

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**ISMAEL MORERO**, individually and on behalf of all others similarly situated,

Plaintiff,

-against-

**BLS PAINTING, INC.; BENITO LUNA; and ERICK LUNA;**

Defendants.

**No: 1:20-cv-780**

**COLLECTIVE  
ACTION COMPLAINT**

**SUMMARY**

Ismael Morero, individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to himself, and upon information and belief as to other matters, alleges as follows:

**NATURE OF THE ACTION**

1. This lawsuit seeks to recover overtime compensation for Plaintiff and similarly situated painters, helpers, and other similarly situated workers (collectively “Painters”) who work or have worked for BLS Painting.

2. Owned and operated by BLS Painting, Inc., Benito Luna, and Erick Luna (collectively, “BLS Painting” or “Defendants”), BLS Painting provides painting services to customers in and outside the greater Austin, Texas area.

3. In order to provide their painting services, BLS Painting employs dozens of Painters company-wide at any given time.

4. Defendants at all times have compensated Plaintiff and other Painters on an hourly

rate basis.

5. Despite being non-exempt employees, Defendants have failed to properly pay Plaintiff and other Painters overtime compensation at 1.5 times their regular rate of pay when they work over 40 hours per workweek.

6. In this regard, Defendants have instituted a policy and practice where they pay Plaintiff and similarly situated Painters “straight time” for overtime hours the company records.

7. In addition, Defendants have instituted a policy and practice where they do not compensate Plaintiff for work time performed before the day’s first job site, for work performed after the day’s last job site, and for travel time.

8. In this regard, Defendants organize their work force into “crews” of Painters who travel from their residences to a “shop” or meet up location to perform work to prepare for their workday. For instance, Painters arrive at the shop or meet up location and load the day’s supplies and materials into the work vans, clean the work vans, organize the work vans, and otherwise prepare for the day’s job assignments. Additionally, when needed, Painters are required to fuel the work vans prior to driving out to the day’s assigned job sites.

9. Painters then depart with their crews via company vehicle to their assigned job site(s). Painters generally arrive to their first job site anywhere between 1 hour to 1.5 hours after first arriving at the shop.

10. Upon finishing their work at their assigned job site(s), Painters travel back to their shop location to unload the work vehicles and perform any other tasks as assigned by Defendants. Such return travel time and unload time generally ranged anywhere between 1 hour to 1.5 hours.

11. Despite these work hours, Defendants have instituted a policy and practice in which they do not compensate Painters for the time spent working at the shop in the mornings, the travel

time from the shop to the first job site, and the travel time from the last job site back to the shop and end of day work duties.

12. Despite having knowledge that Painters regularly perform the above work duties, Defendants do not pay Painters any compensation for this additional compensable time.

13. Plaintiffs bring this action on behalf of themselves and all other similarly situated Painters who elect to opt in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* (“FLSA”), and specifically, the collective action provision of 29 U.S.C. § 216(b).

### **THE PARTIES**

#### **Plaintiff**

##### **Ismael Morero**

14. Ismael Morero (“Morero”) is an adult individual who is a resident of Texas.

15. Morero was been employed by Defendants as a painter from approximately September 2019 through January 2020.

16. Morero is a covered employee within the meaning of the FLSA.

17. A written consent form for Morero is being filed with this Collective Action Complaint as Exhibit 1.

#### **Defendants**

18. Defendants jointly employed Plaintiffs and similarly situated employees at all times relevant.

19. Each Defendant has had substantial control over Plaintiffs’ and similarly situated employees’ working conditions, and over the unlawful policies and practices alleged herein.

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

**BLS Painting, Inc.**

21. BLS Painting, Inc. is a domestic for-profit corporation organized and existing under the laws of Texas.

22. BLS Painting, Inc. may be served through its registered agent, Benito S. Luna, 9300 South IH 35, Suite A500, Austin, Texas 78748.

23. BLS Painting, Inc. is a covered employer within the meaning of the FLSA, and at all times relevant, employed Plaintiff and similarly situated employees.

24. At all times relevant, BLS Painting, Inc. has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including timekeeping, payroll, and other employment practices that applied to them.

25. BLS Painting, Inc. is the corporate payor that appears on Plaintiff's paystubs.

26. BLS Painting, Inc. applies the same employment policies, practices, and procedures to all Painters in its operation, including policies, practices, and procedures with respect to payment of overtime compensation.

27. Upon information and belief, at all relevant times, BLS Painting, Inc. has had an annual gross volume of sales in excess of \$500,000.

**Benito Luna**

28. At all relevant times herein, Benito Luna ("B. Luna") has co-owned and/or co-operated BLS Painting, Inc.

29. Upon information and belief, B. Luna is a resident of the State of Texas.

30. B. Luna is identified as the registered agent for BLS Painting, Inc.

31. B. Luna maintains a direct and significant management role in BLS Painting, Inc. In this regard, Plaintiff identifies B. Luna as a manager who regularly directs his work, supervises

his work, and otherwise controls the terms and condition of his employment.

32. At all relevant times, B. Luna has had the power over payroll decisions at BLS Painting, Inc., including the power to retain time and/or wage records.

33. At all relevant times, B. Luna has been actively involved in managing the day to day operations of BLS Painting, Inc.

