

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

**JONATHAN BARBER, individually and on
behalf of all others similarly situated,**

Plaintiff,

-against-

APEX WELL SERVICING USA INC.,

Defendant.

No:

**CLASS AND
COLLECTIVE
ACTION COMPLAINT**

SUMMARY

1. Apex Well Servicing USA Inc. (“Apex Well”) fails to pay overtime as required by law.
2. This lawsuit seeks to recover the unpaid overtime Apex Well owes to Jonathan Barber and his similarly situated hourly paid co-workers (such as rig supervisors, rig operators, and similar oilfield workers) who received *per diem* payments that were excluded from the regular rate of pay and who did not receive proper overtime payments for all compensable time worked.

JURISDICTION AND VENUE

3. This Court has original jurisdiction under 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331(a), 1332(a), and/or pursuant to 28 U.S.C. § 1367. The Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the alleged North Dakota state wage claims because they are so related to the federal claims that they form part of the same case or controversy.
4. The proposed collective action includes a total number of plaintiffs in excess of 100.
5. Venue is proper in the District of North Dakota, the Minot Division, because Defendant performs business in this District and Plaintiff performed work in this District.

PARTIES

6. Jonathan Barber (“Barber”) is an adult resident of the State of North Dakota.

7. Barber was a rig supervisor for Apex Well from approximately 2020 to 2023, then again from March 2024 through the end of April 2025.

8. At all relevant times, Barber was Apex Well’s “employee” as defined by the FLSA and North Dakota Wage Law.

9. At all relevant times, Apex Well was Barber’s “employer” as defined by the FLSA and North Dakota Wage Law.

10. Barber’s written consent was filed with this Class and Collective Action Complaint.

DEFENDANT

Apex Well Servicing USA Inc.

11. Apex Well is a Canadian-based oil and gas service company headquartered in Slave Lake, Alberta, Canada that offers a full range of service and service equipment to oil well owners.

12. Apex Well’s American headquarters are located at 621 48th Avenue West, Williston, North Dakota 58801.

13. Apex Well is a Delaware corporation and its American corporate headquarters are located at 621 48th Avenue West, Williston, North Dakota 58801.

14. Apex Well has owned and operated all Apex Well offices and work sites throughout the United States in the relevant period.

15. Apex Well’s registered agent is Busek Olson & Associates Inc., 4840 Amber Valley Parkway, Ste A, Fargo, ND 58104

16. Apex Well is the corporate payor on Barber’s paystubs.

17. At all relevant times, Apex Well maintained control, oversight, and direction over Barber and the other Oilfield Workers.

18. This includes Apex Well's ability to hire, fire, and discipline the Oilfield Workers, as well as its ability to make decisions regarding timekeeping, payroll, and other employment practices.

19. Apex Well applies the same employment policies, practices, and procedures to all Oilfield Workers employed at its worksites throughout the United States.

20. At all times relevant, Apex Well's annual gross volume of sales has exceeded \$1,000,000.

21. At all times relevant, Apex Well has employed more than two employees and its employees utilize goods, equipment, and/or materials that have moved in interstate commerce (such as hard hats, hand tools, vehicles, etc.).

FACTS

22. Apex Well offers turnkey solutions for service rigs, rod rigs, heat & pressure services, continuous rod services, and boiler services to its oil and gas customers in the United States.

23. To offer its services, Apex Well employs several hundreds of non-exempt oilfield workers in the United States.

24. These workers include rig supervisors, rig operators, and similar oilfield workers (collectively, "Oilfield Workers").

25. Barber and the other Oilfield Workers work on the oil well sites. For instance, Barber worked on job sites in and around North Dakota.

26. Oilfield Workers typically work at least 12 hours a day, plus drive time, for days or even weeks at a time, in some of the harshest working conditions. Barber generally worked a hitch schedule consisting of 20 days on followed by 10 days off.

27. Apex Well pays its Oilfield Workers a base hourly rate of pay plus additional wages labeled *per diem*. For instance, Apex Well paid Barber a base hourly rate of \$32 per hour plus the wages labeled as *per diem*.

28. This additional *per diem* pay is subject to applicable payroll taxes and is included in Oilfield Workers' year end wage amounts on the pay stubs.

29. Moreover, while labeled *per diem*, these payments are wages are based upon the hours worked by Oilfield Workers.

30. In fact, Apex Well pays its so-called *per diem* payments based on the number of hours worked and billed to a customer.

