

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION

DYLAN WALKER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

V.

JACKSON WELL SERVICES, LLC,

Defendant.

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CIVIL ACTION NO. 7:18-cv-3

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT
COLLECTIVE ACTION AND JURY DEMAND

1. Defendant Jackson Well Services, LLC (“Defendant”) required Plaintiff Dylan Walker (“Plaintiff”) to work more that forty hours in a work week as a flowback operator. Plaintiff is a former employee of Defendant who performed work related to oil and gas wells serviced by Defendant. Defendant misclassified Plaintiff as an independent contractor and as such paid him a flat weekly rate for his substantial regular and overtime hours. Defendant also misclassifies other flowback operators and similar employees as independent contractors across the country and likewise denied them their proper overtime compensation.

2. Defendant’s conduct violates the Fair Labor Standards Act (“FLSA”), which requires non-exempt employees to be compensated for all hours in excess of forty in a workweek at one and one-half times their regular rate. *See* 29 U.S.C. § 207(a). On behalf of himself and all other similarly situated employees, Plaintiff brings this lawsuit as a collective action under the FLSA, 29 U.S.C. § 216(b). Members of the collective action are referred to hereinafter as the “FLSA Class Members.”

SUBJECT MATTER JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 because this lawsuit is brought under the FLSA.

4. Venue is proper in this District because a substantial portion of the events forming the basis of this suit occurred in this District. Specifically, Defendant employed Plaintiff in this District and Plaintiff performed the work that forms the basis of this lawsuit in this District.

PARTIES AND PERSONAL JURISDICTION

5. Plaintiff Dylan Walker is an individual residing in Canadian County, Oklahoma. Plaintiff's written consent to this action is attached hereto as Exhibit "A."

6. The "FLSA Class Members" are all current and former workers who performed work for Defendant associated with monitoring and maintaining oil and gas wells throughout the United States during the three-year period before the filing of this Complaint that Defendant classified as independent contractors.

7. Defendant Jackson Well Services, LLC is a foreign limited liability company organized under the laws of Oklahoma doing business throughout the United States. Defendant may be served with process through its registered agent Austin Jackson, 4305 SE 41st Street, Norman, Oklahoma 73071.

8. This Court has personal jurisdiction over Defendant because Defendant purposefully availed itself of the privileges of conducting activities in the state of Texas and established minimum contacts sufficient to confer jurisdiction over Defendant, and the assumption of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice and is consistent with the constitutional requirements of due process.

9. Defendant had and continues to have continuous and systematic contacts with the state of Texas sufficient to establish general jurisdiction over it. Specifically, Defendant conducts and/or conducted business in Texas.

10. Defendant employs workers and contracts with residents and businesses in Texas.

11. This cause of action arose from or relates to the contacts of Defendant with Texas residents, thereby conferring specific jurisdiction over Defendant.

COVERAGE

12. At all material times, Defendant has been an employer within the meaning of 3(d) of the FLSA. 29 U.S.C. § 203(d).

13. At all material times, Defendant has been an enterprise within the meaning of 3(r) of the FLSA. 29 U.S.C. § 203(r).

14. At all material times, Defendant has been an enterprise or enterprise in commerce or in the production of goods for commerce within the meaning of 3(s)(1) of the FLSA because Defendant has had and continues to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

15. Furthermore, Defendant has an annual gross business volume of not less than \$500,000.

16. At all material times, Plaintiffs and FLSA Class Members were individual employees who engaged in commerce or in the production of goods for commerce as required by 29 USC § 206-207.

FACTUAL ALLEGATIONS APPLICABLE TO ALL COUNTS

17. Defendant provides oil and gas well monitoring services to energy companies nationwide.

18. Defendant employs its workforce to monitor and maintain oil and gas wells in multiple states including Texas and Oklahoma.

19. Plaintiff and the FLSA Class Members were/are employed by Defendant as flowback operators. As such, their primary duties consist of monitoring oil and gas wells located throughout the United States. A flowback operator's work is labor intensive and commonly involves days at a time at a well site.

20. Plaintiff and the FLSA Class Members worked on a regular basis for Defendant at various oil and gas well locations, monitoring such oil and gas wells.

21. Plaintiff Dylan Walker worked for Defendant on an exclusively and essentially non-stop basis from approximately January of 2015 to April of 2015.

22. Plaintiff Walker worked for Defendant at multiple well sites throughout West Texas.

23. While working for Defendant at these various locations, Plaintiff interacted with and became familiar with the way Defendant treats its other employees with respect to overtime pay and that it misclassifies such workers as independent contractors. Therefore, Plaintiff has first-hand personal knowledge of the same pay violations throughout Defendant's operations at multiple geographical locations.

24. Defendant paid Plaintiff and FLSA Class Members on a flat weekly basis without overtime regardless of the number of hours worked per week, despite scheduling and requiring work well in excess of forty hours per week. Commonly, Plaintiff and other flowback operators worked twelve-hour shifts, seven days a week for a total of 84 hours.

