

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

SAMUEL HELMS,
Individually and on behalf
of all others similarly situated,

Plaintiff,

v.

PRODUCERS SERVICE CORPORATION

Defendant.

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§ **Civil Action No. CIV-18-684-HE**
§
§
§ **JURY TRIAL DEMANDED**
§
§ **COLLECTIVE ACTION**
§ **PURSUANT TO 29 U.S.C. § 216(b)**
§
§

ORIGINAL COLLECTIVE ACTION COMPLAINT

Samuel Helms bring this action individually and on behalf of all others similarly situated (hereinafter “Plaintiff and the Putative Class Members”) who worked for Producers Service Corporation. (“PSC” or “Defendant”) at any time from three years preceding the filing of the Original Complaint through the final disposition of this matter, seeking all available relief, including compensation, liquidated damages, attorneys’ fees, and costs, pursuant the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*

**I.
OVERVIEW**

1. This lawsuit includes a collective action pursuant to the FLSA, 29 U.S.C. §§ 201 *et. seq.*, to recover overtime wages.

2. Plaintiff and the Putative Class Members are those current and former employees who worked for PSC at any time from since July 16, 2015 through the final disposition of this matter, were paid on an hourly basis plus non-discretionary bonuses, and

were actually paid overtime, but the non-discretionary bonuses were not included in the calculation of their overtime rate.

3. The FLSA requires that all forms of compensation—including the non-discretionary bonuses paid to Plaintiff and the Putative Class Members—be included in the calculation of the regular rate of pay for overtime purposes.

4. Plaintiff and the Putative Class Members routinely work (and worked) in excess of forty (40) hours per workweek.

5. Plaintiff and the Putative Class Members were not paid at the proper overtime rate of at least one and one-half their regular rates for all hours worked in excess of forty (40) hours per workweek.

6. The decision by PSC not to pay the proper overtime rate to Plaintiff and the Putative Class Members was neither reasonable nor in good faith.

7. PSC knowingly and deliberately failed to compensate Plaintiff and the Putative Class Members the proper overtime rate for all hours worked in excess of forty (40) hours per workweek.

8. Plaintiff and the Putative Class Members did not and currently do not perform work that meets the definition of exempt work under the FLSA.

9. Plaintiff and the Putative Class Members therefore seek to recover all unpaid overtime and other damages owed under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b).

10. Plaintiff prays that all similarly situated employees (Putative Class Members) be notified of the pendency of this action to apprise them of their rights and provide them an opportunity to opt-in to this lawsuit.

II. THE PARTIES

11. Plaintiff Samuel Helms worked for PSC within the relevant time period. Plaintiff Helms did not receive the proper amount of overtime compensation for all hours worked in excess of forty (40) hours per workweek.¹

12. The Putative Class Members include those current and former employees who worked for PSC at any time since July 16, 2015 and have been subjected to the same illegal pay system under which Plaintiff Helms worked and was paid.

13. Producers Service Corporation (“Defendant” or “PSC”) is an Ohio limited liability company, licensed to and doing business in Oklahoma, and may be served through its registered agent for service of process: **The Corporation Company, 1833 South Morgan Road, Oklahoma City, Oklahoma 73128.**

III. JURISDICTION & VENUE

14. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331 as this is an action arising under 29 U.S.C. §§ 201 *et. seq.*

15. This Court has personal jurisdiction over PSC because the cause of action arose within this District as a result of PSC’s conduct within this District.

¹ The written consent of Samuel Helms is attached hereto as Exhibit A.

16. Venue is proper in the Western District of Oklahoma because this is a judicial district where a substantial part of the events or omissions giving rise to the claim occurred. Specifically, PSC maintains a working presence throughout the State of Oklahoma and Plaintiff Helms worked for PSC in Hennessey, Oklahoma, all of which are located in this District.

17. Venue is therefore proper in this District pursuant to 28 U.S.C. § 1391.

IV. ADDITIONAL FACTS

18. Defendant PSC is based in Zanesville, Ohio and provides high pressure pumping, shale fracturing and acidizing, and water pumping services in the oil and gas industry.²

19. Defendant PSC operates in the states of Ohio, Oklahoma, West Virginia, New Mexico, Pennsylvania, and Texas.

20. To provide their services, PSC employed numerous employees who were (and continue to be) paid on an hourly basis plus non-discretionary bonuses—including Plaintiff Helms and the individuals that make up the putative or potential class.

21. While exact job titles may differ, these workers were subjected to the same or similar illegal pay practices for similar work.

22. Plaintiff Helms worked for PSC as a Shop Mechanic in Hennessey, Oklahoma from approximately August 2017 until February 2018.

² <http://www.producerservicecorp.com>.

23. As a Shop Mechanic, Plaintiff Helms worked on, repaired and/or maintained hydraulic fracturing (“frac”) equipment used on frac jobs in the oilfield.

