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8 Attorney for Plaintiffs Audrey Ludlum, et al.

9 U.S. DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 AUDREY LUDLUM, Individually
12 and For Others Similarly Situated.

13 Plaintiffs,

14 v.

15 C&I ENGINEERING, LLC.

16 Defendant.

Case No.:

4:18-cv-05192

**CLASS AND
COLLECTIVE ACTION
COMPLAINT**

**JURY TRIAL
DEMANDED**

17 Plaintiff Audrey Ludlum (Ludlum) is informed and believes, and on
18 that basis alleges, as follows:

19 **SUMMARY**

20 1. C&I Engineering, LLC (C&I) failed to pay Ludlum, and other
21 workers like her, overtime as required by the Fair Labor Standards Act
22 (FLSA) and the Revised Code of Washington, Chapter 49.46 *et seq.*
23 (RCW), Washington’s Minimum Wage Act (WMWA), and any relevant
24 regulations and/or rules adopted by the Washington Director of Labor and
Industries (collectively, “Washington Wage Laws”).

1 **THE PARTIES**

2 9. Ludlum was an hourly employee of C&I. Her written consent is
3 attached as Exhibit A.

4 10. Ludlum seeks conditional and final certification of this FLSA
5 collective action under 29 U.S.C. § 216(b).
6

7 11. The class of similarly situated employees sought to be certified
8 as a collective action under the FLSA is defined as:

9 **All hourly employees of C&I Engineering, LLC who**
10 **were, at any point in the past 3 years, paid “straight**
11 **time for overtime.” (the “FLSA Class”).**

12 12. Ludlum also seeks certification of a class under Fed. R. Civ. P.
13 23 to remedy C&I’s violations of the Washington Wage Laws.

14 13. The class of similarly situated employees sought to be certified
15 as a class action for the purposes of pursuing their Washington Wage Laws
16 claims is defined as:

17 **All hourly employees of C&I who worked in**
18 **Washington who were, at any point in the past 3 years,**
19 **paid “straight time for overtime” (the “Washington**
20 **Class”).**

21 14. Collectively, the FLSA Class Members and Washington Class
22 Members are referred to as “Class Members.”

23 15. C&I is an engineering firm with headquarters in Louisville,
24 Kentucky. C&I may be served with process by serving its registered agent:

1 C&I Engineering, LLC, 369 Falconridge Street, Richland, Washington,
2 99352.

3 **Coverage Under the FLSA**

4 16. At all times hereinafter mentioned, C&I was and is an
5 employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. §
6 203(d).
7

8 17. At all times hereinafter mentioned, C&I was and is an
9 enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. §
10 203(r).
11

12 18. At all relevant times, C&I was an enterprise engaged in
13 commerce or in the production of goods for commerce within the meaning
14 of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), because C&I is an
15 engineering firm providing design, consulting, construction and
16 management services throughout this country.

17 19. At all relevant times, C&I had an annual gross volume of sales
18 made in excess of \$5,000,000.00.
19

20 20. At all times hereinafter mentioned, Ludlum and the Class
21 Members were engaged in commerce or in the production of goods for
22 commerce per 29 U.S.C. §§ 206-207.
23
24

THE FACTS

1
2 21. C&I is a multi-million-dollar engineering firm that provides
3 design, consulting, construction, and management services to clients
4 across the United States.

5
6 22. In order to provide these services, it employs individuals like
7 Ludlum.

8 23. Ludlum was an hourly employee of C&I.

9 24. Ludlum was hired around January of 2017.

10 25. Ludlum was a Civil Engineer for C&I.

11 26. C&I paid Ludlum by the hour.

12 27. C&I paid Ludlum \$83.00 per hour.

13
14 28. Ludlum reported the hours she worked to C&I on a regular
15 basis.

16 29. If Ludlum worked fewer than 40 hours in a week, she was only
17 paid only for the hours she worked.

18 30. But Ludlum regularly worked more than 40 hours in a week.

