

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION**

Vanda Lima, Sergio Alho,
Fabio Lima, and Jose Duarte,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

Case No. 06-7804

Judge Duval

Magistrate Roby

vs.

Belfor USA Group, Inc., a Delaware
Corporation,

Defendant.

**PLAINTIFF'S FAIR LABOR STANDARDS ACT
COLLECTIVE ACTION AMENDED COMPLAINT**

I. PRELIMINARY STATEMENT

1. This is a civil action brought on behalf of individuals who worked or are working for Defendant and all similarly situated former and current employees (collectively referred to as "Plaintiffs") of the Defendant¹. Plaintiffs complain that the Defendants engaged in

¹ Additional parties, such as other subcontractors and the entities that hired or contracted with the named Defendant to provide labor for reconstruction or clean up services, may be added as Defendant joint employers as the case progresses through discovery. This may include hotels, retail stores and other businesses in and around the Gulf coast.

a pattern or practice of unlawful conduct which resulted in the violation of their rights under the Fair Labor Standards Act (FLSA), 29 U.S.C. §201 et seq.

2. Plaintiffs bring this action on behalf of a class of over 1000 workers, predominantly immigrants, who were engaged in manual labor cleaning and restoring various hotels, retail stores and other buildings throughout the United States.²
3. Plaintiffs generally worked seven days a week and usually twelve hours a day restoring and cleaning buildings and other property contaminated by mold, flood water and/or smoke. In general, Plaintiffs are individuals who have limited proficiency in English and are unfamiliar with the many labor protections provided by federal law. Defendant exploited Plaintiffs' indigence, inability to speak or understand English, and their lack of understanding of the laws of the United States to grossly underpay them.
4. Defendant employed Plaintiffs as unskilled manual laborers by using the subcontractor system and intentionally misclassifying Plaintiffs as independent contractors and/or supervisors in an effort to circumvent the overtime provisions of the FLSA.³ At all times, however, Defendant was the joint-employer of the Plaintiffs.
5. Plaintiffs seek a declaration that their rights have been violated, an award of unpaid wages, an award of liquidated damages, an award of fees and costs to make them whole

² Plaintiffs may include individuals who were compensated by Defendant for similar violations in a settlement of a suit filed in this Court for similar claims that occurred along the gulf coast in the aftermath of Hurricane Katrina. This complaint is for claims that arose before and after the Hurricane Katrina clean up in other states, other projects not covered by the Rodrigues vs. Belfor USA Group, Inc. Docket #: 06-0491, and any individuals not included in the Settlement Class.

³ Plaintiffs reserve the right to amend the complaint to include an additional claim of violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act upon completion of discovery.

for damages they have suffered and to ensure that they and future workers will not be subjected by the Defendant to such illegal conduct in the future.

II. JURISDICTION

6. Jurisdiction is conferred upon this Court by 29 U.S.C. §216(b), this action arising under the FLSA; by 28 U.S.C. §1337, this action arising under Acts of Congress regulating commerce; and by 28 U.S.C. §1331, this action involving questions of federal law. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

III. VENUE

7. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

IV. PARTIES

8. Plaintiffs are the named plaintiffs and other similarly situated former and current employees of the Defendant who were directly or indirectly employed by Defendant and/or its subcontractors in various disaster restoration projects throughout the United States and who were owed and did not receive overtime wages as required under the Fair Labor Standards Act.
9. Defendant Belfor USA Group, Inc. (hereinafter "Belfor") is a corporation incorporated in the state of Delaware and registered as a foreign corporation with the Secretary of State of Louisiana whose resident agent is CT Corporation System, 8550 United Plaza Blvd., Baton Rouge, LA 70809.

