

FILED

IN THE UNITED STATES DISTRICT COURT 2017 JUN 19 AM 9: 22
FOR THE MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

DYLAN FRACASSE, individually and
on behalf of other similarly situated,

Plaintiff(s),

v.

AMERIGAS PROPANE, INC., a Foreign
for Profit Corporation doing business in
Florida,

Defendant.

Case No.: 5:17-W-273-De-40 PRL

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, DYLAN FRACASSE (“Plaintiff”), on behalf of himself and current and former employees similarly situated, by and through undersigned counsel, files this Complaint against Defendant, AMERIGAS PROPANE, INC. (“Defendant” or “AMERIGAS”) and in support thereof states as follows:

JURISDICTION

1. Jurisdiction in this Court is proper as the claims are brought pursuant to the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid back wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney’s fees and costs.

2. The Court has jurisdiction over this claim pursuant to 29 U.S.C. §216(b).

PARTIES

3. At all times material hereto, Plaintiff was and continues to be a resident of Lake County, Florida.

4. At all times material hereto, AMERIGAS is a Foreign Corporation with headquarters in Pennsylvania and operates and conducts business in Orange County, Florida, and is therefore within the jurisdiction of this Court. Further, at all times material hereto, AMERIGAS was and continues to be engaged in business in Florida, with a place of business in Orange County, Florida.

5. At all times material hereto, AMERIGAS was and continues to be an organization providing propane service. Defendant specializes in converting appliances to propane, tank installations, propane system design and maintenance, and propane deliveries for homes and businesses.

6. At all times material hereto, Plaintiff was “engaged in commerce” within the meaning of §6 and §7 of the FLSA.

7. At all times material hereto, Plaintiff was an “employee” of Defendant within the meaning of FLSA.

8. At all times material hereto, Defendant was the “employer” within the meaning of the FLSA.

9. Defendant was and continues to be an “employer” within the meaning of the FLSA.

10. At all times material hereto, AMERIGAS was and is an enterprise covered by the FLSA pursuant to 29 U.S.C. § 203(s)(1)(C).

11. The additional persons who may become plaintiffs in this action are/were other employees for AMERIGAS who were paid by the hour and who worked in excess of forty (40) hours during one or more work weeks during the relevant time periods but who did not receive pay at one and one-half times their regular rate for all hours worked in excess of forty (40) hours.

STATEMENT OF FACTS

12. Plaintiff worked for AMERIGAS from approximately July 2015 through March 2017.

13. Plaintiff worked for AMERIGAS as a “Service Technician” from approximately July 2015 through February 2017.

14. In this capacity, Plaintiff’s duties included, but were not limited to, performing maintenance, repairs, fixing leaks and installation of propane tanks.

15. Plaintiff worked as an “operations manager” from approximately February 2017 through March 2017. This Complaint does not contemplate the period of time that Plaintiff worked as an operations manager.

16. As a Service Technician, Plaintiff was paid \$17.91 per hour.

17. At various material times hereto, Plaintiff regularly worked for Defendant in excess of forty (40) hours within a workweek.

18. Service Technician s were/are hourly paid employees.

19. Service Technician s are/were not paid overtime, in one or more weeks, when they worked more than forty (40) hours per week.

20. Plaintiff and other Service Technician s are not exempt from the overtime provisions of the FLSA.

21. All Service Technician s were entitled to be paid for all hours worked for Defendant.

22. In order to perform their jobs to completion, Plaintiff and all Service Technician s worked beyond their scheduled hours, including often working “off the clock” during one or more weeks.

23. Defendant’s supervisors and other managers knew Plaintiff and the other hourly employees were working overtime hours.

24. As a result, Defendant has failed to compensate Plaintiff and all other hourly employees for all overtime hours actually worked.

25. At all times material hereto, Plaintiff was required to submit to Defendant time sheets for all hours worked at the end of each shift.

26. At all times material hereto, when Plaintiff submitted timesheets indicating that he did not take a lunch Defendant automatically deducted thirty (30) minutes for a lunch break from Plaintiff and other hourly workers for each day worked.

27. This automatic deduction was done whether or not Plaintiff took a thirty (30) minute lunch break.

28. Plaintiff usually did not take a lunch break each day that he worked for Defendant.

29. Other Service Technicians also were not able to take a non-compensable lunch break most days yet Defendant still deducted thirty (30) minutes per day from their pay for a lunch break.