19
20 31. For example, during the two-week pay period ending on April
21 8, 2016, Ludlum was credited for working 144 hours.

22 32. During both of those two weeks, Ludlum worked more than 40
23 hours.

1 33. Ludlum was paid \$83.00 for all 144 hours she worked.

2 34. The hours Ludlum worked are reflected in C&I's records.

3 35. C&I paid Ludlum at the same hourly rate for all hours worked,
4 including those in excess of 40 in a workweek.

5 36. Rather than receiving time and half as required by the FLSA,
6 Ludlum only received "straight time" pay for overtime hours worked.

7 37. This "straight time for overtime" payment scheme violates the
8 FLSA.
9

10 38. Ludlum was not paid for periods of inactivity during meal
11 breaks and rest breaks.

12 39. C&I has not paid Ludlum the overtime she is owed,
13 constituting waiting time.

14 40. C&I was aware of the overtime requirements of the FLSA.

15 41. C&I nonetheless failed to pay certain hourly employees, such
16 as Ludlum, overtime.
17

18 42. C&I's failure to pay overtime to these hourly workers was, and
19 is, a willful violation of the FLSA.
20

21 **FLSA VIOLATIONS**

22 43. By failing to pay Ludlum and the FLSA Class Members
23 overtime at one-and-one-half times their regular rates, C&I violated the
24 FLSA's overtime provisions.

1 44. C&I owes Ludlum and the FLSA Class Members the difference
2 between the rate actually paid and the proper overtime rate.

3 45. Any differences in job duties do not detract from the fact that
4 these hourly workers are entitled to overtime pay.

5 46. Because C&I knew, or showed reckless disregard for whether,
6 its pay practices violated the FLSA, C&I owes these wages for at least the
7 past three years.

8 47. C&I is liable to Ludlum and the FLSA Class Members an
9 amount equal to all unpaid overtime wages as liquidated damages.

10 48. Ludlum and the FLSA Class Members are entitled to recover
11 all reasonable attorneys' fees and costs incurred in this action.

12 49. The workers impacted by C&I's "straight time for overtime"
13 scheme should be notified of this action and given the chance to join
14 pursuant to 29 U.S.C. § 216(b).

15
16
17 **WASHINGTON WAGE LAW VIOLATIONS**

18 50. Ludlum realleges and reincorporates all allegations above as if
19 incorporated herein.

20 51. The foregoing conduct, as alleged, violate the Washington
21 Wage Laws.
22
23
24

1 52. At all relevant times, C&I has been, and continue to be, an
2 “employer” within the meaning of the Washington Wage Laws. At all
3 relevant times, C&I employed “employee[s],” including Ludlum and the
4 Washington Class, within the meaning of the Washington Wage Laws.
5

6 53. RCW §49.52.070 provides that employers who violate
7 Washington’s minimum wage laws under the circumstances present in
8 this case are liable for double the amount of wages improperly withheld.

9 54. Pursuant to RCW §49.52.080, there exists a presumption of
10 willfulness.

11 55. The Washington Wage Laws require an employer, such as C&I
12 to pay overtime compensation to all non-exempt employees. Ludlum and
13 the Washington Class are not exempt from overtime pay requirements
14 under the Washington Wage Laws.
15

16 56. More specifically, the Washington Class members’ claims are
17 subject to the three-year statute of limitations applicable to the WMWA
18 and implied contracts, as provided under RCW § 4.16.080(3). *See e.g.*,
19 *Seattle Profl Eng'g Employees Ass'n v. Boeing Co.*, 139 Wash. 2d 824,
20 838, 991 P.2d 1126, 1134, opinion corrected on denial of reconsideration, 1
21 P.3d 578 (Wash. 2000); *Mitchell v. PEMCO Mut. Ins. Co.*, 134 Wash. App.
22 723, 737, 142 P.3d 623 (2006).
23
24

1 57. At all relevant times, C&I had a policy and practice of failing
2 and refusing to pay overtime pay to Ludlum for her hours worked in
3 excess of forty hours per workweek.

