

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

CLIFTON KLUSER and DAVID
SPENCER, on behalf of themselves and
others similarly situated,

Plaintiffs,

vs.

CASE NO.:

AREA WIDE PROTECTIVE, INC.,
d/b/a AWP, INC., a foreign profit
corporation,

Defendant.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs CLIFTON KLUSER and DAVID SPENCER (“Plaintiffs”), on behalf of themselves and other similarly situated employees, bring this action for unpaid overtime compensation, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b) (the “FLSA”) against AREA WIDE PROTECTIVE, INC., (“Defendant”).

JURISDICTION AND VENUE

1. This is an action for damages and for declaratory relief, under the Fair Labor Standards Act, as amended (29 U.S.C. §201, et seq., hereinafter called the “FLSA”) to recover unpaid overtime wages, an additional equal amount as liquidated damages, obtain declaratory relief, and reasonable attorney’s fees and costs and other relief.

2. The jurisdiction of the Court over this controversy is pursuant to 28 U.S.C. §1331 and the FLSA.

3. Venue is proper in this Court because violations of the FLSA occurred in this Judicial District and Defendant maintains an office and regularly conducts business in this

Judicial District.

PARTIES

4. Plaintiff Spencer was employed by Defendant as a traffic control specialist from April 2016 through August 2016, and performed related activities for Defendant in Florida. Plaintiff's job duties included setting up safety zones and directing traffic to ensure road crews were able to complete roadside tasks.

5. Plaintiff Kluser was employed as a senior traffic control specialist from April 2015 through August 2016. Plaintiff's job duties included driving work crews to job sites, setting up safety zones and directing traffic to ensure road crews were able to complete roadside tasks.

6. Defendant Area Wide Protective, Inc., d/b/a AWP, Inc. is a Foreign Profit Corporation that operates and conducts business in, among others, Pinellas County, Florida, and is therefore within the jurisdiction of this Court. Defendant is in the business of temporary traffic control, providing safety services to roadside work crews.

STATEMENT OF FACTS

7. This action is brought under the FLSA to recover from Defendant overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

8. This court has jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. §1337 and the FLSA.

9. At all material times relevant to this action, Defendant was an enterprise covered by the FLSA, as defined by 29 U.S.C. §§203(r) and 203(s). Defendant had gross revenues of at least \$500,000.00 and employees engaged in commerce. Defendant's employees handle and use products that have been moved in or produced in commerce, such as vehicles barricades, flags and tablets.

10. Defendant is a company authorized and doing business in this Judicial District.

11. Defendant is an employer as defined by the laws under which this action is brought and employs the required number of employees.

12. Defendants had a policy of requiring employees to work before and after their scheduled shift without compensation.

13. For example, employees were not permitted to “clock in” for pay purposes until they arrived on the actual job site to which they had been assigned. Similarly, employees were required to “clock out” for pay purposes when the road crews to which they were assigned completed their roadside tasks.

14. However, Plaintiffs performed work before being permitted to “clock in” for pay purposes, for which Plaintiffs were not compensated. Similarly, Plaintiffs were required to continue performing work after being required to “clock out” for pay purposes, for which Plaintiffs were not compensated.

15. Moreover, Plaintiffs were not compensated for travel time to and from job sites, which originated and concluded at Defendant’s offices.

16. As a traffic control specialist, Plaintiff Spencer was not exempt from the overtime requirement of the FLSA.

17. As a senior traffic control specialist, Plaintiff Kluser was not exempt from the overtime requirement of the FLSA.

18. Plaintiffs were not compensated in any way for the “off the clock” work performed for the benefit of Defendant.

19. Defendant was aware Plaintiffs were performing “off the clock” work without compensation because Defendant implemented and enforced the underlying policies requiring

Plaintiffs to work off the clock.

20. At all times relevant to this action, Defendant failed to comply with 29 U.S.C. §§ 201-209, because Defendant did not pay Plaintiffs overtime wages for those hours worked in excess of forty (40) within a work week.

21. During their employment with Defendant, Plaintiffs were not paid time and one-half their regular rate of pay for all hours worked in excess of forty (40) within a work week during one or more weeks of employment.

22. Upon information and belief, the records, to the extent that any exist, concerning the number of hours worked and amounts paid to Plaintiffs are in the possession, custody and control of the Defendant.

