Road 4470, Blooming Grove, TX 76626 or wherever he may be found.

5. Defendant John Paul Plemons is an individual who may be served at 8445 N.W. County Road 4470, Blooming Grove, TX 76626 or wherever he may be found.

6. Defendant Lora Plemons is an individual who may be served at 8445 N.W. County Road 4470, Blooming Grove, TX 76626 or wherever she may be found.

III. JURISDICTION AND VENUE

7. This Court has jurisdiction over the claim because Plaintiffs assert claims arising under federal law.

8. Venue is proper in this District because Defendants reside in this District and the events forming the basis of this lawsuit occurred in this District.

IV. COVERAGE FACTS

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

10. At all times hereinafter mentioned, Defendants have been an employer, joint or successor employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

11. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

12. At all times hereinafter mentioned, Defendants have 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 \$500,000.00.

13. At all times hereinafter mentioned, Plaintiffs 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

14. Defendant Legacy does more than \$500,000.00 per year in business.

15. During the period covered by this lawsuit, Defendants John Paul Plemons and Lora Plemons were owners and officers of Legacy. They were responsible for running the day-to-day activities of the company. They made decisions about how the company should operate, market itself, acquire work, pay its employees and vendors, and treat its employees, including

Plaintiffs. In this capacity and through these acts, John Paul Plemons and Lora Plemons were responsible for designing and/or approving, implementing, and enforcing the pay plans for Plaintiffs and the Class Members which violate the FLSA.

16. Plaintiffs worked for Defendants within the statutory period, during the three years prior to the filing of this lawsuit, and until approximately November 2017.

17. Plaintiffs were employed by Defendants as truck dispatchers.

18. At all relevant times and regardless of precise title used for their position or work, Plaintiffs' duties consisted of receiving e-mails and telephone calls for service requests throughout Texas and in other surrounding states, reviewing the availability of drivers and equipment, assigning drivers and equipment to specific service requests, entering service request and assignment information into computerized systems, and sending e-mails and making phone calls to confirm driver and equipment assignments. Plaintiffs did not have managerial responsibilities, supervise two or more employees, possess the power to hire or fire, or exercise independent discretion or judgment in regards to matters of significance.

19. During their entire employment and during weeks covered by this lawsuit, Plaintiffs regularly worked over 40 hours per workweek. In fact, Plaintiffs worked as many as 91.5 hours in weeks covered by this lawsuit. Defendants knew that Plaintiffs regularly worked in excess of 40 hours per week during weeks covered by this lawsuit. In fact, Defendants allowed and directed them to do so.

20. Defendants paid Plaintiffs on an hourly basis but treated Plaintiffs as exempt from the FLSA and failed to pay any overtime pay despite their regularly working overtime hours.

21. Plaintiffs are entitled to receive overtime pay for all hours worked in excess of 40 hours per workweek. Defendants were aware of the FLSA's overtime requirements but refused

to pay Plaintiffs overtime. Defendants knowingly, willfully or with reckless disregard carried out their illegal practice of failing to pay Plaintiffs overtime.

VI. COLLECTIVE ACTION ALLEGATIONS

22. Plaintiffs and the Class Members performed the same or similar non-exempt job duties as one another. Specifically, they performed trucking dispatch services for Defendants to ensure Defendants' services were rendered to Defendants' clients. Further, Plaintiffs and Class Members were subjected to the same pay provisions in that they were paid under the same pay plan and were not paid at time-and-one-half of their regular rates of pay for all hours worked in excess of 40 hours in a workweek. Specifically, Defendants failed to pay Plaintiffs and Class Members at the rates required by the FLSA because Defendants paid these individuals primarily under a salaried basis or treated them as "exempt" and failed to provide overtime pay for overtime hours worked. Accordingly, the Class Members were victimized by Defendants' unlawful pattern and practices and are similarly situated to Plaintiff in terms of job duties and pay.

23. Defendants' failure to pay overtime compensation at the rates required by the FLSA results from generally applicable policies or practices and do not depend on the personal circumstances of the Class Members. Thus, Plaintiffs' experiences are typical of the experience of the Class Members. All Class Members, regardless of their precise job requirements or rates of pay, are entitled to overtime compensation at a rate of one-and-one-half their regular rate for hours worked in excess of 40 per week. 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 Plaintiffs and the Class Members.

24. Defendants knowingly, willfully, or with reckless disregard carried out their illegal pattern or practice of failing to pay overtime and minimum compensation with respect to Plaintiffs and the Class Members.

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

25. During the relevant time period, Defendants violated and continue to violate the provisions of sections 6 and 7 of the FLSA, 29 U.S.C §§ 206-7, 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 for weeks longer than 40 hours without compensating for work in excess of 40 hours per week at rates no less than one-and-a-half times their regular rates of pay. Defendants have acted willfully in failing to pay Plaintiffs and the Class Members in accordance with the law.

VIII. RELIEF SOUGHT

26. WHEREFORE, cause having been shown, Plaintiffs pray for judgment against Defendants jointly and severally as follows:

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

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

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

d. For and Order awarding Plaintiffs (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/ Shane McGuire

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ATTORNEYS FOR PLAINTIFFS

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

Laura Dennis, Michelle Garrett, and All Others Similarly Situated Under 29 USC 216(B)

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Shane McGuire, THE MCGUIRE FIRM, PC, 102 N. College Ave., Ste. 301, Tyler, Texas 75702 903-630-7154

DEFENDANTS

Legacy Bulk Trucking Co., LLC, John Paul Plemons, Individually, and Lora Plemons, Individually

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.

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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, 6 Multidistrict Litigation

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 216(b)
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 07/30/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ SHANE MCGUIRE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Reset

Case 3:18-cv-01962-C Document 1-1 Filed 07/30/18 Page 2 of 2 PageID 9
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Legacy Bulk Trucking, Owners Sued for Allegedly Unpaid Overtime Wages](#)
