

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JOSE MUNGUIA and GUSTAVO
HERNANDEZ, individually, and on behalf
of all persons similarly situated,**

Plaintiffs,

v.

**TEXAS STANDARD CONSTRUCTION,
LTD., a Texas Limited Partnership, and
RONALD H. DALTON, an individual,
Defendants.**

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Civil Action No. 3:17-cv-02397

COMPLAINT & JURY DEMAND

I. INTRODUCTION AND NATURE OF ACTION

1. This is an action brought under the Fair Labor Standards Act, 29 U.S.C. §§ 201-219, and the Portal-to-Portal Act, 29 U.S.C. §§ 251-262 (collectively, the “FLSA”) to redress Defendants’ abuse of the federal overtime compensation standards.

2. Plaintiffs Jose Munguia and Gustavo Hernandez (collectively “Plaintiffs”) are non-exempt, former employees of Texas Standard Construction, Ltd. (“TSC”), misclassified by Defendants as independent contractors. Plaintiffs were employed as construction work helpers (“Helpers”) to perform construction work for TSC in the Dallas/Fort Worth metroplex. While employed with TSC, Plaintiffs did not receive the FLSA-mandated time-and-one-half their regular rate of pay for each hour worked over forty (40) in a given workweek.

3. Plaintiffs bring this action as a collective action under 29 U.S.C. § 216(b). The FLSA violation raised in this lawsuit is that Defendants Texas Standard Construction, Ltd. and Ronald H. Dalton (“Dalton”) (collectively “Defendants”) unlawfully deprived Plaintiffs and others similarly situated of the overtime wages to which they were entitled under the FLSA. Defendants routinely and systematically denied its Helpers overtime compensation to which they

are entitled under the FLSA by willfully misclassifying them as “independent contractors” when they were in fact “employees” entitled to the protections granted under the FLSA.

II. THE PARTIES

A. The Named Plaintiffs

4. Plaintiff Jose Munguia is an individual residing in Dallas County, Texas. Munguia was a Helper employee of TSC. He worked exclusively for TSC out of its location at 5511 W. Ledbetter Drive, Dallas, Texas 75236, from approximately April 2016 through approximately May 13, 2017. Munguia’s written consent to participate in this action is attached hereto as Exhibit A.

5. Plaintiff Gustavo Hernandez is an individual residing in Dallas County, Texas. Hernandez was a Helper employee of TSC. He worked exclusively for TSC out of its location at 5511 W. Ledbetter Drive, Dallas, Texas 75236, from approximately March 2016 through approximately December 2016. Hernandez’s written consent to participate in this action is attached hereto as Exhibit B.

B. Putative Collective Action Members

6. The Putative Collective Action Members are all current and former Latino helpers hired to perform construction work for Defendant TSC as Helpers at any time within the three (3) years prior to the filing of this Complaint through the date of final disposition of this action who did not receive overtime premium pay for hours worked over forty (40) in a given workweek.

C. Defendants

7. Defendant Texas Standard Construction, Ltd. is a Texas limited partnership with its principal place of business in Dallas, Texas. Defendant TSC does business throughout the

State of Texas operating a construction company. Defendant specifically does business in this District. Defendant TSC may be served with process through its registered agent, Ronald H. Dalton, at 1101 S. Walton Walker Blvd., Dallas, Dallas County, Texas 75211.

8. Defendant Ronald H. Dalton is TSC's President. Dalton directs the operations of TSC. Dalton can be served with process at his place of residence located at 1905 Windmill Hill Ln., Desoto, Dallas County, Texas 75115, or wherever he may be found.

III. JURISDICTION AND VENUE

9. This Court has federal question jurisdiction over all claims pursuant to 28 U.S.C. § 1331 and the FLSA at 29 U.S.C. § 216(b).

10. The United States District Court for the Northern District of Texas, Dallas Division, has personal jurisdiction over Defendants because Defendants, presently and at all times relevant to this action, have conducted substantial and continuous commercial activities in this District, and because many of the acts complained of and giving rise to the claims alleged occurred in Texas and in this District.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to all claims occurred in this District.

IV. FACTUAL BACKGROUND

12. TSC's business operation is to provide the knowledge and resources to construct roads, streets, buildings and drainage systems, which includes providing workers for the manual labor involved in completing such projects.

13. TSC recruited Helpers, including Munguia and Hernandez, through a newspaper advertisement in the Spanish language newspaper, La Subasta. The advertisement specified that construction helpers were needed and a number to call about the position was listed.

