

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**SPENCER ROGERS, on behalf
of himself and those similarly
situated,**

Plaintiff,

CASE NO.:

vs.

**D.W. SANDERS CERAMIC
TILE & STONE
CONTRACTING, INC. , a
Domestic Profit Corporation,**

Defendant.

**COLLECTIVE ACTION
COMPLAINT & DEMAND FOR JURY TRIAL**

Plaintiff, SPENCER ROGERS, on behalf of himself and others similarly situated, files by and through his undersigned counsel, and hereby sues the Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., a Domestic Profit Corporation, (hereinafter referred to as the “Defendant”), and alleges as follows:

INTRODUCTION

1. This is an action by the Plaintiff against his former employer for unpaid overtime wages pursuant to the Fair Labor Standards Act (“FLSA”). Plaintiff seeks damages, reasonable attorney’s fees, and other relief under the Fair Labor Standards Act, as amended, 29 U.S.C. § 216(b) (the “FLSA”).

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

JURISDICTION

3. This action arises under the Fair Labor Standards Act, 29 U.S.C. §210, *et. seq.*

4. The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. §216(b).

5. This action is brought under Federal law to recover from Defendant unpaid overtime wages, liquidated damages, and reasonable attorneys’ fees and costs.

VENUE

6. The venue of this Court over this controversy is proper based upon the claim arising in Cobb County, Georgia.

PARTIES

7. Plaintiff was a Tile Setter Helper and performed related activities for Defendant in Cobb County, Georgia.

8. Plaintiff, SPENCER ROGERS, worked for Defendant as a Tile Setter Helper from approximately January 4, 2016 through April 14, 2016.

9. Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., provides cleaning, painting, and carpet drying to their customers.

10. Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., is a Domestic Profit Corporation which operates and conducts business in Cobb County, Georgia and is therefore, within jurisdiction of this Court.

FACTUAL ALLEGATIONS

11. Plaintiff worked as “Tile Setter Helper” for Defendant and performed related activities (i.e. mixing mortar, laying tile, and pouring concrete).

12. Plaintiff was paid an hourly rate of fourteen and 00/100 dollars (\$14.00) per hour in exchange for work performed up until February, 2016.

13. After February, 2016, Plaintiff was paid an hourly rate of fifteen and 00/100 dollars (\$15.00) per hour in exchange for work performed.

14. Plaintiff worked in this capacity from January 4, 2016 through April 14, 2016.

15. Plaintiff routinely worked in excess of forty (40) hours per week as part of his regular job duties.

16. Plaintiff worked approximately fifty (50) hours per week.

17. Despite working more than forty (40) hours per week, Defendant failed to pay Plaintiff overtime compensation at a rate of no less than time and one half his regular rate of pay for all hours worked over forty in a workweek.

18. Tile Setter Helpers were eligible for overtime provided they worked more than forty (40) hours per week.

19. Defendant failed to compensate Plaintiff for travel time.

20. At all material times during the last three years, Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., was an enterprise subject to the FLSA's provision on overtime wages.

COVERAGE

21. The Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC. , is a corporation formed and existing under the laws of the State of Georgia and at all times, during Plaintiff's employment, was an employer as defined by 29 U.S.C. §203.

22. Plaintiff was an employee of Defendant and was at all times relevant to the violations of the FLSA (2013-2016), engaged in commerce as defined by 29 U.S.C. §§206(a) and 207(a)(1).

23. At all material times relevant to this action (2013-2016), the Defendant was an enterprise covered by the FLSA, and as defined by 29 U.S.C. §203(r) and 203(s).

24. At all material times relevant to this action (2013-2016), the Defendant made gross earnings of at least five hundred thousand and 0/100 dollars (\$500,000.00) annually.

25. At all material times relevant to this action (2013-2016), the Defendant had two (2) or more employees engaged in interstate commerce, producing goods for interstate commerce, or handling, selling or otherwise working on goods or materials that have been moved in or produced for such commerce. (i.e. worked with tile, concrete, mortar, etc.).

26. At all material times relevant to this action (2013-2016), Defendant had two (2) or more employees routinely ordering materials or supplies from out of state vendors, and sold to out of state customers. (i.e. home improvement related materials).

