

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

2016 OCT 31 PM 12:08
US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

MATTHEW KELLY, individually
and on behalf of all those similarly
situated,

CASE NO.: 6:16-cv-1898-ORL-37-TBS

Plaintiffs,

v.

BELFOR USA GROUP, INC.,

Defendant.

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

Plaintiff, MATTHEW KELLY (“KELLY”), individually and on behalf of all other similarly situated employees (hereinafter referred to as “Plaintiffs”), brings this lawsuit against the above captioned Defendant, BELFOR USA GROUP, INC. (“BELFOR”), for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et. seq.* (the “FLSA”) for failure to pay lawful overtime compensation.

INTRODUCTION

1. Overtime requirements of the FLSA were designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers...” 29 U.S.C. § 202(a).

2. To achieve its goals, the FLSA sets overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) & 207(a).

3. Plaintiff, KELLY, brings this action on behalf of himself as well as other similarly situated employees who were employed by Defendant as technicians and were paid an hourly rate.

4. Plaintiff, KELLY, worked for Defendant from December 18, 2015 to June 2, 2016.

5. Plaintiff, KELLY, regularly worked in excess of forty (40) hours per workweek but Defendant failed to properly pay overtime as required under the FLSA.

6. Defendant willfully and intentionally failed to pay lawful overtime under the FLSA.

7. Upon information and belief, the Defendant's willful failure to pay overtime hours also included automatic lunch deductions, regardless of whether bonafide meal breaks were taken by employees.

8. Defendant's policy, which violates the FLSA, is applied to all similarly situated employees.

9. Plaintiff, KELLY, on behalf of himself and all other similarly situated employees sues Defendant for failing to compensate for overtime hours worked in excess of forty (40) hours per workweek in violation of the FLSA.

JURISDICTION AND VENUE

10. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action involves a federal question under the Fair Labor Standards Act, 29 U.S.C., §§ 201-219, inclusive.

11. This Court has personal jurisdiction over this action because the Defendant is engaged in business within the state of Florida and specifically in this District.

12. Venue is proper in the Middle District of Florida pursuant to 28 U.S.C. § 1391(b) because acts complained of herein took place in this District.

THE PARTIES

13. Defendant, BELFOR, is a for-profit corporation, incorporated in the State of

Colorado, which conducts property restoration and disaster mitigation services in more than twenty countries globally.

14. Defendant, BELFOR, is principally operated in Michigan, but also has offices located in every major metropolis in the United States and operates in at least 40 states nationwide.

15. Defendant, BELFOR, conducts substantial business in Florida and has an office located within Orange County in Orlando, Florida.

16. Defendant regularly employs numerous employees staffed in it various locations, including the Orlando office.

17. Defendant is an "employer" as defined by 29 U.S.C. § 203(d).

18. At all times relevant to this action, Defendant employed Plaintiff, KELLY, within the meaning of 29 U.S.C. § 203(g).

19. Defendant has employees subject to the provisions of the FLSA in the locations where Plaintiff, KELLY, was employed.

20. Defendant is an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of FLSA.

21. Defendant employed two or more persons "engaged in commerce or in the production of goods for commerce", and "had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person", as defined by 29 U.S.C. §203(s)(1)(A)(i).

22. Defendant is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000, in accordance with 29 U.S.C. §203(s)(1)(A)(ii).

23. At all times relevant to this action, Plaintiff, KELLY, resided in Seminole County, Florida.

24. Plaintiff, KELLY, worked as a “Water Technician” (hereinafter referred to as “Tech[s]”) servicing Defendant’s clients here in Central Florida. Moreover, Plaintiff, KELLY, also traveled across state lines to Virginia in performance of his duties for Belfor.

25. Plaintiff, KELLY, was employed in his capacity as a Tech from December 18, 2015 to June 2, 2016.

26. Plaintiff, KELLY, and all others similarly situated, were employees of Defendant within the meaning of 29 U.S.C. § 203(e)(1).

27. Plaintiff, KELLY, and all others similarly situated, were employees of Defendant who was, at all times relevant to violations of the FLSA, engaged in commerce as defined by the FLSA.