25. Defendant hired/fired, issued pay, supervised, directed, disciplined, scheduled and performed all other duties generally associated with that of an employer with regard to Plaintiff and the FLSA Class Members.

26. In addition, Defendant instructed Plaintiffs and the FLSA Class Members about when, where, and how they were to perform their work.

27. Plaintiff was a manual laborer.

28. Moreover, the following conduct further demonstrates that Defendant acted as an employer with respect to Plaintiff and the FLSA Class Members:

- a. Defendant required Plaintiff and the FLSA Class Members to turn in the hours they worked once a week just like normal hourly-paid employees;
- b. Defendant paid Plaintiff and the FLSA Class Members on a non-negotiable rate it unilaterally set;
- c. Defendant required Plaintiff and the FLSA Class Members to report to their assigned well at a set time;
- d. Plaintiff and the FLSA Class Members had no control over what well they may be assigned to;
- e. Defendant required Plaintiff and the FLSA Class Members to request time off in advance and have that time off preapproved;
- f. Defendant issued work orders to Plaintiff and the FLSA Class Members;
- g. Defendant provided safety training to Plaintiff and the FLSA Class Members instructing them precisely how to perform their work;

- h. Defendant assigned Plaintiff and the FLSA Class Members so many work hours per week (often more than 70) that, as a practical matter, they were prevented from working for any other company;
- i. Defendant controlled the amount of hours Plaintiff and the FLSA Class Members worked;
- j. Defendant dictated the locations at which Plaintiff and the FLSA Class Members worked;
- k. Defendant required Plaintiff and the FLSA Class Members to work more than forty (40) hours per workweek, and typically FLSA Class Members worked more than seventy (70) hours per workweek;
- l. Plaintiff and the FLSA Class Members' services were integrated into Defendant's operations;
- m. Plaintiff and the FLSA Class Members were required to perform their work in an order set by Defendant;
- n. Plaintiff and the FLSA Class Members worked for Defendant for long and indefinite periods of time, often years, as is common with employees;
- o. Defendant had rules that Plaintiff and the FLSA Class Members were required to follow when performing their jobs;
- p. Defendant required Plaintiff and the FLSA Class Members to attend company meetings; and
- q. Defendant maintained the right to discharge Plaintiff and the FLSA Class Members at will.

29. Furthermore, the degree of investment Plaintiff and the FLSA Class Members made to perform their work pales in comparison to the expenses Defendant incurred. Plaintiff and the FLSA Class Members were required to supply simple hand tools, such as wrenches or a hammer. On the other hand, Defendant provided equipment worth hundreds of thousands of dollars including sand traps, water pumps, earth moving equipment, flowback tanks, generators, valves, gauges, pipe, light plants, generators, and flare stacks.

30. Defendant markets itself as a turnkey solution for the flowback aspect of well production. It sells or leases all the necessary industrial equipment to accomplish production at the well site. Part of the complete package it offers its customers is the services of Plaintiff and his fellow flowback operators. As such, the work of the flowback operators is integral to Defendant's business.

31. A substantial portion of Defendant's annual revenue is derived from work performed by Plaintiff and the FLSA Class Members.

32. Despite these facts, Defendant improperly classified Plaintiff and the FLSA Class Members as independent contractors and not employees.

33. Defendant classified its employees as independent contractors to avoid its obligations to pay employees pursuant to the FLSA as well as to reap other benefits of such illegal classification such as reduced tax liability, avoiding paying workers' compensation insurance, and other forms of insurance and to pass on Defendant's operational costs to their work force.

34. However, at all times, the flowback workers and other similarly situated workers were employees of Defendant.

35. Although Plaintiffs have been required to work more than forty (40) hours per work-week, and did so frequently, Plaintiffs were not compensated at the FLSA mandated time-and-a-half rate for hours in excess of forty (40) per workweek.

36. Instead, Plaintiffs were paid a flat rate for all hours worked, regardless of how many hours they actually worked.

37. Furthermore, the FLSA rate that Defendant paid cannot be classified as a salary because Defendant would deduct from that flat weekly rate for any days a worker missed during the week.

38. No FLSA exemption applies to employees such as Plaintiffs and FLSA Class Members.

39. Plaintiff did not hire or fire other employees.

40. Plaintiff did not supervise two or more employees.

41. Defendant did not pay the Plaintiff a salary.

42. Defendant paid Plaintiff a day rate.

43. Defendant's method of paying Plaintiffs in violation of the FLSA was willful and was not based on a good faith and reasonable belief that its conduct complied with the FLSA. Indeed, Defendant's conduct is all the more egregious because it intentionally set up a paper facade that belied the true interaction and conduct of the company and its workforce.

