

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

KEITH WARD, WILLIAM CLARK, KODY §  
CLARK, and All Others Similarly Situated, §  
§  
Plaintiffs §  
§  
v. §  
§  
WIND RIVER TRUCKING, LLC d/b/a §  
WIND RIVER OIL SERVICES; and TODD §  
BRADFORD, §  
§  
Defendants §

CIVIL ACTION NO. \_\_\_\_\_

**COLLECTIVE AND CLASS ACTION**  
**JURY TRIAL DEMANDED**

**PLAINTIFFS’ ORIGINAL COMPLAINT & JURY DEMAND**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff, KEITH WARD, WILLIAM CLARK, KODY CLARK and All Others Similarly Situated (“Plaintiffs”), files this Original Complaint & Jury Demand against Defendants, WIND RIVER OIL SERVICES; WIND RIVER TRUCKING, LLC; and TODD BRADFORD (collectively “Defendants”) and respectfully argue as follows:

**I. SUMMARY**

1. Plaintiffs bring a collective action to recover overtime compensation, minimum wages and other wages, liquidated damages, attorney’s fees, litigation expenses, costs of court, pre-judgment and post-judgment interested and injunctive relief under the provisions of the Fair Labor Standards Act of 1938 as amended, 29 U.S.C. § 201 *et seq.* (“FLSA”).

2. Plaintiffs also bring a Rule 23 class action to recover overtime compensation, minimum wages and other wages, liquidated damages, attorney’s fees, litigation expenses, costs of court, pre-judgment and post-judgment interested and injunctive relief under North Dakota’s Wage and Hour laws, as specified in North Dakota Administrative Code § 46-02-07-02 *et seq.* (“North

Dakota Law”); FED. R. CIV. P. 23.

3. Plaintiffs Keith Ward, William Clark, and Kody Clark are non-exempt employees who worked more than forty (40) hours in a workweek as Truck Pushers for Wind River Trucking, LLC d/b/a Wind River Oil Services.

4. Defendants violated the FLSA and North Dakota law by failing to pay its employees, including Plaintiffs, time and one-half for each hour worked in excess of forty (40) per work week. The FLSA and North Dakota law requires the non-exempt employees to be compensated for overtime work at the mandated overtime wage rate. Accordingly, Plaintiffs bring this collective and class action to recover unpaid overtime compensation under 29 U.S.C. § 206 and §216(b) and N.D. Admin. Code § 46-02-07-01 *et seq.*

5. Upon information and belief, Defendants, likewise, did not pay proper overtime to other similarly situated workers throughout North Dakota and the United States. Plaintiffs bring a collective and class action to recover unpaid overtime compensation owed to themselves and on behalf of all other similarly situated employees, current and former, of Defendants. Members of the Collective/Class Action are hereinafter referred to as “Class Members.”

## **II. PARTIES AND PERSONAL JURISDICTION**

6. Plaintiffs and Class Members are individuals currently residing in Wyoming, North Dakota and across the United States. Plaintiffs were employees employed by Defendants within the meaning of the FLSA and North Dakota law.

7. The Class Members are all of the Defendants’ current and former employees who were compensated on a flat day rate basis, as Truck Pushers in North Dakota and other states during the three-year period prior to the filing of this Complaint up to the present. The Class Members are similarly situated employees who are/were not paid time and one-half for each hour worked in

excess of forty (40) per work week.

8. Defendant Wind River Trucking, LLC is a corporation doing business in the state of North Dakota. Wind River Trucking, LLC (“WRT”) is an employer under the FLSA and acted as such in relation to Plaintiffs and Class Members. WRT may be served with process by serving through its Registered Agent: Ronnie Marciano, 310 Airport Road, Williston, North Dakota, 58801-2946.

9. Defendant Todd Bradford (“Mr. Bradford”) is an individual doing business in North Dakota. Mr. Bradford is an employer under the FLSA and acted as such in relation to Plaintiffs. Mr. Bradford may be served with process at 310 Airport Road, Williston, North Dakota, 58801-2946.

### **III. SUBJECT MATTER JURISDICTION AND VENUE**

10. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

11. This Court has supplemental jurisdiction over North Dakota law pursuant to 29 U.S.C. § 137(a).

12. Venue is proper in the United States District Court for the District of North Dakota because the Defendants provide employment services to its clients in and throughout North Dakota and one or more Plaintiffs reside in this District.

### **IV. COVERAGE**

13. At all material times, Defendants have been an employer within the meaning of section 203(d) of the FLSA, which is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. § 203(d).

14. At all material times, Defendants have been an enterprise in commerce or in the production of goods for commerce within the meaning of section 203(s)(1) of the FLSA because Defendants

have had and continues to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

15. At all material times, Plaintiffs and Class Members were employed in an enterprise engaged in commerce, or were engaged in commerce or in the production of goods for commerce as required by 29 USC § 206-207.

16. Furthermore, Defendants have had, and continues to have, an annual gross business volume in excess of the statutory standard of \$500,000.