14. Plaintiffs called the number listed in the advertisement and were invited to come to the TSC office at 5511 W. Ledbetter Drive in Dallas, Texas (“Ledbetter Facility”) to fill out an application. Plaintiffs started work after completing the application process and being hired by TSC.

15. A typical workweek for Plaintiffs was Monday through Friday and every other Saturday. A typical work day for Plaintiffs involved arriving at the TSC Ledbetter Facility, at approximately 6:30 a.m. Upon arrival, Plaintiffs would clock in at a time clock provided by TSC and would then be given information and instructions on where the work assignment would be for the day. Plaintiffs were driven to the worksite in a truck operated by a TSC representative.

16. Plaintiffs would work throughout the day and return to the Ledbetter Facility in a TSC vehicle at the end of each day. Upon return to the Ledbetter Facility, Plaintiffs would clock out.

17. Plaintiffs were provided a daily, unpaid, lunch break for thirty (30) minutes. Plaintiffs were docked an additional thirty minutes each day for what was referred to as a “transport” deduction. Upon information and belief, the “transport” deduction pertained to the time Plaintiffs spent being transported to and from the job site locations.

18. Plaintiffs performed manual labor for TSC on all days they worked for TSC. Plaintiffs were directed by TSC representatives or employees in all aspects of their work. On many occasions, Plaintiffs were told to speed up the pace of their work.

V. FLSA ALLEGATIONS

19. Defendants misclassified Plaintiffs, and other similarly situated Helpers, as independent contractors instead of non-exempt employees. As a result of this misclassification,

Plaintiffs and other putative class members were not paid overtime wages as required by relevant federal law.

20. Under the FLSA's broad remedial purpose, the "economic realities test" is applied to determine whether an individual is an employee or an independent contractor. The courts utilize several factors to determine economic dependence and employment status. They are: (i) the degree of control exercised by the alleged employer, (ii) the relative investments of the alleged employer and employee, (iii) the degree to which the employee's opportunity for profit and loss is determined by the employer, (iv) the skill and initiative required in performing the job, (v) the permanency of the relationship, and (vi) the degree to which the alleged employee's tasks are integral to the employer's business.

21. The totality of circumstances surrounding the employment relationship between Defendants and the Helpers working for Defendants establishes economic dependence by the Helpers on Defendants and their status as employees and not independent contractors. As a matter of economic reality, Plaintiffs and all others similarly situated are not in business for themselves and truly independent, but rather are economically dependent upon finding employment in others, namely Defendants. The Helpers are not engaged in occupations or businesses distinct from that of Defendants. Rather, their work is the basis of Defendants' business. Defendants obtain the construction jobs and provide the workers who perform the construction work on behalf of Defendants. Defendants retain pervasive control over the construction business as a whole, and the Helpers' duties are an integral part of the operation.

A. Degree of Control – TSC Exerts Control as Employers of the Plaintiffs and Putative Collective Action Members.

22. Plaintiffs and Putative Collective Action Members do not exert control over a meaningful part of TSC's business and do not stand as separate economic entities from TSC.

23. Plaintiffs' and Putative Collective Action Members' economic statuses are inextricably linked to conditions over which TSC has complete control. Plaintiffs and the other Helpers are completely dependent on TSC for their earnings.

24. TSC exercises control over all aspects of the working relationship with their Helpers. Defendants set the hours of operations, the lengths of shifts their Helper employees must work, the locations the Helpers must work, and the job tasks at those given locations. Defendants also provide the safety equipment to be worn and essentially all of the equipment, tools and supplies needed to perform a given job function. Helper employees are only expected to provide their own work belt and gloves.

25. Helper employees are required to clock in and clock out at the beginning and end of every workday at the Ledbetter Facility. If a Helper arrives late, leaves early, or misses a shift, he is subject to reprimand by Defendants.

26. Plaintiffs and Putative Collective Action Members must request time off from work for any vacation or errand and were instructed to only request time off for urgent matters. Helpers were told that there was no guarantee any vacation request would be approved.

27. The foregoing establishes that Defendants set the terms and conditions of all Helpers' work which is a hallmark of economic dependence.

B. Working as a Helper Does Not Require Special Skill or Initiative Indicative of a Person in Business for Themselves.

28. Plaintiffs and Putative Collective Action Members do not exercise the skill and initiative of those in business for themselves.

