

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL SPIVEY, individually and on behalf of
all others similarly situated,

v.

INTEGRITY INSPECTION SERVICES, LLC,

Case No.: 4:20-cv-01912

CLASS & COLLECTIVE
ACTION

COMPLAINT

SUMMARY

1. This lawsuit seeks to recover overtime compensation for Plaintiff and his similarly situated co-workers – day rate workers (collectively, “Day Rate Workers” or “Class Members”) – who have worked for Integrity Inspection Services, LLC (“Defendant” or “IIS”) in the United States.
2. Headquartered in Katy, Texas, Integrity Inspection specializes in third party inspection services to ensure pipeline projects are properly constructed and maintained.¹
3. Integrity Inspection also has offices in Houston, Texas and Atlanta, Georgia.²
4. IIS is actively operating at oilfields around the United States, including but not limited to, New Mexico.
5. In order to offer its services, IIS employs over 100 Day Rate Workers throughout the United States.
6. Spivey and similarly situated Day Rate Workers typically work at least ten-hour shifts, six days a week, for weeks at a time, all while in some of the harshest working conditions.

¹ <https://www.integrityinspector.com/about.php>

² *Id.*

7. Day Rate Workers were paid at a set day rate and also received, mileage, a per diem, and daily equipment pay, as part of their customary wages.

8. Despite treating its Day Rate Workers as non-exempt employees, IIS failed to properly pay overtime compensation at 1.5 times Day Rate Workers' regular rate of pay.

9. As a result, IIS significantly underpaid Spivey and other Day Rate Workers for overtime hours worked.

10. Spivey brings this action on behalf of himself and similarly situated current and former Day Rate Workers who elect to opt-in to this action pursuant to the FLSA, and specifically, the collective action provision of 29 U.S.C. § 216(b) to remedy violations of the wage-and-hour provisions of the FLSA by IIS that have deprived Spivey and similarly situated employees of their lawfully earned wages.

11. Spivey also brings this action under the New Mexico Minimum Wage Act, N.M. Stat. Ann. § 50-4-22, ("NMMWA") pursuant the Federal Rules of Civil Procedure 23 ("Rule 23") on behalf of all Day Rate Workers paid by the same compensation method by IIS within the State of Mexico at any time prior to the filing of this action and the date of final judgment in this action (the "New Mexico Class").

JURISDICTION AND VENUE

12. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA. 29 U.S.C. § 216(b).

13. This Court has federal jurisdiction over this action pursuant to the jurisdictional provisions of the Class Action Fairness Act, 28 U.S.C. § 1332(d).

14. The Court has supplemental jurisdiction over any state law sub-class pursuant to 28 U.S.C. § 1367.

15. Venue is proper in the Southern District of Texas pursuant to 28 U.S.C. § 1391.

16. IIS conducts substantial business operations in this District and Division.
17. IIS is headquartered within this District and Division.

THE PARTIES

Michael Spivey

18. Michael Spivey (“Spivey”) is an adult individual who is currently a resident of the State of Arizona. Spivey performed work for IIS in New Mexico during his employment.

19. Spivey was employed by IIS as a Day Rate Worker from approximately August 2019 through April 2020.

20. Spivey’s consent is attached.

21. Spivey brings this action on behalf of himself and all other similarly situated Day Rate Workers who were paid with a day rate, *i.e.*, did not receive overtime compensation, and/or were paid job bonus, *e.g.*, a per diem.

22. The FLSA collective of similarly situated workers consists of:

ALL CURRENT AND FORMER DAY RATE WORKERS WHO WORKED FOR INTEGRITY INSPECTION DURING THE LAST THREE YEARS THAT WERE PAID WITH A DAY RATE AND/OR JOB BONUS (“Putative Collective Members”).

23. The class of similarly situated employees or potential class members sought to be certified is defined as follows:

ALL CURRENT AND FORMER DAY RATE WORKERS IN NEW MEXICO WHO WORKED FOR INTEGRITY INSPECTION DURING THE LAST THREE YEARS THAT WERE PAID WITH A DAY RATE AND/OR JOB BONUS (“Putative Class Members”).

24. Spivey also seeks class certification of such a class under Rule 23 under the NMMWA.

Integrity Inspection Services, LLC

25. IIS employed Spivey and similarly situated employees at all times relevant.

26. IIS has had substantial control over Spivey's working conditions, and over the unlawful policies and practices alleged herein.

