

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

RICK GANDY, individually and on behalf of all
others similarly situated,

v.

BULLET ENERGY SERVICES, LLC;
CHRISTOPHER HAYS; and CASEY HAYS

Case No: CIV-18-732-D
FLSA Collective Action

ORIGINAL COLLECTIVE ACTION COMPLAINT

SUMMARY

1. Bullet Energy Services, LLC failed to pay Rick Gandy, and other workers like him, overtime and minimum wage required under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, and the Oklahoma Minimum Wage Act, OKLA. STAT. 40-197.1, *et seq.*

2. Bullet Energy Services, LLC paid Gandy, and other workers like him, an hourly rate, but did not pay Gandy and the other workers for all hours worked or an overtime premium for hours worked over 40 in a workweek.

3. Instead, Bullet Energy Services, LLC, capped the number of hours that Gandy and the other workers like him would receive at a set number per load without regard to the number of hours they actually worked.

4. Gandy brings this collective action to recover unpaid wages, unpaid overtime, and other damages owed to him and the workers like him.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA. 29 U.S.C. § 216(b).

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

7. Venue is also proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Bullet Energy Services, LLC, Christopher Hays, and Casey Hays reside in this District.

8. Gandy performed work for Bullet Energy Services, LLC in this District.

9. Bullet Energy Services, LLC maintains its main office and regularly provides services in this District.

THE PARTIES

10. Gandy was employed by Bullet Energy Services, LLC.

11. Gandy was paid by Bullet Energy Services, LLC on an hourly basis.

12. Gandy's written consent is attached as Exhibit A.

13. Bullet Energy Services, LLC is an Oklahoma limited liability company. It may be served by serving its registered agent for service of process: **Kirk Johnson, 2600 John Saxon Blvd., Norman, Oklahoma 73071.**

14. Christopher Hays is a natural person. He may be served by service upon him at **8448 N. 2990th Rd., Velma, OK 73491**, or wherever he may be found.

15. At all relevant times, Christopher Hays was an owner of Bullet Energy Services, LLC.

16. At all relevant times, Christopher Hays was a manager of Bullet Energy Services, LLC.

17. At all relevant times, Christopher Hays was a member of Bullet Energy Services, LLC.

18. At all relevant times, Christopher Hays exerted operational control over Bullet Energy Services, LLC.

19. Casey Hays is a natural person. She may be served by service upon her at **116 First St., Velma, OK 73491**, or wherever she may be found.

20. At all relevant times, Casey Hays was an owner of Bullet Energy Services, LLC.

21. At all relevant times, Casey Hays was a manager of Bullet Energy Services, LLC.

22. At all relevant times, Casey Hays was a member of Bullet Energy Services, LLC.

23. At all relevant times, Casey Hays exerted operational control over Bullet Energy Services, LLC.

24. Bullet Energy Services, LLC, Christopher Hays, and Casey Hays employed and/or jointly employed Archon and the Putative Class Members.

25. Bullet Energy Services, LLC, Christopher Hays, and Casey Hays are joint employers for purposes of the FLSA. *See* 29 C.F.R. § 791.2.

26. Bullet Energy Services, LLC, Christopher Hays, and Casey Hays are hereinafter referred to jointly as “Bullet.”

COVERAGE UNDER THE FLSA

27. At all relevant times, Bullet employed Gandy and the putative class members within the meaning of the section 3(d) of the FLSA, 29 U.S.C. § 203(d).

28. At all relevant times, Bullet has been part of an enterprise within the meaning of section 3(r) of the FLSA, 29 U.S.C. § 203(r).

29. At all relevant times, Bullet has been part of 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 and 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—such as tools and equipment—that have been moved in or produced for commerce by any person and in that Bullet has had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

30. At all relevant times, Gandy and the putative class members were engaged in commerce or in the production of goods for commerce.