17. Defendants provided training to Plaintiffs and Class Members, controlled and has knowledge of the hours to be worked by Plaintiffs and Class Members, and directed the work of Plaintiffs and Class Members. Defendants maintained communications with Plaintiffs and Class Members and received updates as to the status of their work and control how each assigned task was to be performed by Plaintiffs and Class Members.

18. Likewise, North Dakota Administrative Code Section 46-02-07-02 sets forth the applicable standards governing overtime and minimum wage under North Dakota law. Section 46-02-07-02 directly applies to Plaintiffs and Class Members, who qualify as non-exempt employees under North Dakota Law. Plaintiffs and Class Members do not qualify as exempt employees under Section 46-02-07-02(1) and (4). Defendants also are subject to Section 46-02-07-02 *et seq.* wage and hour requirements and are not exempt employers under Section 46-02-07-02(1) and (4).

## V. FACTS

19. Defendants provide trucking services associated with oil and/or gas production and exploration in the Williston Basin.

20. According to the company's website, Defendants trucking services including providing fresh water, flowback and production water and currently operate a fresh water depot and a salt water disposal. Defendants' water depot is a state of the art facility, with six lanes equipped with

high speed pumps. Wind River Services has an “A” rated safety program by ISNET World, recognized globally for providing safe and reliable contractors.

21. Mr. Bradford is the President of Wind River Trucking, LLC and actively manages Wind River’s operations.

22. Plaintiffs and Class Members are Truck Pushers. Each of Wind River’s sites are manned 24 hours a day with a truck pusher trained in hazard identification and risk mitigation. Truck Pushers are all, at a minimum, SafeLand PEC certified and First Aid/CPR trained. Each driver is also required to complete SafeLand PEC certification training.

23. Truck Pushers are tasked with a variety of responsibilities including: monitoring tank levels or wells, ensuring that semi-trucks are running safely, and monitoring safety conditions at various Wind River sites. Truck Pushers did not have supervisory authority and did not supervise fellow employees.

24. Plaintiffs and Class Members were paid on a flat day-rate basis.

25. Plaintiffs and Class Members were not paid a salary when they worked for Defendants as Truck Pushers.

26. Plaintiffs and Class Members were not paid an hourly rate when they worked for Defendants.

27. Plaintiffs and Class Members were misclassified as “exempt” workers under the FLSA and North Dakota laws when they worked for Defendants.

28. Plaintiffs and Class Members were misclassified as “independent contractors” when they worked for Defendants.

29. Plaintiffs and Class Members were falsely classified as exempt for purposes of overtime and were denied overtime compensation and guaranteed minimum wages.

30. Plaintiffs and Class Members were entitled to be paid minimum wages. Plaintiffs and Class Members should have been paid time and one-half their regular rates for all hours worked over 40 in a work week (“overtime compensation”).

31. Plaintiffs and Class Members were not paid overtime compensation or guaranteed minimum wages when they worked for Defendants during the relevant time period.

32. As Truck Pushers, Plaintiffs and Class Members frequently worked in excess of twelve hours a day.

33. Plaintiffs and Class Members were required to report to work at Wind River’s specific sites as specified by Wind River management.

34. Plaintiffs and Class Members left Wind River sites for reasons limited to travel to another Wind River site location.

35. Plaintiffs and Class Members were regularly required to work 7 days each week.

36. Defendants’ method of paying Plaintiffs in violation of the FLSA and North Dakota law was willful and not based on a good faith and reasonable belief that its conduct complied with the FLSA.

## **VI. COLLECTIVE/CLASS ACTION ALLEGATIONS**

37. Plaintiffs have actual knowledge that Class Members have also been denied overtime pay for hours worked over forty (40) hours per workweek and have been denied pay at the federally mandated minimum wage rate. Plaintiffs have worked with other employees of Defendants who were paid pursuant to the method that fails to comply with the law.

38. Other employees similarly situated to Plaintiffs work or have worked for Defendants, but were not paid overtime at the rate of one and one-half times their regular rate when those hours exceeded forty (40) hours per workweek.

39. Although Defendants permitted and/or required the Class Members to work in excess of forty (40) hours per workweek, Defendants have denied them full compensation for their hours worked over forty.

40. The Class Members perform or have performed the same or similar work as the Plaintiffs and regularly work or have worked in excess of forty (40) hours during a workweek. Similar to Plaintiffs, Class Members are not exempt from receiving overtime at the federally mandated wage rate under the FLSA. As such, Class Members are similar to Plaintiffs in terms of job duties, pay structure, and/or the denial of overtime wage.

41. Defendants' failure to pay overtime compensation at the wage rate required by the FLSA and North Dakota law results from generally applicable policies or practices, and does not depend on the personal circumstances of the Class Members. The experiences of the Plaintiffs, with respect to their pay, are typical of the experiences of the Class Members.

42. All Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty (40) during a workweek and compensation for hours worked at the federally mandated minimum wage rate.

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

44. Plaintiffs' claims are typical of Class Members claims, and Plaintiffs and Plaintiffs and Class Members share common issues of law and fact.