24. PSC paid Plaintiff and the Putative Class Members on an hourly basis plus non-discretionary bonuses.

25. While PSC actually paid overtime for all hours worked over forty (40) each workweek, PSC ***did not*** include the non-discretionary bonuses in calculating Plaintiff and the Putative Class Members’ regular rate of pay as is required by federal law. Therefore, the overtime wages were improperly calculated resulting in the underpayment of overtime wages.

26. Upon information and belief, the non-discretionary bonuses were based upon a pre-determined formula established by PSC. Moreover, specific criteria had to be met in order to receive the bonuses.

27. When Plaintiff and the Putative Class Members met the criteria, they were entitled to receive the bonuses.

28. Plaintiff and the Putative Class Members received these non-discretionary bonuses on a regular and frequent basis.

29. The FLSA mandates that overtime be paid at one and one-half times an employee’s regular rate of pay.

30. Under the FLSA, the regular rate of pay is the economic reality of the arrangement between the employer and the employee. 29 C.F.R. § 778.108.

31. Pursuant to 29 C.F.R. § 778.209, these non-discretionary bonuses (and any other non-discretionary compensation) should have been included in Plaintiff and the Putative Class Members’ regular rates of pay before any and all overtime multipliers were applied.

32. PSC failed to include the non-discretionary bonuses in the calculation of their overtime rate as is required by federal law. Therefore, the overtime wages were improperly calculated resulting in the underpayment of overtime wages.

33. Accordingly, PSC's pay policies and practices violated the FLSA.

V. CAUSES OF ACTION

A. FLSA COVERAGE

34. All previous paragraphs are incorporated as though fully set forth herein.

35. The FLSA Collective is defined as:

ALL HOURLY EMPLOYEES WHO WORKED FOR PRODUCERS SERVICE CORPORATION, AT ANY TIME FROM JULY 16, 2015 THROUGH THE FINAL DISPOSITION OF THIS MATTER, WERE PAID OVERTIME BUT WHOSE BONUSES WERE NOT INCLUDED IN THE REGULAR RATE OF PAY FOR PURPOSES OF DETERMINING THEIR PROPER OVERTIME RATE (“FLSA Collective” or “FLSA Collective Members”).

36. At all times hereinafter mentioned, PSC has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

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

38. At all times hereinafter mentioned, PSC has 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, or in any closely related process or occupation directly essential to the

production thereof, and in that those 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).

39. During the respective periods of Plaintiff and the FLSA Collective Members' employment by PSC, these individuals provided services for PSC that involved interstate commerce for purposes of the FLSA.

40. In performing the operations hereinabove described, Plaintiff and the FLSA Collective Members were engaged in commerce or in the production of goods for commerce within the meaning of §§ 203(b), 203(i), 203(j), 206(a), and 207(a) of the FLSA. 29 U.S.C. §§ 203(b), 203(i), 203(j), 206(a), 207(a).

41. Specifically, Plaintiff and the FLSA Collective Members are (or were) non-exempt employees who worked for PSC and were engaged in services that were directly essential to the production of goods for PSC and related oil and gas exploration and production companies. 29 U.S.C. § 203(j).

42. At all times hereinafter mentioned, Plaintiff and the FLSA Collective Members are (or 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.

43. In violating the FLSA, PSC acted willfully, without a good faith basis and with reckless disregard of applicable federal law.

44. The proposed collective of similarly situated employees, i.e. putative collective members sought to be certified pursuant to 29 U.S.C. § 216(b), is defined in Paragraph 35.

45. The precise size and identity of the proposed class should be ascertainable from the business records, tax records, and/or employee or personnel records of PSC.

B. FAILURE TO PAY WAGES IN ACCORDANCE WITH THE FLSA

46. All previous paragraphs are incorporated as though fully set forth herein.

47. PSC violated provisions of Sections 7 and 15 of the FLSA, 29 U.S.C. §§ 207, and 215(a)(2) by employing individuals in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than forty (40) hours without compensating such employees for hours worked in excess of forty (40) hours per week at rates at least one and one-half times the regular rates.

48. Plaintiff and the FLSA Collective Members have suffered damages and continue to suffer damages as a result of PSC's acts or omissions as described herein; though PSC is in possession and control of necessary documents and information from which Plaintiff and the FLSA Collective Members would be able to precisely calculate damages.

49. Moreover, PSC knowingly, willfully and in reckless disregard carried out its illegal pattern of failing to pay Plaintiff and other similarly situated employees the proper amount of overtime compensation. 29 U.S.C. § 255(a).

50. PSC knew or should have known its pay practices were in violation of the FLSA.

51. PSC is a sophisticated party and employer, and therefore knew (or should have known) its policies were in violation of the FLSA.

52. Plaintiff and the FLSA Collective Members, on the other hand, are (and were) unsophisticated laborers who trusted PSC to pay overtime in accordance with the law.

53. The decision and practice by PSC to not pay the proper amount of overtime was neither reasonable nor in good faith.

54. Accordingly, Plaintiff and the FLSA Collective Members are entitled to overtime wages for all hours worked in excess of forty (40) in a workweek pursuant to the FLSA in an amount equal to one-and-a-half times their regular rate of pay, plus liquidated damages, attorneys' fees and costs.

