

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SAM LU, individually and on behalf of all
others similarly situated,

Plaintiff,

-against-

OD INSPECTIONS, INC. and OSNEL DE
LA CRUZ,

Defendants.

No: 4:20-cv-02063

COLLECTIVE ACTION
PURSUANT TO 29 U.S.C. §
216(b)

ORIGINAL COLLECTIVE ACTION COMPLAINT

I. SUMMARY

1. This lawsuit seeks to recover overtime compensation for Plaintiff and his similarly situated co-workers – salaried inspectors and inspector helpers (“Inspectors” or “Collective Members”) – who have worked for OD Inspections, Inc. and Osnel Da La Cruz (together “OD Inspections” or “Defendants”) in the United States.

2. Headquartered in Humble, Texas and with established operations in West Texas and Oklahoma, OD Inspections, Inc. is a leading provider of inspection services to the oil and gas industry and manufacturing industry.

3. In order to offer its services, Defendants employs dozens of Inspectors throughout the states of Texas and Oklahoma.

4. At one time, Defendants classified its Inspectors as W-2 employees. Sometime within the last 3 years, Defendants began to classify Inspectors as 1099 independent contractors. Despite, this, however, Inspector’s primary duties remained the same.

5. In order to avoid paying Inspectors overtime for hours worked in excess of 40 per workweek, Defendants uniformly misclassified them as exempt from the overtime provisions of the Fair Labor Standards Act § 201 *et seq.* (“FLSA”). In this regard, Defendants pay Inspectors with a set salary without additional compensation for hours worked over 40 in a workweek.

6. Inspectors have non-exempt primary duties that involve applying well-established testing procedures that are routine and technical in nature. For example, Inspectors are sent to job sites by OD Inspections and perform routine inspections on oil & gas and manufacturing equipment, such as ultrasonic, MAG particle, and visual inspections.

7. Inspectors are required to carry out their inspections according to detailed step-by-step procedures promulgated by Defendants, Defendants’ customers, or standard industry guidelines.

8. Inspectors are not required to hold higher education degrees to perform their job duties.

9. Inspectors do not hire or fire employees, nor do they supervise other employees.

10. OD Inspections at all times relevant has had direct control over Inspectors’ day-to-day activities. For instance, OD Inspections controls the work schedules of Inspectors, controls the job assignments of Inspectors, and provides the equipment necessary to perform the inspections on the oil & gas and manufacturing equipment. Inspectors are wholly economically dependent upon OD Inspections.

11. Inspectors do not incur operating expenses like rent, payroll, marketing, and insurance.

12. OD Inspections could and did transfer Inspectors between job sites.

13. No real investment was required of Inspectors to perform their job duties. In this regard, OD Inspections provides the testing equipment used by Inspectors to perform their job duties.

14. The services rendered by Inspectors are an integral part of OD Inspection’s business of providing inspection services to oil & gas and manufacturing clients.

15. Despite having substantial custody and control over Inspectors and being their employer, OD Inspections misclassified them as independent contractors to avoid paying overtime compensation.

16. Plaintiff brings this action on behalf of himself and similarly situated current and former Inspectors 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 Defendant that has deprived Plaintiff and similarly situated employees of their lawfully earned wages.

II. JURISDICTION AND VENUE

17. 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).

18. Venue is proper in the Southern District of Texas, Houston Division pursuant to 28 U.S.C. § 1391(b) because Defendants operate business in this District and a substantial part of the events or omissions giving rise to the claim occurred in this District and Division.

III. THE PARTIES

Sam Lu

19. Sam Lu (“Plaintiff” or “Lu”) is an adult individual who is currently a resident of the State of Texas.

20. Plaintiff worked for Defendants as an Inspector in two distinct employment periods. Specifically, Plaintiff first worked for Defendants as an Inspector from approximately October 2014 to July 2016, and then again from March 2017 to April 2020. During his employment, Plaintiff performed work for Defendant in the areas of Houston, Texas and Midland/Odessa, Texas during his employment.