4 58. C&I violated Washington Wage Laws including, but not
5 necessarily limited to, RCW, WMWA, by failing to pay the Washington
6 Class on a salary basis.

7 59. At all relevant times, C&I did not pay the Washington Class on
8 a salary basis, so the Washington Class was not exempt under Wash.
9 Admin. Code §296-128-510 (executive), Wash. Admin. Code §296-128-
10 520 (administrative), Wash. Admin. Code §296-128-530 (professional),
11 and Wash. Admin. Code §296-128-532 (salary basis and deductions).
12

13 60. With regards to the Class Members, C&I did not comply with
14 Washington Admin. Code §296-126-092(4) which provides: “Employees
15 shall be allowed a rest period of not less than ten minutes, on the
16 employer’s time, for each four hours of working time.”
17

18 61. At all relevant times, C&I willfully failed and refused, and
19 continues to willfully fail and refuse, to pay Ludlum and Class Members
20 the amounts owed. Specifically, C&I claws back all hourly advances not
21 paid for rest/meal break time. This conduct violates Washington Wage
22 Laws as alleged in this cause of action.
23
24

1 62. C&I has denied Ludlum and the Washington Class wages and
2 benefits of employment, including contractual vacation pay, as alleged
3 herein. C&I’s deduction of Ludlum and the Washington Class members
4 vacation pay for wages results in depriving Ludlum and Washington Class
5 members of their vacation pay, in violation of RCW §49.52.050. C&I is,
6 therefore, liable to Ludlum and the Washington Class for all such vacation
7 pay and other improperly deducted or rebated wages or earnings, and
8 double damages, under RCW §49.52.070.
9

10 63. Ludlum and the Washington Class seek recovery of attorneys’
11 fees, costs, and expenses of this action to be paid by C&I.
12

13 64. Ludlum and the Washington Class seek damages in the
14 amount of the respective unpaid wages earned and due at the regular
15 hourly wage rate, and at a rate not less than one and one-half times the
16 regular rate of pay for work performed in excess of forty hours in a
17 workweek; actual damages; penalty damages; and such other legal and
18 equitable relief as the Court deems just and proper.
19

20 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

21 65. C&I’s illegal “straight time for overtime” policy extends beyond
22 Ludlum.
23
24

1 66. It is the “straight time for overtime” payment plan that violates
2 the FLSA in this collective and class action.

3 67. C&I pays hundreds of hourly employees according to the same
4 unlawful scheme.

5 68. Any differences in job duties do not detract from the fact that
6 these hourly workers were entitled to overtime pay.

7 69. Ludlum and the Class Members impacted by C&I’s “straight
8 time for overtime” scheme should be notified of this action and given the
9 chance to join pursuant to 29 U.S.C. § 216(b).

10 70. C&I has accurate records of the wages paid to its hourly
11 workers.

12 71. The Class Members are geographically disbursed, residing,
13 and working in states across the country.

14 72. Ludlum’s experiences are typical of the experiences of all Class
15 Members.

16 73. Ludlum has no interests contrary to, or in conflict with, the
17 members of the Class Members. Like each member of the proposed
18 classes, Ludlum has an interest in obtaining the unpaid overtime wages
19 owed under state and/or federal law.
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1 74. A class and collective action, such as the instant one, is
2 superior to other available means for fair and efficient adjudication of the
3 lawsuit.