29. Plaintiffs and Putative Collective Action Members are not required to have any specialized or unusual skills to work at TSC. There are no certification standards for TSC's Helpers. There are no seminars, no specialized training, and no instructional booklets required in

order to work at TSC's construction projects. The labor skills utilized are commensurate with those exercised by ordinary people working at the lowest level at a construction site.

30. Plaintiffs, like the Putative Collective Action Members, did not have the opportunity to exercise business skills and initiative necessary to elevate their status from the lowest level of the construction labor employee. Helper employees exercise no business management skills. They maintain no separate business structures or facilities.

31. Plaintiffs and Putative Collective Action Members are not permitted to hire or contract other qualified individuals to provide help and increase the construction worker's efficiency or profit margin, as an independent contractor in business for themselves would.

C. TSC's Relative Investment in its Operations Vastly Exceeds that of Plaintiffs and Putative Collective Action Members.

32. Plaintiffs' and Putative Collective Action Members' investment in the construction business is minute when compared with that of TSC.

33. Plaintiffs have made no capital investment in their occupations for office, equipment, advertising, inventory, or staffing. A Helpers' investment is limited to expenditures on a work belt and gloves. But for TSC's provision of construction jobs, the Plaintiffs and Putative Collective Action Members would earn nothing.

D. Plaintiffs and Putative Collective Action Members Did Not Have the Ability to Alter their Opportunity for Profit and Loss Per the Economic Reality Test.

34. TSC, not the Helper employees such as Plaintiffs, manage all aspects of the business operation including winning bids for various construction projects and obtaining appropriate business insurance, permits, and licenses. TSC also has sole responsibility for establishing construction project plans, working hours, hours of operations, and supervision of employees.

35. Helper employees, such as Plaintiffs and Putative Collective Action Members, do not control the key determinations for profit and loss of the TSC enterprise. Specifically, Plaintiffs were not responsible for any aspect of the enterprise's ongoing business risk, facilities and equipment, inventory, and payment of wages. Defendants alone took the true business risks related to TSC's business.

E. Plaintiffs and Putative Collective Action Members Worked for TSC for Significant Periods of Time.

36. Plaintiffs and Putative Collective Action Members worked exclusively for TSC for indefinite periods of time. On information and belief, Helper employees worked exclusively for Defendants for protracted periods of time, often more than a year at a time. Plaintiffs anticipated that their employment with TSC would be on an ongoing basis.

F. Helpers Are Integral to the Financial Success of Defendants' Enterprise.

37. Plaintiffs and Putative Collective Action Members are essential to the success of TSC's operation. Moreover, TSC is able to bid lower amounts than competitors as a result of its treatment of the Helpers. As a result, the Helpers are an integral part of TSC's business success.

38. The foregoing demonstrates that Helpers, like Plaintiffs and Putative Collective Action Members, are economically dependent on Defendants and subject to significant control by Defendants and are not and have never been independent contractors. Therefore, Plaintiffs and Putative Collective Action Members are entitled to the overtime protections of the FLSA. Plaintiffs and Putative Collective Action Members worked overtime hours without being paid overtime wages in accordance with the FLSA.

VI. DEFENDANTS' INTENT

39. All actions described above are willful, intentional, and the result of design rather than mistake or inadvertence. At all relevant times, Defendants were aware that the FLSA

applied to their operations and that, under the economic realities test, Helpers were misclassified as independent contractors.

VII. CAUSE OF ACTION - FLSA CLAIMS FOR OVERTIME PAY

40. Plaintiffs incorporate the preceding paragraphs by reference as if set forth fully in this section.

41. At all times relevant to this lawsuit, TSC was an enterprise engaged in commerce under the FLSA pursuant to 29 U.S.C. § 203(s)(1)(A).

42. At all relevant times, Defendants have employed and continue to employ Helpers as “employee[s]” with the meaning of the FLSA, 29 U.S.C. § 203, as indicated by the substantial level of control that the Defendants have wielded and continue to wield over its Helpers. However, Defendants have willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA by misclassifying Helpers as independent contractors who are exempted from overtime compensation. Defendants have engaged in these practices throughout the three-year statute of limitations that applies to this action pursuant to 29 U.S.C. § 255.

43. Therefore, at all relevant times, Defendants operated under and continue to operate under a common policy and plan of willfully, regularly, and repeatedly failing and refusing to pay Helpers overtime compensation at the rates required by the FLSA, 29 U.S.C. § 207.