FACTS

31. Bullet provides salt water disposal services for its clients in support of oilfield operations.

32. Over the past three years, Bullet employed many individuals—including Gandy—who were not exempt from the FLSA's overtime requirements but were not paid overtime for all hours worked over 40 in a single workweek.

33. The putative class members routinely handled goods or materials that have moved in, or were produced for, interstate commerce.

34. Gandy was employed by Bullet from March 2016 to February 2018.

35. Gandy's duties included driving saltwater loads from jobsites to a disposal site.

36. Gandy was paid by the hour.

37. Gandy's pay was capped at a set number of hours that he would be paid per load.

38. Bullet did not pay Gandy for time spent driving from one worksite to another.

39. For example, Bullet did not pay Gandy for time spent driving from the Bullet yard to another jobsite at the beginning of each workday.

40. Nor did Bullet pay Gandy for time spent driving from the jobsite to the fueling station or the Bullet yard at the end of each workday.

41. Bullet instead fixed Gandy's pay at a set number of hours per load, regardless of the amount of time each load actually took.

42. Bullet did not pay Gandy for all hours worked in a day, regardless of whether they were regular time or overtime.

43. Bullet didn't even track Gandy's work time.

44. Instead, Bullet tracked Gandy's work by the number of loads that were run.

45. Gandy was a non-exempt employee.

46. The putative class members were non-exempt employees.

47. Variations, if any, in the putative class members' job duties do not impact their entitlement to overtime under the FLSA.

48. Bullet regularly scheduled Gandy and the putative class members for 12 or more hours of work per day.

49. Gandy worked more than the number of hours Bullet paid him for.

50. The putative class members worked more than the number of hours it paid them for.

51. Bullet knows that the putative class members worked more than the number of hours it paid them for.

52. Gandy and the putative class members were not exempt from the FLSA's overtime provisions (or the provisions of any similar state overtime laws).

53. Bullet knows Gandy and the putative class members were not exempt from the FLSA's overtime provisions (or the provisions of any similar state overtime laws).

54. Nonetheless, Bullet did not pay Gandy or the putative class members overtime for all hours worked in excess of 40 in a workweek.

COLLECTIVE ACTION ALLEGATIONS

55. Bullet's illegal policy of not giving its employees credit for all hours worked extends well beyond Gandy.

56. Bullet has paid many hourly employees according to the same unlawful scheme.

57. Any differences in job duties do not detract from the fact that these hourly employees were entitled to overtime pay for all hours worked over 40 in a workweek.

58. Bullet's illegal pay scheme results from generally applicable, systematic policies, and practices which are not dependent on the personal circumstances of the putative class members.

59. The workers impacted by Bullet's illegal pay scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b).

60. Therefore, the class Gandy represents is properly defined as:

All drivers employed by Bullet Energy Services, LLC at any point in the past 3 years who were paid by the hour, subject to a capped amount of time, and were not paid for all hours worked.

FIRST CAUSE OF ACTION — VIOLATION OF FLSA OVERTIME

61. Gandy incorporates all preceding paragraphs by reference.

62. At all relevant times, Bullet has been an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA.

63. Bullet employed Gandy and each of the putative class members.

64. By failing to pay Gandy and the other putative class members overtime at 1.5 times their regular rates for all hours worked over 40 in a workweek, Bullet violated the FLSA. 29 U.S.C. § 207(a).

65. Bullet owes Gandy and the other putative class members the difference between the rate actually paid and the proper overtime rate.

66. Because Bullet knew, or showed reckless disregard for whether, its pay practices violated the FLSA, Bullet owes these wages for at least the past three years.

67. Bullet also owes Gandy and the other putative class members an amount equal to the unpaid overtime wages as liquidated damages.

68. Gandy and the other putative class members are entitled to recover all reasonable attorneys' fees, costs, and expenses incurred in this action.

SECOND CAUSE OF ACTION—VIOLATION OF FLSA MINIMUM WAGE

69. Gandy incorporates all preceding paragraphs by reference.

70. By failing to pay Gandy and the other putative class members for all hours worked, Bullet violated the FLSA.

71. No excuse, legal justification, or exemption excuses Bullet's failure to pay Gandy and the putative class members minimum wage for all hours worked.