30. Defendant's supervisors and other managers knew Plaintiff and the other hourly employees were working during the automatically deducted lunch break.

31. Plaintiff brought up the fact that he was not being paid overtime to his area director, Sean Daughtry, and was told that the company was in a period of "no overtime." Additionally, Plaintiff and other Service Technicians were told to limit what they put on their timesheets for overtime -- even if they worked it.

32. As a result, Defendant has failed to compensate Plaintiff and all other hourly employees for all overtime hours actually worked.

33. Plaintiff and the other hourly workers should have been paid an overtime rate of pay for all hours worked over forty (40) in a workweek due to the improperly deducted hours as well as the hours in which they were required to work off the clock to complete their duties.

34. The records, to the extent they are accurate, detailing the time recorded and pay received by Plaintiff and the other workers are in the possession of Defendant.

COUNT I
VIOLATION OF 29 U.S.C. §207 OVERTIME COMPENSATION

35. Plaintiff re-alleges and reincorporates paragraphs 1 through 34 of the Complaint, as if fully set forth herein.

36. For the last three years, Plaintiff and those similarly situated to him were subjected to Defendant's policy wherein Defendant did not pay overtime hours which were mostly worked "off the clock" and which Plaintiff's supervisors and managers were aware of.

37. For the last three years, Plaintiff and those similarly situated to him were subject to Defendant's policy wherein Defendant automatically deducted thirty (30) minutes per day for a lunch break even though Plaintiff routinely did not take a deductible lunch break.

38. Plaintiff often recorded at or above forty (40) hours per week, therefore this unpaid time would be considered unpaid overtime compensation.

39. All other hourly employees of Defendant were subject to the same policies and as a result were also shorted overtime pay from Defendant.

40. Plaintiff and the other workers are and were entitled to be paid at the statutory rate of one and one-half times their hourly rate of pay for all hours worked in excess of forty (40) hours.

41. At all times material hereto, Defendant failed and continues to fail to maintain proper time records in regards to actual "working hours" in violation of the FLSA.

42. Defendant's actions were willful and/or showed reckless disregard for the provisions of the FLSA in that Defendant knew Plaintiff and other hourly workers were performing work "off the clock" yet Defendant continued to deduct and/or omit overtime hours worked per week from these hourly workers' pay.

43. Defendant failed to properly disclose or apprise Plaintiff and other hourly workers of their rights under the FLSA.

44. Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to 29 U.S.C. §216(b).

WHEREFORE, Plaintiff respectfully requests that judgment be entered in her favor against Defendant:

- a. Declaring that the acts and practices complained of herein are in violation of the maximum hour provisions of the FLSA;
- b. Awarding Plaintiff and other hourly workers similarly situated to him overtime compensation in the amount due to them for their uncompensated work in excess of forty (40) hours per work week;
- c. Awarding Plaintiff and the other hourly workers liquidated damages in an amount equal to the overtime award;
- d. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- e. Awarding Plaintiff pre-judgment interest;
- f. Issue of an Order, as soon as is practicable, authorizing Plaintiff to send notice of the instant lawsuit to all similarly situated hourly workers employed by Defendant within the past 3 years; and
- g. Ordering any other further relief the Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable as a matter of right by jury.

DATED this 15 day of June 2017.

Respectfully submitted,



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Attorneys for Plaintiff(s)

JS 44 (Rev. 11/15)

CIVIL COVER SHEET 5:17-cv-273-De-40 PRL

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
 DYLAN FRACASSE, individually and on behalf of other similarly situated,

DEFENDANTS
 AMERIGAS PROPANE, INC., a Foreign for Profit Corporation doing business in Florida,

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

County of Residence of First Listed Defendant Orange
 (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 MORGAN & MORGAN, P.A.
 20 North Orange Avenue, 14th Floor Orlando, FL 32802-4979
 Tel.: (407) 428-6241

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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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 (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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<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
Citizen or Subject of a Foreign Country	<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	TORTS	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 (Excludes 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 Liability <input type="checkbox"/> 196 Franchise	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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<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 (1395ff) <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)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Others: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. §201, et seq
 Brief description of cause:
Action to recover unpaid back wages, liquidated damages, obtain declaratory relief, and other relief.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND UNKNOWN at this time CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 08/15/2017 SIGNATURE OF ATTORNEY OF RECORD: _____

FOR OFFICE USE ONLY
 RECEIPT # OCA AMOUNT \$400 APPLY AG FEE 8232 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 Amerigas Propane Denies Wages](#)