45. Plaintiffs are ideally situated to fairly and accurately represent the interests of fellow Class Members, who have retained competent counsel in this action.

46. As such, the class of similarly situated Plaintiffs are properly defined as follows:

*The Class Members are all of Defendants' current and former employees employed as a Truck Pusher who were paid pursuant to a flat day rate with no payment for hours worked beyond 40 hours for three years before the filing of this Complaint up to the present.*

**VII. VIOLATION OF 29 U.S.C. § 206**

47. Plaintiffs and Class Members incorporate all preceding paragraphs.

48. Defendants' practice of failing to pay Plaintiffs and Class Members minimum wage violates the FLSA. 29 U.S. C. § 206. Plaintiffs' flat day rate did not compensate Plaintiffs and Class Members for hours worked beyond forty (40) hours a week.

**VIII. VIOLATION OF 29 U.S.C. § 207**

49. Plaintiffs and Class Members incorporate all preceding paragraphs.

50. Defendants' practice of failing to pay Plaintiffs and Class Members the time-and-a-half based on Plaintiffs' regular rate of pay for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S. C. § 207.

51. 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 the Defendants or the Plaintiffs and Class Members.

**IX. WILLFUL VIOLATIONS OF THE FLSA**

52. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiffs and Class Members at the statutory overtime rate of one and one-half for all hours worked in excess of forty (40) hours per week, when they knew or should have known such was due and that non-payment of overtime pay would financially injure Plaintiffs.

53. Upon information and belief, Defendant Wind River Trucking, LLC is a sophisticated



business spanning multiple states. As such, Wind River has the knowledge and expertise to know that the payment structure is impermissible under the FLSA.

54. Plaintiffs and Class Members request this Court permit recovery for any claims within the last three years from the filing of this suit. 29 USC § 255(a).

**X. VIOLATION OF NORTH DAKOTA WAGE AND HOUR LAWS**

55. Plaintiffs and Class Members incorporate all preceding paragraphs.

56. Defendants' practice of failing to pay Plaintiffs and Class Members minimum wage violates North Dakota Admin. Code Section 46-02-07-01, et. seq. and N.D. Cent. Code § 34-06-22. Plaintiffs' flat day rate did not compensate Plaintiffs and Class Members for minimum wage and hours worked beyond forty (40) hours a week.

**XI. WAGE DAMAGES SOUGHT**

57. Plaintiffs and Class Members are entitled to recover their unpaid overtime compensation and North Dakota Law and the FLSA.

58. Plaintiffs and Class Members are entitled to an amount equal to all of their unpaid minimum wages and overtime wages as liquidated damages. 29 USC § 216(b).

**XII. JURY DEMAND**

59. Plaintiffs and Class Members hereby demand trial by jury on all issues.

**XIII. ATTORNEY FEES**

60. Plaintiffs and Class Members are entitled to recover their reasonable attorney's fees, costs and expenses of this action as provided by the FLSA. 29 USC § 216(b).

61. Plaintiffs and Class Members are entitled to recover their reasonably attorney's fees, costs, and expenses of this action as provided by North Dakota law.

**XIV. PRAYER**

62. For these reasons, Plaintiffs and Class Members respectfully request that judgment be entered in their favor awarding the following relief:
- a. Issuance of an order granting collective certification, allowing notice under the FLSA as soon as possible to all similarly situated employees of Defendants during any portion of the three years immediately preceding the filing of this lawsuit, informing them of their rights to participate in the lawsuit if they should so desire;
  - b. Issuance of an order certifying a Rule 23 Class Action under North Dakota Wage and Hour laws;
  - c. Award Plaintiffs and Class Members unpaid overtime compensation for all hours worked over forty (40) hours in a workweek at the applicable time-and-a-half rate;
  - d. Award Plaintiffs and Class Members an equal amount of unpaid wages as liquidated damages as required under the FLSA and North Dakota Wage and Hour laws;
  - e. Award Plaintiffs and Class Members reasonable attorney fees, costs, and expenses of this action as provided by the FLSA and North Dakota law;
  - f. Award Plaintiffs and Class Members pre-judgment and post-judgment interest;
  - g. An order requiring Defendants to correct their pay practices going forward; and
  - h. Award Plaintiffs and Class Members any other appropriate relief in law or in equity.

Respectfully submitted,

THE VETHAN LAW FIRM, PC

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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

Keith Ward, William Clark, Kody Clark, and all others similarly situated

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

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

Charles M.R. Vethan, Vethan Law Firm, P.C., 8700 Crownhill Blvd. Suite 302, San Antonio, Texas 78209

DEFENDANTS

Wind River Trucking, LLC d/b/a Wind River Oil Services, and Todd Bradford

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

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, 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): 26 USC 206 and 216(b). Brief description of cause: Failure to pay Plaintiffs time and one-half for hours worked over 40

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 12/08/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Charles M.R. Vethan

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: [Wind River Oil Services Drilled with Worker Misclassification Class Action](#)

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