C. FLSA COLLECTIVE ACTION ALLEGATIONS

55. All previous paragraphs are incorporated as though fully set forth herein.

56. Pursuant to 29 U.S.C. § 216(b), this collective claim is made on behalf of all those who are (or were) similarly situated to Plaintiff Helms.

57. Other similarly situated employees have been victimized by PSC's patterns, practices, and policies, which are in willful violation of the FLSA.

58. The FLSA Collective Members are defined in Paragraph 35.

59. PSC's failure to pay the proper amount of overtime compensation results from generally applicable policies and practices, and does not depend on the personal circumstances of the individual FLSA Collective Members.

60. Thus, Plaintiff's experiences are typical of the experiences of the FLSA Collective Members.

61. The specific job titles or precise job requirements of the various FLSA Collective Members does not prevent collective treatment.

62. All of the FLSA Collective Members—regardless of their specific job titles, precise job requirements, rates of pay, or job locations—are entitled to be properly compensated for all hours worked in excess of forty (40) hours per workweek.

63. Although the issues of damages may be individual in character, there is no detraction from the common nucleus of liability facts.

64. PSC has employed a substantial number of similarly situated individuals across the United States since July 16, 2015. Upon information and belief, these workers are geographically dispersed, residing and working in locations across the United States. Because these workers do not have fixed work locations, they may work in different states across the country in the course of a given year.

65. Absent a collective action, many members of the proposed FLSA collective likely will not obtain redress of their injuries and PSC will retain the proceeds of its rampant violations.

66. Moreover, individual litigation would be unduly burdensome to the judicial system. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of the individual members of the classes and provide for judicial consistency.

67. Accordingly, the FLSA collective of similarly situated plaintiffs should be certified as defined as in Paragraph 35 and notice should be promptly sent.

VI. RELIEF SOUGHT

68. Plaintiff Helms respectfully prays for judgment against PSC as follows:

a. For an Order recognizing this proceeding as a collective action pursuant to Section 216(b) of the FLSA, certifying the FLSA Collective as defined in Paragraph 35 and

requiring PSC to provide the names, addresses, e-mail addresses, telephone numbers, and social security numbers of all potential collective action members;

b. For an Order approving the form and content of a notice to be sent to all potential FLSA Collective Members advising them of the pendency of this litigation and of their rights with respect thereto;

c. For an Order awarding Plaintiff (and those FLSA Collective Members who have joined in the suit) back wages that have been improperly withheld;

d. For an Order pursuant to Section 16(b) of the FLSA finding PSC liable for unpaid back wages due to Plaintiff (and those FLSA Collective Members who have joined in the suit), for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those FLSA Collective Members who have joined in the suit);

e. For an Order awarding Plaintiff Helms the costs and expenses of this action;

f. For an Order awarding Plaintiff's attorneys' fees;

g. For an Order awarding pre-judgment and post-judgment interest at the highest rates allowed by law;

h. For an Order awarding Plaintiff Helms a service award as permitted by law;

i. For an Order compelling the accounting of the books and records of PSC, at PSC's own expense;

j. For an Order providing for injunctive relief prohibiting PSC from engaging in future violations of the FLSA, and requiring PSC to comply with such laws going forward; and

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

Date: July 16, 2018

Respectfully submitted,

ANDERSON ALEXANDER, PLLC

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Attorneys in Charge for Plaintiff and the Putative Class Members

Exhibit A

CONSENT TO JOIN WAGE CLAIM

Print Name: Samuel T. Helms

1. I hereby consent to participate in a collective action lawsuit against **PRODUCERS SERVICE CORPORATION** to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.
3. I designate the law firm and attorneys at ANDERSON ALEXANDER, PLLC as my attorneys to prosecute my wage claims.
4. I intend to pursue my claim individually, unless and until the Court certifies this case as a collective action. I agree to serve as the Class Representative if the Court so approves. If someone else serves as the Class Representative, then I designate the Class Representative(s) as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with the Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.
5. I authorize the law firm and attorneys at ANDERSON ALEXANDER, PLLC to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature:  Samuel T. Helms (Jul 15, 2018)

Date: Jul 15, 2018

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
 SAMUEL HELMS, Individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 Clif Alexander, Anderson Alexander, PLLC, 819 N. Upper Broadway,
 Corpus Christi, TX 78401 and Noble McIntyre, McIntyre Law, 8601 S.
 Western Avenue, Oklahoma City, OK 73139

DEFENDANTS
 PRODUCERS SERVICE CORPORATION

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

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) [Click here for: Nature of Suit Code Descriptions.](#)

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	PERSONAL INJURY <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"/> 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"/> 835 Patent - Abbreviated New Drug Application <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))	<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
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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 §216(b), 28 USC §1331

Brief description of cause:
 FLSA

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 07/16/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Clif Alexander

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: [Producers Service Corporation Facing Unpaid Overtime Collective Action](#)
