

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

**JASON LAGUERRE, Individually and
On behalf of all others similarly
situated,**

Plaintiff,

Case No.:

v.

**SC MAINTENANCE INC., and STEPHEN S.
CLEMENTS,**

Defendants.

**COLLECTIVE ACTION COMPLAINT PURSUANT TO 216(b) OF THE FAIR LABOR
STANDARDS ACT FOR FAILURE TO PAY OVERTIME WAGES**

INTRODUCTION

Plaintiff, JASON LAGUERRE (hereinafter referred to as “Plaintiff” or “Laguerre”), brings this Collective Action Complaint against Defendants, SC MAINTENANCE INC., and STEPHEN S. CLEMENTS. (collectively hereinafter referred to as “Defendants”), for violation of the Fair Labor Standards Act (“FLSA”) 29 U.S.C. Section 201, *et seq.*, and Section 207 for Defendants’ failure to pay overtime wages. This is a case of misclassification, in which Defendants classified all laborers as exempt, regardless of their job duties or any individualized variances. Plaintiff Laguerre brings this complaint individually and on behalf of all other present and formerly employed daily paid laborers, also known as the putative class of similarly situated persons for recovery of overtime wages for all hours worked over forty (40) in each an every

work week, plus an equal sum in liquidated damages over the preceding three (3) years of the filing of this complaint and continuing until the present, until Defendants alter their unlawful pay practices.

1. Plaintiff is a resident of Haines City, Florida.

2. At all times material hereto, Plaintiff was an “employee” of Defendants, SC MAINTENANCE INC. as defined under the FLSA, 29 U.S.C. §203, and working for Defendants from their principal place of business, which is Clements’ home.

3. Defendant, SC MAINTENANCE INC. is a Florida, for profit corporation, with principal place of business at 625 Pink Apartment Road, Davenport, Florida 33837. Defendant may be served through its designated registered agent as follows: Stephen S. Clements, at the same address, which is his home.

4. Defendant Stephen S. Clements is the owner, president, director and primary supervisor of Plaintiff, and the person who created, instituted and implemented the pay practices complained of herein.

5. Defendant Clements directed the work of Plaintiff and the others similarly situated, set their pay, set their schedules, and made decisions on hiring and firing of employees.

6. Defendant Clements, as the owner, primary officer and person who directed the work of Plaintiff and instituted and enforced the pay practices complained of herein, and is an Employer under the definition in the FLSA Section 203(d). See *In re Van Diepen, P.A.*, 236 Fed. Appx. 498, 12 Wage & Hour Cas. 2d (BNA) 1358 (11th Cir. 2007) (allowing individual liability).

7. The FLSA defines “employer” as any “person” acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. § 203(d). *See also Boucher v. Shaw*, 572 F.3d1087, 1090 (9th Cir. Nev. 2009) (the definition of "employer" under the Fair Labor Standards Act (FLSA) is not limited by the common law concept of "employer," but is to be given an expansive interpretation in order to effectuate the FLSA's broad remedial purposes).

8. Employees are either exempt or non-exempt and the key to determination of exempt status does not depend on employer’s general characterization of job; what is important is what employee actually does on day-to-day basis. *Ale v. Tennessee Valley Authority*, 269 F.3d 688, 691 (6th Cir. 2001).

9. It is well settled that employees are *presumed* to be non-exempt; that is, that they are entitled to overtime at the rate of time and one half their regular hourly rate for hours worked after 40 each week. *Ale v. Tennessee Valley Authority*, 269 F.3d 680, 683 (6th Cir. 2001).\

10. There is no exemption to the FLSA in this case applicable to Plaintiff and the putative class of similarly situated, but to the extent one is asserted the Defendants “must establish it through clear and affirmative evidence that the employee meets every requirement of an exemption.” *Ale v. Tennessee Valley Authority*, 269 F.3d 680, 683 (6th Cir. 2001).

JURISDICTION AND VENUE

11. The Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1337 and 29 U.S.C. § 216(b) because this action involves a federal question under the Fair Labor Standards Act.

12. This Court has personal jurisdiction over the Defendant, SC MAINTENANCE INC. as its primary office is in Davenport, Polk County, Florida which is within this District, and

where it continuously and primarily conducts business and can reasonably be expect to be hailed into court in this District; and Stephen Clements, is a resident of Davenport, Polk County Florida, likewise is within this district, such that Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) because the acts complained of by Plaintiff occurred in the Middle District of Florida, specifically in Davenport, Polk County, Florida, and Defendants are subject to personal jurisdiction within this District and division as it engaged in business therein.