27. During all relevant times, IIS has been Spivey's employer within the meaning of the FLSA and NMMWA.

28. Integrity Inspection Services, LLC is a foreign business corporation doing business throughout the United States, organized and existing under the Laws of Texas.

29. Integrity Inspection Services, LLC's corporate headquarters is located at 21422 Provincial Blvd., Katy, TX 77450

30. At all relevant times, Integrity Inspection Services, LLC has maintained control, oversight, and direction over Spivey and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

31. Integrity Inspection Services, LLC applied the same employment policies, practices, and procedures to all Day Rate Workers at their worksites throughout the United States.

COVERAGE UNDER THE FLSA

32. At all times hereinafter mentioned, IIS has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

33. At all times hereinafter mentioned, IIS has been part of an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

34. At all times hereinafter mentioned, IIS has been a part of an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has and has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on

goods or materials – such as tools, cell phones, and personal protective equipment – that have been moved in or produced for commerce by any person and in that IIS has had and have an annual gross volume of sales made or business done of not less than \$1,000,000 (exclusive of excise taxes at the retail level which are separately stated).

35. At all times hereinafter mentioned, Spivey and Day Rate Workers were engaged in commerce or in the production of goods for commerce.

FACTS

Michael Spivey

36. Spivey was employed by IIS as an inspector from approximately August 2019 through April 2020.

37. During this time, Spivey was assigned to IIS's operations in New Mexico.

38. During the course of his employment, Spivey regularly worked over 40 hours per week. In this regard, Spivey was assigned to daily job shifts at least 10 in length.

39. As a result, Spivey consistently worked over 40 hours per week.

40. IIS paid Spivey with a day rate and non-discretionary job bonuses, including, but not limited to, mileage, a per diem, and daily equipment pay.

41. By the end of his employment, IIS paid Spivey \$485 per day.

42. IIS failed to properly pay overtime compensation to Spivey at not less than 1.5 times his regular rate of pay.

43. IIS also failed to factor in non-discretionary job bonuses into Spivey's regular rate for determining overtime pay.

44. Upon information and belief, IIS did not keep accurate records of hours worked by Spivey and similarly situated employees.

FLSA VIOLATIONS

45. As set forth herein, IIS violated, and is violating, Section 7 of the FLSA, 29 U.S.C. § 207, by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than forty (40) hours without compensating such employees for their employment in excess of forty (40) hours per week at rates no less than 1.5 times the regular rates for which they were employed.

46. IIS knowingly, willfully, or in reckless disregard carried out this illegal pattern or practice of failing to pay the Putative Day Rate Workers overtime compensation. IIS's failure to pay overtime compensation to these employees was neither reasonable, nor was the decision not to pay overtime made in good faith.

47. Accordingly, Spivey and all those who are similarly situated are entitled to overtime wages under the FLSA in an amount equal to 1.5 times their rate of pay, plus liquidated damages, attorney's fees and costs.

NMMWA VIOLATIONS

48. Spivey brings this claim under the NMMWA as a Rule 23 class action.

49. The conduct alleged violates the NMMWA (N.M. Stat. Ann. §50-4-22).

50. At all relevant times, IIS was subject to the requirements of the NMMWA.

51. At all relevant times, IIS employed Spivey and each Putative Class Member with New Mexico state law claims as an "employee" within the meaning of the NMMWA.

52. The NMMWA requires employers like IIS to pay employees at 1.5 times the regular rate of pay for hours worked in excess of forty (40) hours in any one week. Spivey and each member of the Putative Class are entitled to overtime pay under the NMMWA.

53. IIS had a policy by which Investigators and each member of the Putative Class were not paid overtime compensation.

54. Spivey and each Putative Class Member seek unpaid overtime in amount equal to 1.5 times the regular rate of pay for work performed in excess of 40 hours in a workweek, prejudgment interest, all available penalty wages, liquidated damages, and such other legal and equitable relief as the Court deems just and proper.

55. Spivey and each Putative Class Member also seeks recovery of attorneys' fees, costs, and expenses of this action, to be paid by IIS, as provided by the NMMWA.

56. The improper pay practices at issue were part of a continuing course of conduct, entitling Spivey and each Putative Class Member to recover for all such violations, regardless of the date they occurred.

CLASS AND COLLECTIVE ACTION

57. Spivey incorporates all previous paragraphs and alleges that the illegal pay practices IIS imposed on Spivey were likewise imposed on the members of the class and collective.

58. Numerous individuals were victimized by this pattern, practice, and policy which is in willful violation of the FLSA and the NMMWA.