V. GENERAL ALLEGATIONS

10. Defendant was contracted by various businesses across the United States to provide services which included structural cleaning and drying, debris removal, and content cleaning among other things.
11. Defendant was permitted to subcontract some or all of the work it was required to provide under these contracts.
12. Defendant contracted with various subcontractors and other entities to provide labor and other services to fulfill their obligations under the contracts referenced in paragraph 10.
13. Subcontractors hired by Defendant, recruited and hired Plaintiffs to perform the services required under the contracts referenced under paragraph 12.
14. Plaintiffs relied upon various promises made by the subcontractors in accepting the employment offered.
15. Defendant controlled or supervised the work performed by the Plaintiffs and subcontractors.
16. Plaintiffs worked as unskilled manual laborers on various projects across the United States for Defendant.
17. Plaintiffs performed substantially similar unskilled manual labor in public and private buildings.
18. Plaintiffs routinely worked over 40 hours per week.
19. Defendant did not keep a record of all hours worked by each of the Plaintiffs.
20. Defendant did not keep or maintain records pertaining to each of the Plaintiffs as required under the FLSA.

21. Defendant did not pay Plaintiffs overtime wages as required under the FLSA for the hours worked by Plaintiffs in excess of 40 hours in a workweek.
22. Defendant did not pay Plaintiffs on regular paydays as required by the FLSA.
23. At all times relevant to this action, Defendant employed Plaintiffs with the meaning of the FLSA, 29 U.S.C. § 203(g).
24. At all times relevant to this action, Plaintiffs were employees of the Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).
25. At all times relevant to this action, Defendant was the employer of the Plaintiffs within the meaning of the FLSA, 29 U.S.C. § 203(d).

VI. COLLECTIVE ACTION ALLEGATIONS

26. All claims set forth in Count I of this action are brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §216 (b).
27. Named Plaintiffs bring this count on their own behalf and on behalf of all other individuals who (1) worked or are working for Defendant performing unskilled manual labor either directly or indirectly through subcontractors in various projects throughout the United States over the last three years and until the date of the filing of the present action, and (2) who were eligible for overtime pursuant to the FLSA, 29 U.S.C. § 207 and who did not receive overtime pay. Named Plaintiffs do not bring Count I on behalf of any executive, administrative, and professional employees exempt from coverage under the FLSA. Plaintiffs do not bring Count I for any claims that were included in the settlement of Rodrigues vs. Belfor USA Group, Inc., Docket No. 06-0491, which was filed in this Court.

28. Plaintiffs were hired directly by Defendant or by subcontractors utilized by Defendant to fill Defendant's needs for manual labor in conducting clean up and reconstruction work in various projects throughout the United States. However, at all times relevant to this action, Defendant was an employer or joint employer of the Plaintiffs.
29. With respect to Count I, a collective action under the FLSA is appropriate because the Plaintiffs are "similarly situated". 29 U.S.C. 216(b).
30. The class of individuals on behalf of whom the named Plaintiffs bring this collective action are similarly situated because they have been or are employed in the same or similar positions as the individually named Plaintiffs, were or are subject to the same or similar unlawful practices, policy or plan as the individually named Plaintiffs, and their claims are based upon the same legal theory as those of the named Plaintiffs.
31. The precise number of individuals in the class are known only to the Defendant. The class is believed to include well over one thousand individuals.
32. The Plaintiffs seek to represent a class consisting of:

"All individuals who worked or are working for Defendant performing unskilled manual labor either directly or indirectly through various subcontractors in various projects throughout the United States over the last three years who were eligible for overtime pay pursuant to the FLSA, 29 U.S.C. § 207 and who did not receive overtime pay."
33. The class is generally comprised of indigent migrant and seasonal workers who are not fluent in the English language and who maintain their residences at various locations throughout the United States. The relatively small size of the individual claims, the indigence and migratory nature of the class members makes the maintenance of separate

actions by each class member economically infeasible. Joinder of all class members is impracticable.