72. Bullet failed to make a good faith effort to comply with the FLSA's minimum wage requirement.

73. Bullet knowingly, willfully, or with reckless disregard carried out its illegal pay policy regarding minimum wage compensation.

74. Bullet also owes Gandy and the other putative class members an amount equal to the unpaid overtime wages as liquidated damages.

75. Gandy and the other putative class members are entitled to recover all reasonable attorneys' fees, costs, and expenses incurred in this action.

THIRD CAUSE OF ACTION—VIOLATION OF OKLAHOMA MINIMUM WAGE ACT

76. Gandy incorporates all preceding paragraphs by reference.

77. Bullet's failure to pay overtime and minimum wage also violate the Oklahoma Minimum Wage Act. OKLA. STAT. 40-197.1, *et seq.*

78. Bullet did not pay the wages due to Gandy and the putative class members by the next regular designated payday established for the pay period in which the work was performed. Okla. Stat. 40-165.3.

79. In the alternative to their recovery under the FLSA, Gandy and the other putative class members are entitled to recover their unpaid wages and overtime under the Oklahoma Minimum Wage Act, along with liquidate damages.

80. Gandy and the other putative class members are entitled to recover waiting time penalties and damages under the Oklahoma Minimum Wage Act.

81. Gandy and the other putative class members are entitled to recover all reasonable attorneys' fees, costs, and expenses incurred in this action under the Oklahoma Minimum Wage Act.

RELIEF SOUGHT

82. WHEREFORE, Gandy prays for judgment against Bullet as follows:

- a. For an order certifying this case as a collective action for the purposes of the FLSA claims and directing notice to all putative class members covered by this case;
- b. For an order finding Bullet liable for violations of state and federal wage laws with respect to Gandy and all putative class members covered by this case;
- c. For a judgment awarding all unpaid wages, liquidated damages, and/or penalty damages, to Gandy and all putative class members covered by this case;
- d. For a judgment awarding Gandy and all putative class members covered by this case their costs of this action;
- e. For a judgment awarding Gandy and all putative class members covered by this case their attorneys' fees;
- f. For a judgment awarding Gandy and all putative class members covered by this case pre- and post-judgment interest at the highest rates allowed by law; and
- g. For all such other and further relief as may be necessary and appropriate.

Respectfully submitted,

/s/ Matthew S. Parmet

By: _____

Matthew S. Parmet

Texas Bar # 24069719

PARMET HEDGPETH LLP

800 Sawyer St.

Houston, Texas 77007

p 713 999 5228


matt@parmethedgpeth.com

Attorneys for Plaintiff

CONSENT TO JOIN WAGE CLAIM

Print Name: Rick Gandy

1. I hereby consent join the collective action lawsuit filed against Bullet Energy and any of its related companies, agents, contractors, representatives, owners, or other related persons to pursue my claims of unpaid overtime during the time that I worked with them.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act and applicable federal and state law.
3. I consent to be bound by the Court's decisions.
4. I designate the law firm PARMET HEDGPETH LLP as my attorneys to prosecute my wage claims.
5. If needed, I authorize my attorneys to use this consent to re-file my claim in a separate lawsuit or arbitration against the company.

DocuSigned by:

 Signature ID: 8829503FE029444...

 June 25, 2018
 Date

**EXHIBIT
A**

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Rick Gandy, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Matthew S. Parmet, Parmet Hedgpeth LLP, 800 Sawyer St., Houston, TX 77007, Ph: 713-999-5228

DEFENDANTS

Bullet Energy Services, LLC, Christopher Hays, Casey Hays

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 and business location (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)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, 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 (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): 29 USC s 201, et seq.

Brief description of cause: recover unpaid wages

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 7/30/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew S. Parmet

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 Files Wage and Hour Suit Against Bullet Energy Services](#)