31. If an Oilfield Worker works more than 8 hours of rig time, that worker would receive the full *per diem* payment (which ranges between \$150 to \$170).

32. In the company's vernacular, a full day's *per diem* is known as "base pay."

33. Where a worker works between 4 to 7.99 hours of rig time, they receive half of the *per diem* payment, known as "camp pay."

34. An Oilfield Worker who works less than 4 hours does not receive any *per diem* pay.

35. When so-called *per diem* payments are tied to hours worked, they are considered wages for the purposes of calculating and paying overtime compensation. *See, e.g., Rule v. S. Indus. Mech. Maint. Co.*, No. 16-cv-01408, 2020 WL 1126179, at *4 (W.D. La. Mar. 6, 2020) (*citing Madison v. Re. for Human Dev., Inc.*, 233 F.3d 175, 187 (3d Cir. 2000)).

36. Apex Well did not factor its *per diem* payments into Barber's and other Oilfield Workers' overtime rates of pay.

37. Instead, Defendant only paid 1.5 times Barbers' and other Oilfield workers' base hourly rates of pay.

38. Additionally, Defendant did not pay for all compensable travel time worked by Barber and other Oilfield Workers.

39. Specifically, Apex Well only pays for travel time as estimated by Google Maps between the job site and its Williston headquarters.

40. However, Apex Well required Barber and Oilfield Workers to perform additional job duties after leaving the Williston yard and before arriving at the oil well job sites.

41. For instance, Oilfield Workers are routinely required to pick up other crew members from their homes, and/or gather various supplies around town, prior to leaving for the job site.

42. Barber estimates that he and other Oilfield Workers spend between 15 to 30 minutes of uncompensated time performing these tasks prior to the travel time to the job sites.

43. Additionally, Apex Well requires its Oilfield Workers to spend between 30 minutes and 1 hour on after-shift errand work upon returning to the Williston yard.

44. Such job duties include dropping off crew members as well as returning items to Apex Well's shop or its vendors around town.

45. Apex Well did not pay Barber and other Oilfield Workers for this additional work time.

46. During the height of the winter months, Barber and other Oilfield Workers are required to go to oil well job sites to run equipment for a few hours to prevent deep freezes.

47. Such waiting time while running the equipment for winter maintenance is sometimes unpaid or only partially paid, depending on the agreement with the oil well owner.

48. Barber brings this action on behalf of himself and similarly situated current and former Oilfield Workers who elect to opt-in to this action pursuant to the FLSA, 29 U.S.C. § 216(b).

49. Barber also brings this action on behalf of himself and similarly situated Oilfield Workers in North Dakota pursuant to Rule 23 remedy violations of North Dakota Century Code 34 and the North Dakota Minimum Wage and Work Conditions Order (N.D. Admin. Code § 46-02-07-01 *et seq.*) (together "North Dakota Wage Laws").

COLLECTIVE/CLASS ALLEGATIONS

50. Barber brings his First Cause of Action under the FLSA.

51. He brings this claim on behalf of himself and all hourly, non-exempt employees who Apex Well paid according to its hourly *per diem* pay scheme (the “FLSA Collective”).

52. Barber brings this claim on behalf of himself and all hourly, non-exempt employees who Apex Well paid according to its hourly *per diem* pay scheme in North Dakota (the “North Dakota Class”) (together, with the FLSA Collective, “Class Members”).

53. Apex Well is liable under the FLSA and North Dakota Wage Laws for failing to pay its Oilfield Workers properly.

54. Apex Well’s *per diem* scheme resulted in all its Oilfield Workers receiving less than the required “time and a half” overtime premium for hours worked after 40 hours in a workweek.

55. Apex Well assigned Barber and the other Class Members their work.

56. Apex Well intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA and North Dakota Wage Law with respect to its Oilfield Workers.

57. Apex Well’s wrongful policies and/or practices include:

- a. willfully failing to pay its Oilfield Workers overtime at the required rates; and
- b. willfully failing to record—and pay for—all time worked by the Oilfield Workers.

58. Apex Well’s failure to pay results from its corporate policy or practice of incorrectly excluding *per diem* payment from workers’ regular rates of pay and undercounting hours worked.

59. Apex Well knew federal and state law required it to pay its Oilfield Workers overtime for all hours worked in excess of 40 per workweek.