34. There are questions of fact common to the class. The common questions of fact include, but are not limited to:
 - a. whether the Defendant engaged in a pattern or practice of failing to keep and maintain accurate payroll records as required by the FLSA;
 - b. whether the Defendant engaged in a pattern or practice of failing to pay Plaintiffs all wages when due in accordance with the FLSA;
 - c. whether the Defendant engaged in a pattern or practice of failing to pay Plaintiffs overtime wages for all hours worked in excess of 40 hours per workweek as required by the FLSA;
 - d. whether Plaintiffs and members of the proposed class are entitled to actual or liquidated damages and the other requested relief.
35. There are questions of law common to the class. The common legal questions include whether the Defendant's actions violated the FLSA and whether any such violations were willful within the meaning of the statute.
36. The claims of the named Plaintiffs are typical of those of the class, and these typical, common claims predominate over any questions affecting only individual class members. The named Plaintiffs have the same interests as do the other members of the class and will vigorously prosecute these interests on behalf of the class.
37. The Plaintiffs' counsel have handled numerous actions in the federal courts, including collective actions under the FLSA. The Plaintiffs' counsel are prepared to advance litigation costs necessary to vigorously litigate the action.

38. A collective action is superior to other available methods of adjudicating the controversy concerning the Defendant's alleged violations of the FLSA because, inter alia:
- a. The common issues of law and fact, as well as the relatively small size of the individual class members' claims, substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions;
 - b. Many members of the class are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;
 - c. There has been no litigation already commenced against the Defendant by the class members to determine the questions presented;
 - d. It is desirable that the claims be heard in this forum since the Defendant is subject to the court's jurisdiction, and the actions giving rise to the claim may have occurred in this district;
 - e. A collective action can be managed without undue difficulty because the Defendant has regularly committed the violations complained of herein, and are required to maintain detailed records concerning each class member.

VII. COUNT I

Violation of the Federal Fair Labor Standards Act, 29 USC § 201 et. seq.

39. Plaintiffs incorporate paragraphs 1-38 above.
40. Pursuant to 29 U.S.C. § 216(b), the named Plaintiffs have consented in writing to be party plaintiffs in this FLSA action.
41. At all times relevant to this action, Defendant "suffered or permitted" Plaintiffs to work and thus "employed" Plaintiffs within the meaning of FLSA, 29 U.S.C. §203(g).

42. The FLSA requires an employer to pay employees the federally mandated overtime wage rate of one and half times their regular rate of pay for every hour worked in excess of 40 hours per workweek, 29 U.S.C. §206.
43. The Defendant violated the FLSA by failing to pay the Plaintiffs the overtime wage rate for all hours worked in excess of 40 hours per workweek.
44. Plaintiffs are victims of a uniform and company wide compensation policy which operates to compensate them at a rate less than the federally mandated overtime wage rate. This uniform policy, in violation of the FLSA, has been and continues to be applied to all individuals who have worked or are working as manual laborers for Defendant.
45. An employer subject to the FLSA is also required to “post and keep posted a notice explaining the Act . . . in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy.” 29 C.F.R. §516.4
46. The Defendant failed to post or maintain such a notice as referred to in paragraph 45 of this complaint, during all relevant times.
47. Defendant’s violations of the FLSA were willful.
48. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid overtime wages plus an additional equal amount in liquidated damages, costs, and reasonable attorney’s fee.
49. As a result of Defendant’s violation, each Plaintiff is entitled to his or her unpaid overtime wage plus an additional equal amount in liquidated statutory damages along with costs and reasonable attorney’s fee.

PRAYER FOR RELIEF

- A. Certifying this case as a collective action in accordance with 29 U.S.C. §216(b) with respect to the FLSA claims set forth in Count I;
- B. Ordering Defendant to disclose in computer readable format, or in print if no computer readable format is available, the names and addresses of all those individuals who are similarly situated, and permitting Plaintiffs to send notice of this action to all those similarly situated individuals;
- C. Declaring that the Defendants willfully violated the Fair Labor Standards Act and their attendant regulations as set forth in Count I;
- D. Granting judgment in favor of Plaintiffs and against Defendant on the Plaintiffs' Fair Labor Standards Act claim as set forth in Count I and awarding each of them the amount of his/her unpaid overtime wages, along with an equal amount as liquidated damages;
- E. Awarding Plaintiffs the costs of this action;
- F. Awarding the Plaintiffs a reasonable attorney's fee with regard to their claims under the Fair Labor Standards Act;
- G. Whatever additional relief the Court deems just and proper.

Respectfully submitted,

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