4 75. Absent this action, many members of the FLSA Class and
5 Washington Class likely will not obtain redress of their injuries and C&I
6 will retain the proceeds of their violations of the FLSA and Washington
7 Wage Laws.
8

9 76. Furthermore, individual litigation would be unduly
10 burdensome to the judicial system. Concentrating the litigation in one
11 forum will promote judicial economy and parity among the claims of
12 individual members of the classes and provide for judicial consistency.
13

14 77. The questions of law and facts common to each of the FLSA
15 and Washington Class Members predominate over any questions affecting
16 solely the individual members. Among the common questions of law and
17 fact are:

18 a. Whether C&I employed the FLSA and Washington
19 Class Members within the meaning of the FLSA and
20 Washington Wage Laws;

21 b. Whether the FLSA and Washington Class
22 Members were exempt from overtime;
23
24

1 c. Whether C&I's decision not to pay overtime to the
2 FLSA and Washington Class Members was made in good faith;
3 and

4 d. Whether C&I's violation of the FLSA and
5 Washington Wage Laws was willful.
6

7 78. Ludlum's claims are typical of the FLSA and Washington Class
8 Members since both have sustained damages arising out of C&I's illegal
9 and uniform employment pay policy.

10 79. Ludlum knows of no difficulty that will be encountered in the
11 management of this litigation that would preclude its ability to go forward
12 as a class or collective action.
13

14 80. Although the issue of damages may be somewhat individual in
15 character, there is no detraction from the common nucleus of liability
16 facts. Therefore, this issue does not preclude class or collective action
17 treatment.

18 81. Concentrating the litigation in one forum will promote judicial
19 economy and parity among the claims of individual members of the
20 classes and provide for judicial consistency.
21

22 **JURY DEMAND**

23 82. Pursuant to F.R.C.P. 38, Ludlum demands a trial by jury.
24

PRAYER

83. WHEREFORE, Ludlum prays for relief as follows:

a. An order designating this lawsuit as a collective action and authorizing notice pursuant to 29 U.S.C. § 216(b) to the proposed Class Members to permit them to join this action by filing a written notice of consent;

b. For an Order designating the state law classes as class actions pursuant to Fed. R. Civ. P. 23 under Washington Wage Laws;

c. Judgment against C&I awarding Ludlum and the Class Members all unpaid overtime compensation, liquidated damages, attorneys' fees and costs.

d. An award of pre- and post-judgment interest on all amounts awarded at the highest rate allowable by law; and

e. All such other and further relief to which Ludlum and the Class Members may show themselves to be justly entitled.

Respectfully submitted,

By: /s/ Nicholas D. Kovarik

Nicholas D. Kovarik

WA Bar No. 35462

nick@pyklawyers.com

PISKEL YAHNE KOVARIK, PLLC

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT A

CONSENT TO JOIN WAGE CLAIM

Print Name: Audrey L. Ludlum

1. I hereby consent to participate in a collective action lawsuit against C&I Engineering 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 JOSEPHSON DUNLAP and BRUCKNER BURCH as my attorneys to prosecute my wage claims.
4. I authorize the law firm and attorneys at JOSEPHSON DUNLAP and BRUCKNER BURCH to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature: 
Audrey L. Ludlum (Nov 29, 2018)

Date Signed: 11-29-18

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

AUDREY LUDLUM, Individually and For Others Similarly Situated

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

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

Piskel Yahne Kovarik, 522 W. Riverside Ave, Ste. 700, Spokane WA 99201; (509) 321 - 5930.

DEFENDANTS

C&I ENGINEERING, LLC

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)

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): 28 U.S.C. § 1331, 29 U.S.C. § 216(b)

Brief description of cause: unpaid overtime compensation

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 12/14/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Nicholas D. Kovarik

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

AUDREY LUDLUM, Individually and For Others
Similarly Situated

Plaintiff(s)

v.

C&I ENGINEERING, LLC

Defendant(s)

Civil Action No. 4:18-cv-05192

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) C&I ENGINEERING, LLC

Registered Agent:
C&I Engineering, LLC
369 Falconridge Street
Richland, WA 99352

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

PISKEL YAHNE KOVARIK, PLLC
Attn: Nicholas D. Kovarik
522 West Riverside Avenue, Suite 700
Spokane, WA 99201

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date

SEAN F. McAVOY, Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [C&I Engineering Facing Employee's Unpaid Overtime Lawsuit](#)