21. A written consent form for Lu is being filed with this Collective Action Complaint.

22. Plaintiff brings this action on behalf of himself and all other similarly situated Inspectors who were paid a salary and did not receive overtime compensation.

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

ALL CURRENT AND FORMER INSPECTORS AND/OR INSPECTOR HELPERS WHO WORKED FOR OD INSPECTIONS, INC. DURING THE LAST THREE YEARS THAT WERE PAID WITH A SALARY (“Collective Members”)

Defendants

24. Defendants jointly employed Plaintiff and similarly situated employees at all times relevant.

25. Each Defendant has had substantial control over Plaintiff’s working conditions, and over the unlawful policies and practices alleged herein.

26. Defendants are part of a single integrated enterprise that has jointly employed Plaintiffs and similarly situated employees at all times relevant.

27. During all relevant times, Defendants’ operations are interrelated and unified.

28. During all relevant times, Defendants have been Plaintiffs’ employers within the meaning of the FLSA.

OD Inspections, Inc.

29. Together with the other Defendants, OD Inspections, Inc. has co-owned and/or co-operated all OD Inspections worksites during the relevant time period.

30. Based on information and belief, OD Inspections, Inc. is a domestic for-profit corporation organized and existing under the laws of Texas.

31. OD Inspections, Inc.’s business address is 14703 Mill Road, Humble, Texas 77396.

32. At all relevant times, OD Inspection, Inc. has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other employment practices.

33. OD Inspections, Inc. applies the same employment policies, practices, and procedures to all Inspectors at their job sites company wide.

Osnel De La Cruz

34. Upon information and belief, Osnel De La Cruz (“De La Cruz”) is a resident of the State of Texas.

35. At all relevant times, De La Cruz has been an owner and operator of OD Inspections. In this regard, De La Cruz is listed as the President on OD Inspections’ website.

36. De La Cruz maintains a direct and significant management role in OD Inspections.

37. At all relevant times, De La Cruz has had the power over payroll decisions at OD Inspections including the power to retain time and/or wage records.

38. At all relevant times, De La Cruz has been actively involved in managing the day to day operations of OD Inspections.

39. At all relevant times, De La Cruz has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees at OD Inspections.

40. At all relevant times, De La Cruz has had the power to transfer the assets and/or liabilities of OD Inspections.

41. At all relevant times, De La Cruz has had the power to declare bankruptcy on behalf of OD Inspections.

42. At all relevant times, De La Cruz has had the power to enter into contracts on behalf of OD Inspections.

43. At all relevant times, De La Cruz has had the power to close, shut down, and/or sell OD Inspections.

44. De La Cruz is a covered employer within the meaning of the FLSA, and at all relevant times, has employed and/or jointly employed Plaintiff and similarly situated employees.

IV. COVERAGE UNDER THE FLSA

45. At all times hereinafter mentioned, Defendants have been employers within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

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

47. At all times hereinafter mentioned, Defendants have 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 Defendant 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).

48. At all times hereinafter mentioned, Plaintiff and Collective Members were engaged in commerce or in the production of goods for commerce.

V. FACTS

49. Lu and those similarly situated to him worked for Defendants as salaried Inspectors.

50. Lu worked for Defendants as an Inspector in two distinct employment periods. Specifically, Lu first worked for Defendants as an Inspector from approximately October 2014 to July 2016, and then again from March 2017 to April 2020.

51. Defendants classified Lu as a W2 employee from October 2014 to July 2016. When Lu returned to OD Inspections, Defendants classified him as a 1099 contractor. Plaintiff's job duties remained largely the same during both employment periods.

52. During his employment, Lu performed work for Defendant in the areas of Houston, Texas and Midland/Odessa, Texas during his employment.

53. During the course of his employment, Lu regularly worked over 40 hours per week.

54. During his employment, Lu generally worked between 5 to 7 days per week, with shifts lasting between 8 hours to 16 hours in length.