60. Plaintiff and the Class Members perform or performed the same or similar duties.

61. There are many similarly situated current and former rig supervisors, rig operators, and similar positions who have been denied 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.

62. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

63. The members of the North Dakota Class are known to Defendant, are readily identifiable, and can be located through Defendant's records.

64. The North Dakota Class is so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

65. There are more than fifty members of the North Dakota Class.

66. Barber's claims are typical of those claims that could be alleged by any North Dakota Class Member and the relief sought is typical of the relief which would be sought by each North Dakota Class Member in separate actions.

67. Barber and the North Dakota Class have all been injured in that they have been uncompensated or under-compensated due to Apex Well's common policies, practices, and patterns of conduct. Apex Well's corporate-wide policies and practices affected all of the North Dakota Class Members similarly, and Defendant benefited from the same type of unfair and/or wrongful acts as to each of the North Dakota Class.

68. Barber is able to fairly and adequately protect the interests of the North Dakota Class and has no interests antagonistic to Class Members.

69. Barber is represented by attorneys who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

70. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where

individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender.

71. Common questions of law and fact exist as to the North Dakota Class that predominate over any questions only affecting Barber and the North Dakota Class individually. Such issues include, but are not limited to:

- a. Whether Defendant tied *per diem* payments to hours worked by Oilfield Workers;
- b. Whether Defendant properly paid overtime wages by not factoring in *per diem* wages into Oilfield Workers' rates of pay;
- c. Whether Defendant paid overtime compensation for all compensable time worked;
- d. Whether Defendant kept accurate hours of worked performed by Oilfield Workers;

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

72. The overtime protections set forth in the FLSA, 29 U.S.C. § 207(a), apply to Defendant and protect Plaintiff and the members of FLSA Collective.

73. Apex Well failed to pay Plaintiff and the FLSA Collective at a rate of at least 1.5 times their regular rate of pay (which include should include all earnings per workweek).

74. Apex Well excluded, unlawfully, the *per diem* payments from the calculation of the Oilfield Workers' regular rates.

75. Apex Well also failed to pay overtime for all compensable hours worked.

76. Its unlawful conduct, as described in this Complaint, has been willful and intentional.

77. Apex Well was aware or should have been aware that the practices described in this Complaint were unlawful.

78. Defendant did not make a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and the FLSA Collective.

79. As such, a three-year statute of limitations applies, pursuant to 29 U.S.C. §§ 201 *et seq.*

80. As a result of Apex Well's willful violations of the FLSA, Barber 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, costs, and other compensation pursuant to 29 U.S.C. §§ 201 *et seq.*

SECOND CAUSE OF ACTION
North Dakota Wage Laws – Overtime Wages
(Brought on Behalf of Plaintiff and the North Dakota Class)

81. The overtime provisions of the North Dakota Century Code 34 and North Dakota Admin. Code - §46-02-07-01, *et seq.* - and their supporting regulations apply to Apex Well and protect Plaintiff and the North Dakota Class.

82. Defendant failed to pay Plaintiff and the North Dakota Class the premium overtime wages to which they were entitled under North Dakota Wage Laws—at a rate of 1.5 times their regular rate of pay (inclusive of all forms of compensation)—for all hours worked beyond 40 per workweek.

83. Defendant also failed to pay overtime for all compensable hours worked.

84. Through their knowing or intentional failure to pay Plaintiff and the North Dakota Class the appropriate overtime wages, Defendant willfully violated the North Dakota Admin. Code, § 46-02-07-02(4).

85. Due to Defendant's violations of the North Dakota Admin. Code, Barber and the North Dakota Class are entitled to recover their unpaid overtime wages, applicable interest, liquidated damages, and reasonable attorneys' fees and costs pursuant to North Dakota Wage Law.

PRAYER FOR RELIEF

WHEREFORE, Barber, individually, and on behalf of the Class, 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 Rig Supervisors, Rig Operators, and other similarly situated oilfield 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 at Apex Well's locations nationwide;

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

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiff as a representative of the North Dakota Class and counsel of record as Class Counsel;

E. Unpaid overtime wages and liquidated damages as permitted by law pursuant to North Dakota Wage Law;

F. Issuance of a declaratory judgment that the practices complained of in this Complaint are unlawful under the FLSA and North Dakota Wage Laws;

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

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

Dated: October 24, 2025

Respectfully submitted,

/s/ Armando A. Ortiz
Armando A. Ortiz

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