27. At all material times relevant to this action (2013-2016), the Defendant has been an enterprise involved in interstate commerce by accepting payments from customers based on credit cards issued by out of state banks.

28. At all material times relevant to this action (2013-2016), the Defendant also used heavy machinery, professional tools, and other related materials for residential

and commercial use.

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

COLLECTIVE FACTUAL ALLEGATIONS

30. Class members are treated equally by Defendant.

31. Defendant subjected class members to the same illegal practice policy by not paying Plaintiff and those similarly situated correct overtime wages.

32. Defendant has employed several tile setter helpers who were improperly paid overtime wages in the State of Georgia within the past three (3) years.

33. Plaintiff and all class members worked in the State of Georgia.

34. Plaintiff and all class members in the State of Georgia were not correctly paid overtime wages for all hours worked in excess of forty (40) hours.

35. Defendant failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

36. Defendant has acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

37. Defendant acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

38. Defendant was aware of the time and record keeping requirements of the Fair Labor Standards Act, but willfully or recklessly failed to keep accurate pay and time records as required.

39. Defendant did not act in good faith or reliance upon any of the following in formulating its pay practices: (a) case law; (b) the FLSA, 29 U.S.C. 216 §201, *et seq.*; (c) Department of Labor Wage & Hour Opinion Letters; or (d) the Code of Federal Regulations.

40. Plaintiff files this collective action on behalf of himself and all other similarly situated tile setter helper.

41. The proposed class is defined as follows:

All tile setter helpers (or similar title) who worked for Defendant within the last three years who were not paid overtime compensation at time and one half their regular rate of pay for all hours worked in excess of forty (40) within a work week.

**COUNT I - RECOVERY OF OVERTIME COMPENSATION
VERSUS D.W. SANDERS CERAMIC TILE & STONE CONTRACTING,
INC.**

42. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-41 above as though fully stated herein.

43. Throughout Plaintiff's employment, the Defendant repeatedly and willfully violated Section 7 and Section 15 of the FLSA by failing to compensate Plaintiff at

a rate not less than one and one-half times the regular rate at which he was employed for workweeks longer than forty (40) hours while it knew that overtime compensation was required by the law.

44. Specifically, Defendant failed to keep accurate time records as required by the FLSA for Plaintiff.

45. Plaintiff demands trial by jury.

WHEREFORE, Plaintiff, SPENCER ROGERS, on behalf of himself and all other similar situated employees, demands judgment against Defendant, D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., for the payment of all overtime hours at one and one-half the regular rate of pay for the hours worked by him for which Defendant did not properly compensate him, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief that this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Dated this 30th day of November, 2016.

Respectfully submitted,

s/ADIAN MILLER

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

SPENCER ROGERS

DEFENDANT(S)

D.W. SANDERS CERAMIC TILE & STONE CONTRACTING, INC., a Domestic Profit Corporation

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Adian R. Miller, Esq., & Carlos V., Leach, Morgan & Morgan, P.A., 191 Peachtree Street NE, P.O. Box 57007, Atlanta, Georgia 30343, (404) 965 - 8811

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) (FOR DIVERSITY CASES ONLY)

- 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. 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 ANOTHER DISTRICT (Specify District), 6 MULTIDISTRICT LITIGATION, 7 FROM MAGISTRATE JUDGE JUDGMENT, APPEAL TO DISTRICT JUDGE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. 216(b) ; Actions for Unpaid Overtime Wages

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties. 2. Unusually large number of claims or defenses. 3. Factual issues are exceptionally complex. 4. Greater than normal volume of evidence. 5. Extended discovery period is needed. 6. Problems locating or preserving evidence. 7. Pending parallel investigations or actions by government. 8. Multiple use of experts. 9. Need for discovery outside United States boundaries. 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT #, AMOUNT \$, APPLYING IFP, MAG. JUDGE (IFP), JUDGE, MAG. JUDGE (Referral), NATURE OF SUIT, CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 QUI TAM 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Adian R. Miller

11/30/2016

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Georgia Ceramic Tile & Stone Contracting Co. Hit with FLSA Suit](#)