34. At all relevant times, B. Luna has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees at BLS Painting, Inc.

35. At all relevant times, B. Luna has had the power to transfer the assets and/or liabilities of BLS Painting, Inc.

36. At all relevant times, B. Luna has had the power the declare bankruptcy on behalf of BLS Painting, Inc.

37. At all relevant times, B. Luna has had the power to enter into contracts on behalf of BLS Painting, Inc.

38. At all relevant times, B. Luna has had the power to close, shut down, and/or sell BLS Painting, Inc.

39. B. Luna 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.

**Erick Luna**

40. At all relevant times herein, Erick Luna (“E. Luna”) has co-owned and/or co-operated BLS Painting, Inc.

41. Upon information and belief, E. Luna is a resident of the State of Texas.

42. E. Luna maintains a direct and significant management role in BLS Painting, Inc. In this regard, Plaintiff identifies E. Luna as a manager who regularly directs his work, supervises

his work, and otherwise controls the terms and condition of his employment.

43. At all relevant times, E. Luna has had the power over payroll decisions at BLS Painting, Inc., including the power to retain time and/or wage records.

44. At all relevant times, E. Luna has been actively involved in managing the day to day operations of BLS Painting, Inc.

45. At all relevant times, E. Luna has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees at BLS Painting, Inc.

46. At all relevant times, E. Luna has had the power to transfer the assets and/or liabilities of BLS Painting, Inc.

47. At all relevant times, E. Luna has had the power the declare bankruptcy on behalf of BLS Painting, Inc.

48. At all relevant times, E. Luna has had the power to enter into contracts on behalf of BLS Painting, Inc.

49. At all relevant times, E. Luna has had the power to close, shut down, and/or sell BLS Painting, Inc.

50. E. Luna 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.

#### **JURISDICTION AND VENUE**

51. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331.

52. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

53. Venue is proper in the Western District of Texas, Austin Division, pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims

occurred in this District and Defendants conduct business in this District.

**COLLECTIVE ACTION ALLEGATIONS**

54. Plaintiff brings the First Cause of Action, an FLSA claim, on behalf of himself and all similarly situated persons who work or have worked as Painters for BLS Painting who elect to opt-in to this action (the “FLSA Collective”).

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

56. Consistent with Defendants’ policies and patterns or practices, Plaintiff and the FLSA Collective were not paid the proper premium overtime compensation of 1.5 times their regular rates of pay for all hours worked beyond 40 per workweek.

57. 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.

58. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to, willfully failing to pay their employees, including Plaintiff and the FLSA Collective, proper premium overtime wages for all hours worked in excess of 40 hours per workweek.

**PLAINTIFF’S FACTUAL ALLEGATIONS**

59. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiff, individually, as follows:

**Ismael Morero**

60. Morero was been employed by Defendants as a painter from approximately

September 2019 through January 2020.

61. At all times relevant, Defendant paid Morero on an hourly basis.

62. At all times relevant, Morero has been a non-exempt employee under the FLSA.

63. During his employment, Morero generally the following schedule, unless he missed time for vacation, sick days or holidays:

- 5 to 6 days per week, from approximately 7:00 am to approximately 6:30 pm/7:00 pm

64. Plaintiff recalls also having worked up to 7 days per week and being required to perform miscellaneous work at the shop until approximately 9:00 pm at times.

65. In general, Morero would arrive at the shop at 7:00 am and perform work such as loading the work van with the day's materials and supplies, cleaning the work van, organizing the work van, fueling the work van when necessary, and any other work directed by Defendants. Then, after leaving the shop, Morero and his coworkers would drive to the day's first job site. Morero and his coworkers would arrive to the day's first job site generally 1 hour to 1.5 hours after first arriving at the shop.

66. Morero was not allowed to clock in until he arrived at the first job site of the day. Morero was required to clock out for the day when their work at the final job site finished.

67. After completing his assigned duties at his worksite(s), Morero would generally drive back to the shop, and upon arriving at the shop, he would unload the van and perform any other end of day tasks assigned to him. Morero would spend between 1 hour to 1.5 hours after leaving the last job site traveling back to the shop and performing work at the shop.

68. Defendants had knowledge of the shop and travel time performed by Morero.

69. Despite regularly working over 40 hours per workweek, Defendants failed to

correctly compensate Morero with proper overtime compensation of 1.5 times his regular rate of pay for all hours he was suffered or permitted to work.

**FIRST CAUSE OF ACTION**  
**Fair Labor Standards Act – Overtime Wages**  
**(Brought on behalf of Plaintiff and the FLSA Collective)**

70. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

71. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiff and the FLSA Collective.

72. Plaintiff and the FLSA Collective worked in excess of 40 hours during workweeks in the relevant period.

73. Defendants failed to pay Plaintiff and the FLSA Collective the premium overtime wages to which they were entitled under the FLSA – at a rate of 1.5 times their regular rate of pay for all hours worked in excess of 40 per workweek.

74. As a result of Defendants' willful violations of the FLSA, Plaintiff and the FLSA Collective have suffered damages by being denied overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees and costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually, and on behalf of all other similarly situated persons, respectfully requests 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 Painters 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 BLS Painting. 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 wages, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor Regulations;

C. Prejudgment and post-judgment interest;

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

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

Dated: July 22, 2020  
Houston, Texas

Respectfully submitted,

/s/ Ricardo J. Prieto

Ricardo J. Prieto

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