44. As a result of the unlawful acts of the Defendants, Plaintiffs and the Putative Collective Action Members are entitled to recovery in the amounts of their respective unpaid overtime compensation and interest; liquidated (double) damages; prejudgment interest;

attorneys' fees and costs; and any other legal and equitable relief the Court deems just and proper pursuant to 29 U.S.C. § 216(b).

VIII. DEMAND FOR TRIAL BY JURY

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

IX. PRAYER FOR RELIEF

46. WHEREFORE, Plaintiffs on behalf of themselves and the Putative Collective Action Members request the following relief:

- a. That the Court determine that this action may be maintained as a collective action under 29 U.S.C. 216(b);
- b. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have been at any time during the statute of limitations period, employed by Defendants as Helpers. Such persons shall be informed that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit for the recovery of withheld overtime compensation;
- c. That the Court find that Defendants have violated the overtime provisions of the FLSA, 29 U.S.C. § 207;
- d. That the Court find that Defendants' violations as described herein have been willful;
- e. That the Court award to Plaintiffs and Putative Collective Action Members compensatory and liquidated damages for unpaid overtime

compensation, including interest, and penalties subject to proof at trial pursuant to 29 U.S.C. § 201 *et seq.* and the supporting United States Department of Labor regulations;

- f. That Plaintiffs and Putative Collective Action Members be awarded reasonable attorneys' fees and costs pursuant to FLSA 29 U.S.C. 216(b), and/or other applicable law; and
- g. That the Court award such other and further relief as this Court may deem appropriate.

Dated: September 8, 2017

Respectfully Submitted,

JACKSON ALLEN & WILLIAMS, LLP

/s/ John H. Allen, III

John H. Allen, III, Esq. - Trial/Lead Counsel

Texas. Bar No. 00788798

tallen@jacksonallenfirm.com

Jennifer Williams, Esq.

Texas. Bar No. 24007755

jwilliams@jacksonallenfirm.com

3838 Oak Lawn Ave., Suite 1100

Dallas, Texas 75219

(214) 521-2300

(214) 452-5637 (Facsimile)

ATTORNEYS FOR PLAINTIFF

EXHIBIT A

IN RE: FAIR LABOR STANDARDS ACT ACTION] COLLECTIVE ACTION
]]
TEXAS STANDARD CONSTRUCTION, LTD.] NOTICE OF CONSENT

I consent to be a party plaintiff in a collective action to collect unpaid wages against Texas Standard Construction LTD.

SMUTS

Signature

Jose Solomon Munguia

Full Legal Name (print)

10/7/17

Date

202 N. Bond AV

Street Address

DALLAS 75211

City, State, Zip Code

817 768 06 98

Telephone Number

E-Mail Address

Send Via Mail or Fax to:

Jackson Allen & Williams, LLP
bwiginton@jacksonallenfirm.com
Fax: 214-452-5637
Oak Lawn Ave., Suite 1100
Dallas, Texas 75219

EXHIBIT B

IN RE: OVERTIME ACTION]	COLLECTIVE ACTION
TEXAS STANDARD CONSTRUCTION, LTD, et al.]	
]	
]	NOTICE OF CONSENT

I consent to be a party plaintiff in an action to collect unpaid wages. I agree to be bound by the Professional Services Agreement with Jackson Allen & Williams, LLP.



Signature

Gustavo Cesar Gutierrez Hernandez

Full Legal Name (Print)

August 2 2017

Date

3247. S.T. YLER. # 226.

Street Address

Dallas. Texas 75224

City, State, Zip Code

214.5718554

Telephone Number

E-Mail Address

**Send Via Mail or Fax to: Jackson Allen & Williams, LLP
tallen@jacksonallenfirm.com
Fax: 214-452-5637
3838 Oak Lawn Ave., Suite 1100
Dallas, Texas 75219**

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

Jose Munguia and Gustavo Hernandez, individually, and on behalf of all persons similarly situated

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

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

John H. Allen, III and Jennifer Williams; Jackson Allen & Williams, LLP 3838 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219

DEFENDANTS

Texas Standard Construction, Ltd., a Texas Limited Partnership, and Ronald H. Dalton, an individual

County of Residence of First Listed Defendant Dallas County, Texas (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 and business location (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)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, 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): 29 U.S.C. 201, et seq. Brief description of cause: Labor: Fair Standards

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 09/08/2017 SIGNATURE OF ATTORNEY OF RECORD John H. Allen, III

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: [Texas Standard Construction Faces Former Employees' Unpaid OT Claims](#)