13. Defendant SC Maintenance Inc. is an “Employer” as defined in the FLSA, and upon information and belief, employs greater than ten (10) employees, and has exceeded revenues of \$500,000 in the preceding 12 months, and each is engaged in interstate commerce within the meaning of FLSA 29 U.S.C. §§ 206(a) and 207(a), such that it is subject to the FLSA and the overtime wage requirements.

THE PUTATIVE CLASS OF SIMILARLY SITUATED

14. Plaintiff brings this collective action, opt-in, Rule 216(b) lawsuit on behalf of all persons defined herein:

ALL PERSONS PRESENTLY EMPLOYED, OR PREVIOUSLY EMPLOYED BY SC MAINTENANCE INC. IN THE 3 YEARS PRECEDING THE FILING OF THIS COMPLAINT AS DAILY RATE PAID LABORERS, UNDER ANY TITLE INCLUDING FLOOR TECHNICIAN, CREW PERSON, FLOOR STRIPPER OR CLEARER, OR ANY OTHER TITLES USED BY DEFENDANTS TO DESCRIBE DAILY PAID EMPLOYEES.

15. Upon information and belief, Defendants employ upwards of 25 or more Floor Technicians, and with turnover, the putative class of similarly situated may be comprised of 100 or more members over the preceding applicable three year period of time.

PLAINTIFF LAGUERRE

16. Plaintiff Jason Laguerre is well suited to represent the putative class, and by this complaint does both consent to his inclusion in this collective action and is ready, able and willing to represent the interests of the putative class.

17. Plaintiff Laguerre was employed by Defendants from approximately October, 2015 until April 2018 as a Floor Technician.

18. Plaintiff was required every day to first report and present to Defendant Clements' home prior to going to any store location, which served as the principal place of business.

19. From there, Plaintiff would drive Defendants' truck and other Floor Technicians to an assigned store.

20. Plaintiff's primary job duty was to clean floors at retail stores throughout the evenings and early morning hours.

21. All training floor technician were trained in the same manner by Defendants.

22. When Plaintiff was hired, he did not have any prior similar experience, and, the position did not require any college education.

23. Plaintiff routinely worked 12 to 16 hour days, 4 or more days per week and his job requirements were to do whatever it takes to make sure the floors were cleaned and ready for the day, regardless of the overtime hours required.

24. Plaintiff was even locked in the store he was cleaning such that he could not leave until management came to open the store for the day.

25. Plaintiffs routine shift was from 7:00pm until about 7:00 am and later, and then, after completing the work at the store, Plaintiff was required to drive back to the Defendants' home and office before being dismissed for the day.

26. Plaintiff additionally worked during some workweeks upwards of 6 days in a week.

27. Plaintiff was paid on a daily labor rate of \$100.00 per day, and never a premium for overtime pay.

28. Defendant did not track and record the work hours, nor require the Plaintiff and other similarly situated employees to track and record their work hours.

GENERAL ALLEGATIONS

29. No formal education or specific formal training is required to perform the job of the Floor Technician.

30. The work was manual labor, and physically demanding.

31. Plaintiff worked with a crew of other Floor technicians, and worked numerous retail store locations during the workweek, between 1 or 2 days at the same store.

32. Plaintiff spent additionally, non-compensated work hours driving to and from Defendants home and office at the beginning of each work day and after cleaning the floors at the assigned stores.

33. Plaintiff was lead to believe his position was a permanent, ongoing full time position.

34. Plaintiff had to commit to working continuously and a full week of at least 4 days or more.

35. Although Defendants did not track and record Plaintiffs exact work hours, the schedules in the Defendants possession may provide some information, as can the stores or any logs at the stores where Plaintiff and the class of similarly situated worked.

36. To the extent these records are unavailable or unreliable, Plaintiff may establish the hours he worked solely by his testimony, and the burden of overcoming such testimony shifts to the employer. See *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

37. Upon information and belief, all Floor Technicians, and any other titles used by Defendants to describe the same position, were all paid on a common pay practice of a flat sum as a daily rate, of \$100.00 other flat sum.

38. Plaintiff routinely worked over 40 hours in each workweek and was not paid a premium for overtime hours worked.

39. Upon information and belief, Defendants pay all laborers and floor technicians pursuant to a common pay plan, and practice of treating them all as, daily pay employees and none were paid a premium for overtime hours worked.

COUNT I
FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF 29 U.S.C. SECTION 207
OF THE FAIR LABOR STANDARDS ACT

40. Plaintiff adopts and realleges paragraphs 1 through 39 as if fully set forth herein.

41. The FLSA requires Defendants to pay all non-exempt employees a premium for all overtime hours worked.

42. When paying daily rates to employees, such as here, Defendants are still required to pay Plaintiffs a premium for all overtime hours at rates of at least one half their regular rate of pay.