28. A Tech’s work responsibilities included general labor, cleaning, handling materials, operating small equipment, removing carpet and household furnishings, and other tasks in furtherance of Defendant’s disaster mitigation services.

OVERTIME DUE UNDER THE FLSA

29. Plaintiff, KELLY, regularly and routinely worked in excess of forty (40) hours per workweek for Defendant.

30. Plaintiff, KELLY, did not receive all compensation owed to him for hours worked in excess of forty (40) hours in any given workweek.

31. Plaintiff, KELLY, noticed that his hours were not accurate and realized there was an *automatic deduction* for lunch even when he did not take a meal break.

32. After complaining to Defendant about the failure to compensate him for all hours worked in excess of forty (40), Plaintiff, KELLY, learned that Defendant has policy of not paying

overtime hours.

33. When Plaintiff, KELLY, inquired about the lunch deductions he was erroneously told by Defendant, “under Florida law we have to deduct half hour lunch.”

34. Defendant has a systemic policy and practice of not paying overtime hours in violation of the FLSA.

35. Upon reasonable information and belief, Defendant has a policy that violates the FLSA and is applied broadly across all similarly situated employees.

36. Further compounding the foregoing violations, Defendant failed to maintain adequate time and pay records.

37. All employers subject to the FLSA must maintain and preserve records describing the wages, hours and working conditions of their employees.

38. To the extent records are unavailable, an employee may establish the hours worked solely by testimony and the burden of overcoming such testimony shifts to the employer. Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680 (1946).

39. An employer’s failure to maintain records may create a presumption in the aggrieved employee’s favor. *See, Myers v. The Copper Cellar Corp.*, 192 F.3d 546, 551 n.9 (7th Cir. 1999).

40. Defendant knowingly and willfully failed to pay Plaintiff, KELLY, overtime compensation at the appropriate legal rate for the hours he worked over and above forty (40) hours per workweek in violation of the FLSA; in particular 29 U.S.C. §207.

41. The conduct alleged herein constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

42. Due to Defendant’s willful FLSA violations, Plaintiff, KELLY, and all others

similarly situated allege damages and are entitled to recover unpaid overtime compensation, an additional equal amount as liquidated damages, prejudgment interest, reasonable attorneys' fees, costs, and any other remedy available under the FLSA.

WHEREFORE, Plaintiff prays that:

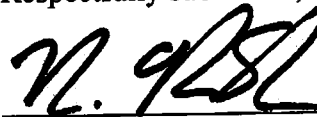
- a. Defendant is found in violation of the overtime compensation provisions of the FLSA and that the Court finds that Defendant's violations of the FLSA were and are willful;
- b. Defendant is ordered to pay overtime compensation for all previous hours worked over forty (40) hours, that were not paid at one and one-half time regular compensation rates for the past three years, and liquidated damages of an equal amount of the unpaid overtime compensation; in addition interest on said award pursuant to § 216 of the FLSA.
- c. the Court award attorneys' fees and costs pursuant to § 216 of the FLSA; and
- d. the Court award any other legal and equitable relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues and questions of fact raised by this Complaint.

Dated: 10/27/2016

Respectfully submitted,



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JS 44 (Rev. 12/12)

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
MATTHEW KELLY, individually and on behalf of all those similarly situated,

DEFENDANTS
BELFOR USA GROUP, INC.

(b) County of Residence of First Listed Plaintiff Seminole
(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.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)
N. Ryan LaBar, Esq., LaBar & Adams, P.A.
2300 E. Concord Street, Orlando, Florida 32803
(407) 835-8968

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)

Grid of categories for nature of suit: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PERSONAL INJURY, PERSONAL INJURY, PERSONAL PROPERTY, LABOR, SOCIAL SECURITY, FEDERAL FRANCHISES, IMMIGRATION, 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

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
710 Fair Labor Standards Act
Brief description of cause:
29 U.S.C. Sections 201, et.seq. Unpaid wages under Fair Labor Standards Act

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 10/27/2016
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: [Belfor USA Group Hit with FLSA Class Action](#)