59. Numerous other individuals who worked with Spivey indicated that they were paid in the same manner, performed similar work, and were not properly compensated for all hours worked as required by state and federal wage laws.

60. Based on his experiences and tenure with IIS, Spivey is aware that IIS's illegal pay practice were imposed on the Putative Class Members.

61. The Putative Collective Members and the Putative Class Members were all denied overtime compensation when they worked in excess of 40 hours per week.

62. IIS is an "employer" of the Putative Collective Members and the Putative Class Members.

63. IIS's failure to pay overtime compensation at the rates required by state and/or federal law results from generally applicable, systematic policies and practice which are not dependent on the personal circumstances of the Putative Collective Members or the Putative Class Members.

64. Spivey's experiences are therefore typical of the experiences of the Putative Collective Members and the Putative Class Members.

65. The specific job titles or precise job locations of the Putative Collective Members and the Putative Class Members do not prevent class or collective treatment.

66. Spivey has no interest contrary to, or in conflict with, the Putative Collective Members and the Putative Class Members.

67. Like each Putative Collective and Class Member, Spivey has an interest in obtaining the unpaid overtime wages owed to them under state and/or federal law.

68. A class and collective action, such as the instant one, is superior to other available means for fair and efficient adjudication of the lawsuit.

69. Absent this action, many Putative Collective Members and Putative Class Members likely will not obtain redress of their injuries and IIS will repeat the unjust benefits of violating the FLSA and applicable state labor laws.

70. Furthermore, even if some of the Putative Collective Members and the Putative Class Members could afford individual litigation against IIS, it would be unduly burdensome to the judicial system.

71. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of individual members of the classes and provide for judicial consistency.

72. The question of law and fact common to each member of the class predominate over any questions affecting solely the individual members. Among the common questions of law and fact are:

- a) Whether IIS employed the members of the class within the meaning of the FLSA and the NMMWA;
- b) Whether IIS's decision to not pay time and a half for overtime was made in good faith;
- c) Whether IIS's violation of the law was willful; and
- d) Whether IIS's illegal pay practices were applied uniformly across the nation to all Putative Collective Members and Putative Class Members.

73. Spivey's claims are typical of the claims of the Putative Collective Members and the Putative Class Members.

74. Spivey, the Putative Collective Members, and the Putative Class Members have sustained damages arising out of IIS's illegal and uniform employment policy.

75. Spivey knows of no difficulty that will be encountered in the management of this litigation that would preclude its ability to go forward as a collective or class action.

76. Although the issue of damages may be somewhat individual in character, there is no detraction from the common nucleus of liability facts. Therefore, this issue does not preclude collective and class action treatment.

RELIEF SOUGHT

Spivey respectfully requests that this Court grant the following relief:

- a) An Order designating this lawsuit as a collective action and permitting the issuance of a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents pursuant to 29 U.S.C. § 216(b);
- b) For an Order pursuant to Section 16(b) of the FLSA finding IIS liable for unpaid overtime wages due to Spivey and the Putative Class Members for liquidated damages equal in amount to their unpaid compensation;
- c) For an Order designating the Putative Class Members NMMWA claims as a class action pursuant to Fed. R. Civ. P. 23;

- d) For an order finding IIS liable for all unpaid overtime owed under the NMMWA at the highest available rates allowed by law, plus liquidated damages;
- e) For an Order appointing Spivey and his counsel as Class Counsel to represent the interests of both the federal and state law classes;
- f) For an Order awarding attorneys' fees, costs, and pre- and post-judgment interest; and
- g) For an Order granting such other and further relief a may be necessary and appropriate.

Dated: June 1, 2020

Respectfully submitted,

/s/ **David I. Moulton**

By: _____

Richard J. (Rex) Burch
Texas Bar No. 24001807
David I. Moulton
Texas Bar No. 24051093

BRUCKNER BURCH PLLC

8 Greenway Plaza, Suite 1500
Houston, Texas 77046
Telephone: (713) 877-8788
Telecopier: (713) 877-8065
rburch@brucknerburch.com
dmoulton@brucknerburch.com

FITAPELLI & SCHAFFER, LLP

Joseph A. Fitapelli, *pro hac vice forthcoming*
Dana M. Cimera, *pro hac vice forthcoming*
28 Liberty Street, 30th Floor
New York, New York 10005
Telephone: (212) 300-0375
Jfitapelli@fslawfirm.com
Dcimera@fslawfirm.com

Attorneys for Spivey and the Classes