43. Defendants willfully refused to pay Plaintiff and the class of similarly situated present and former employees any premium for overtime hours worked in each and every work week.

44. By their schedules, Defendants absolutely knew that the Plaintiff and the other similarly situated Floor technicians and daily paid laborers were routinely working greater than 40 hours in workweeks.

45. Defendant willfully failed and refused to pay any overtime wages or any overtime premium to Plaintiff and all other similarly situated laborers and floor technicians.

46. Defendants do not have a good faith basis for refusing and failing to pay Plaintiff and all other laborers or floor technicians a premium for all overtime hours worked, and for treating or classifying them as exempt from overtime wages, such that Plaintiff and the class of similarly situated should be awarded double the amount of overtime wages as liquidated damages.

47. Defendants had direct knowledge of Plaintiff working overtime hours through communications and their schedules, and from such as emails and phone calls and other location and tracking information and procedures.

48. The job duties performed by Plaintiff and the putative class of similarly situated do not satisfy the elements of any exemption under the FLSA.

49. Plaintiff and the putative class of similarly situated have been harmed and been permitted to suffer to work without being paid a premium for all overtime hours worked as required by the FLSA.

50. Defendants have acted willfully, and with reckless disregard for the overtime pay requirements of the FLSA in respect to Plaintiff and the putative class of similarly situated.

51. Plaintiff and the class of similarly situated daily paid laborers and floor technicians, have suffered financial harm and are owed overtime wages for all overtime hours worked in the period of three (3) years preceding the filing of this complaint and continuing for all current employees.

52. A three (3) year Statute of Limitations must apply as the Defendants' actions of violating the FLSA are intentional and with reckless disregard of the requirements of the FLSA.

53. Defendants did not track and record the work hours of daily laborers and floor technicians as required by the FLSA, 29 U.S.C. Section 211(c), and 29 CFR Section 516, which is a per-se violation of the FLSA.

54. Pursuant to *Anderson v. Mt. Clemens*, 328 US 680 (Sup. Ct. 1946) Plaintiffs may establish the work hours by just and reasonable inference where here, Defendants failed to track and record their work hours.

55. As a direct result of Defendants' willful violation of the FLSA overtime wage requirements, Plaintiff and the class of similarly situated have suffered loss of wages and are entitled to be paid overtime wages for all hours worked in the three (3) years preceding the filing of this complaint to the present and continuing.

56. Plaintiff and the class of similarly situated should be paid overtime wages at the default rate of one and one half times their regular rates of pay for all overtime hours worked, an equal sum as liquidated damages, attorney's fees, costs and expenses of this action.

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, request this honorable court enter judgment and award them the following relief:

- a) Approve this action to proceed as a collective action and enter an order conditionally certifying this action as a collective action and approve and supervise delivery of Notice of the rights of the putative class to opt into this action;
- b) Order Defendants to produce the names, addresses, telephone numbers and emails for all members of the putative class employed in the three (3) years preceding the filing of the complaint to the present;
- c) Find that the Defendants have acted without good faith and award liquidated damages for all past wages owed;
- d) Award Plaintiff and those who file consents or who opt in to join this action, overtime wages for all hours worked;
- e) Hold that Defendants have acted willfully, and with reckless disregard for the FLSA requirements such that a three (3) year SOL should apply;
- f) Award Plaintiff, attorney's fees, costs and expenses of this litigation as per Section 216(b).
- g) Determine that Defendants have pay practices violated Section 207 of the FLSA by failing to pay overtime wages and that the daily laborer and floor technician positions should have been classified as non-exempt, and require the Defendants to reclassify the position going forward as non-exempt and pay all daily laborers a premium for overtime hours worked;
- h) Award Plaintiff a service award for his time and efforts on behalf of the putative class;

- i) Award the Plaintiff any other relief in Equity this court deems just and fair, including estoppel on all affirmative defenses.

DEMAND FOR JURY TRIAL

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

Dated this 22nd of October, 2018.

/s/ Mitchell L. Feldman, Esq.
Mitchell L. Feldman, Esq.
Florida Bar No.: 008049
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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
JASON LAGUERRE

DEFENDANTS
SC MAINTENANCE INC. and STEPHEN S. CLEMENTS

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

County of Residence of First Listed Defendant Polk
(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)
Mitchell L. Feldman, FELDMAN WILLIAMS PLLC; 6940 W. Linebaugh Ave., Suite 101, Tampa, FL 33625; Tel: (813) 639-9366; Fax: (813) 639-9376; mitch@feldmanwilliams.com

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 and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, 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 & 207
Brief description of cause:
Failure to pay overtime 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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/22/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Mitchell L. Feldman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [SC Maintenance Facing Unpaid Overtime Claims in Wage and Hour Suit](#)