55. As a result, Lu consistently worked over 40 hours per week.

56. Defendants paid Lu with a salary regardless of the number of hours worked.

57. At all times relevant, Lu had non-exempt primary job duties, such as completing different types of inspection tests on oil & gas and manufacturing equipment. For instance, Lu would complete ultrasonic tests on oil & gas and manufacturing equipment that looked for cracks or other abnormalities in oilfield and manufacturing equipment. Completing these tests involve using well-established techniques and practices that are catalogued and technical in nature.

58. Lu's primary duties were technical and consisted of well-established testing procedures. Inspector's primary duties do not require independent judgment or discretion. Instead, Lu was required to carry out his inspections according to detailed step-by-step procedures promulgated by Defendants, Defendants' customers, or standard industry guidelines.

59. Lu did not have the authority to hire or fire employees.

60. Although Defendants classified Lu as an independent contractor for some of his employment, Defendants exercised custody and control over all material aspects of his employment and the performance of his job. For instance, OD Inspections controlled Lu's work schedules, controlled Lu's job assignments, and provided Lu with the inspection equipment necessary to perform

his job. Lu was wholly economically dependent upon OD Inspections, and was not in business for himself.

61. Lu did not incur operating expenses like rent, payroll, marketing, and insurance.

62. OD Inspections could and did transfer Lu between job sites.

63. No real investment was required of Lu to perform his job duties. In this regard, OD Inspections provided Lu with the testing equipment used to perform his job duties.

64. The services rendered by Lu was an integral part of OD Inspection's business of providing inspection services to oil & gas and manufacturing clients.

65. Upon information and belief, Defendants did not keep accurate records of hours worked by Lu and similarly situated employees.

66. As such, Lu's primary job duties as an Inspector are non-exempt duties under the FLSA.

VI. FLSA VIOLATIONS

67. As set forth herein, Defendants have 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.

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

69. Accordingly, Plaintiff 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.

VII. COLLECTIVE ACTION

70. Plaintiff incorporates all previous paragraphs and alleges that the illegal pay practices Defendants imposed on Plaintiff were likewise imposed on the members of the Collective.

71. Plaintiff brings the First Cause of Action, a FLSA claim, on behalf of himself and all similarly situated persons who work or have worked for Defendant as Salaried Inspectors, Inspector Helpers, and other similar titles nationwide who elect to opt-in to this action (the "FLSA Collective").

72. Defendants are liable under the FLSA for *inter alia*, failing to properly compensate Plaintiff and the FLSA Collective.

73. Consistent with Defendant's policies and patterns or practices, Plaintiff and the FLSA Collective were not paid the proper premium overtime compensation when they worked beyond 40 hours in a workweek.

74. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiff and the FLSA Collective have performed.

75. As part of their regular business practice, Defendant has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective.

76. This policy and pattern or practice includes, but is not limited to, willfully failing to pay its employees, including Plaintiff and the FLSA Collective, the correct premium overtime wages for hours that they worked in excess of 40 hours per workweek and failing to maintain accurate records of hours worked by its employees, including Plaintiff and the FLSA Collective.

77. Defendant's unlawful conduct, as described in this Complaint, is pursuant to a corporate policy or practice of minimizing labor costs by failing to pay overtime pay.

78. Defendant is aware or should have been aware that federal law required them to pay Plaintiff and the FLSA Collective no less than 1.5 times their regular rates of pay for all overtime hours worked.

79. Plaintiff and the FLSA Collective perform or performed the same primary duties.

80. There are many similarly situated current and former Inspectors who have been undercompensated in their overtime pay in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it.

81. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

82. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records.

VIII. RELIEF SOUGHT

Plaintiff, individually, and on behalf of the FLSA Collective respectfully request that this Court grant the following relief:

A. That, at the earliest possible time, Plaintiff be allowed to give notice of this collective action, or that the Court issue such notice, to all Inspectors and other similarly situated workers who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, worked for Defendant nationwide. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid overtime pays and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under the FLSA.

D. Reasonable attorneys' fees and costs of the action; and

E. Such other relief as this Court shall deem just and proper.

Dated: June 11, 2020

Respectfully submitted,

/s/ David I. Moulton

By: _____

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