44. That is, Defendant's misclassification was not by accident, but a well thought out scheme to reduce its labor costs. Accordingly, Defendant's violations of the FLSA were willful.

VIOLATION OF 29 U.S.C. § 207
FAILURE TO PAY OVERTIME UNDER THE FLSA
(COLLECTIVE ACTION)

45. Plaintiffs incorporate all allegations contained in the foregoing paragraphs.

46. Defendant's practice of failing to pay Plaintiffs time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S.C. § 207.

47. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to Defendant or Plaintiffs.

COLLECTIVE ACTION ALLEGATIONS

48. Plaintiff has actual knowledge that FLSA Class Members have also been denied overtime pay for hours worked over forty (40) hours per workweek as a result of Defendant's misclassification of its employees.

49. Plaintiff's knowledge is based on his personal work experience and through communications with other workers of Defendant while performing work throughout multiple locations for Defendant.

50. Other workers similarly situated to the Plaintiff work for Defendant throughout the United States, but are not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty (40) hours per workweek.

51. Although Defendant permitted and/or required FLSA Class Members to work in excess of forty (40) hours per workweek, Defendant has denied them full compensation for their hours worked over forty (40).

52. Defendant has classified and continues to classify FLSA Class Members as independent contractors.

53. FLSA Class Members perform or have performed the same or similar work as Plaintiffs and were misclassified as independent contractors by Defendant.

54. FLSA Class Members are not exempt from receiving overtime pay under the FLSA.

55. As such, FLSA Class Members are similar to Plaintiffs in terms of relevant job duties, pay structure, misclassification as independent contractors and/or the denial of overtime pay.

56. Defendant's failure to pay overtime compensation at the rate required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of FLSA Class Members.

57. The experiences of Plaintiff, with respect to his pay, hours, and duties are typical of the experiences of FLSA Class Members.

58. The specific job titles or precise job responsibilities of each FLSA Class Member does not prevent collective treatment.

59. All FLSA Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty (40) during a workweek.

60. Although the exact amount of damages may vary among FLSA Class Members, the damages for FLSA Class Members can be easily calculated by a simple formula. The claims of all FLSA Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by Defendant that caused harm to all FLSA Class Members.

61. As such, the class of similarly situated Plaintiffs for the FLSA Class is properly defined as follows:

All current and former workers classified as independent contractors (or other than employees) who performed work for Defendant associated with monitoring and maintaining oil and gas wells throughout the United States during the three-year period before the filing of this Complaint up to the date the court authorizes notice.

DAMAGES SOUGHT

62. Plaintiff and the FLSA Class Members are entitled to recover their unpaid overtime compensation. 29 U.S.C. §§ 207, 216.

63. Plaintiffs and the FLSA Class Members are entitled to an amount equal to all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).

64. Plaintiffs and the FLSA Class Members are entitled to recover attorney's fees and costs. 29 U.S.C. § 216(b).

JURY DEMAND

65. Plaintiffs hereby demands trial by jury on all issues.

PRAYER

66. For these reasons, Plaintiff, on behalf of himself and the FLSA Class Members respectfully request that judgment be entered in their favor awarding them the following:

- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. Liquidated damages in an amount equal to their unpaid overtime as allowed under the FLSA;
- c. Reasonable attorney's fees, costs, and expenses of this action as provided by the FLSA; and
- d. Such other and further relief to which Plaintiff and Class Members may be entitled, at law or in equity.

Respectfully submitted,

By: /s/ Beatriz Sosa-Morris

Beatriz-Sosa Morris

SOSA-MORRIS NEUMAN, PLLC

BSosaMorris@smnlawfirm.com

Texas State Bar No. 24076154

5612 Chaucer Drive

Houston, Texas 77005

Telephone: (281) 885-8844

Facsimile: (281) 885-8813

LEAD ATTORNEY IN CHARGE FOR PLAINTIFF AND
CLASS MEMBERS

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

Dylan Walker

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

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

Sosa-Morris Neuman, PLLC, 5612 Chaucer Drive, Houston, TX 77005 281-885-8844

DEFENDANTS

Jackson Well Services, 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):

Fair Labor Standards Act, 29 U.S.C. 201, et seq.

Brief description of cause: Failure to Pay Overtime

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 01/05/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Beatriz Sosa-Morris

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:


- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

WAGE AND HOUR LITIGATION CONSENT FORM

Printed Name: Dylan Walker

1. I consent and agree to pursue my claims of unpaid overtime and/or minimum wage through the lawsuit filed against my employer by Sosa-Morris Neuman Attorneys at Law.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act and all applicable state laws. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.
3. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if the court approves. If someone else serves as the class representative, then I designate the class representatives 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 attorney's fees and costs, and all other matters pertaining to this lawsuit.
4. If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

Signature:  _____

Date Signed 1/2/18

Exhibit A

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Jackson Well Services Misclassifies Workers as Contractors, Denies OT Pay](#)