23. Upon information and belief, Defendant did not rely on and Department of Labor Wage and Hour Opinions or the advice of an attorney in creating its pay policies.

24. Defendant has the resources to ensure compliance with the FLSA. Therefore, Defendant knew or should have known with reasonable diligence that their conduct violated the Fair Labor Standards Act.

25. Defendant was aware that their policies violated the FLSA. Specifically, Defendant previously paid employees for work performed before the arrival at the assigned job site and after departure of the road crews, as well as travel time to and from job sites departing from and returning to Defendant's offices.

COUNT I
RECOVERY OF OVERTIME COMPENSATION

26. Plaintiffs reincorporate and readopt all allegations contained within Paragraphs 1-25 above.

27. Plaintiffs were entitled to be paid time and one-half their regular rate of pay for each

hour worked in excess of forty (40) per work week.

28. During their employment with Defendant, Plaintiffs regularly worked overtime hours but were not paid time and one-half compensation for the same.

29. As a result of Defendant's intentional, willful, and unlawful acts in refusing to pay Plaintiffs time and one-half their regular rate of pay for each hour worked in excess of forty (40) per work week in one or more work weeks, Plaintiffs have suffered damages and are incurring reasonable attorneys' fees and costs.

30. Defendant was aware Plaintiffs performed non-exempt job duties but still refused to pay Plaintiffs overtime for hours worked over forty (40).

31. Defendant did not maintain and keep accurate time records as required by the FLSA for Plaintiff.

32. Defendant failed to post required FLSA informational listings as required by the FLSA.

33. Defendant's conduct was in reckless disregard of the overtime requirements of the FLSA.

34. Defendant willfully violated the FLSA.

35. Plaintiffs are entitled to liquidated damages.

36. Plaintiffs demand a trial by jury.

WHEREFORE, Plaintiffs demand judgment against Defendant for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by them for which Defendant did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and all further relief that this Court deems to be just and appropriate.

COUNT II
COLLECTIVE ACTION, VIOLATION OF FLSA
(FAILURE TO PAY OVERTIME)

37. Plaintiffs reincorporate and readopt all allegations contained within Paragraphs 1-25 above.

38. At all times material, Defendant employed numerous other non-exempt employees who worked as traffic control specialists and senior traffic control specialists, who were subject to the same unlawful pay practices and who worked a substantial number of hours in excess of forty (40) per week.

39. Defendant failed to pay individuals similarly situated to Plaintiffs one and one half times their regular hourly rate, for all hours worked in excess of forty (40) in each week, in violation of the FLSA.

40. Defendant's failure to pay such similarly situated individuals the required overtime rate was willful and in reckless disregard of the FLSA.

41. As a direct and legal consequence of Defendant's unlawful acts, individuals similarly situated to Plaintiffs have suffered damages and have incurred, or will incur, costs and attorneys' fees in the prosecution of this matter.

WHEREFORE, Plaintiffs demand that similarly situated employees have judgment entered against Defendant for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked over forty for which Defendant did not properly them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and all further relief that this Court deems to be just and appropriate.

JURY DEMAND

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

Dated this 5th day of January 2017.

MORGAN & MORGAN, P.A.

/s/ Marc R. Edelman

MARC R. EDELMAN, ESQ.

Fla. Bar No. 0096342

Morgan & Morgan, P.A.

201 N. Franklin Street, Suite 700

Tampa, FL 33602

Telephone: 813-223-5505

Fax: 813-257-0572

Email: Medelman@forthepeople.com

Attorney for Plaintiff

JS 44 (Rev. 11/15)

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

CLIFTON KLUSER and DAVID SPENCER, on behalf of themselves and other similarly situated,

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

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

Mark R. Edelman, Esq., Morgan & Morgan, P.A., 201 N. Franklin Street, Suite 700, Tampa, FL 33602 - Tel: 813-223-5505

DEFENDANTS

AREA WIDE PROTECTIVE, INC., d/b/a AWP, INC., a foreign profit 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 checked="" 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	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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" 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	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 Other: <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):
Fair Labor Standards Act

Brief description of cause:
Non-payment of overtime and 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

SIGNATURE OF ATTORNEY OF RECORD

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: [Area Wide Protective, Inc. Knocked with Unpaid Overtime Lawsuit](#)
