

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Jose Aguilar (referred to as “Plaintiff” or “Aguilar”) bringing this collective action and lawsuit on behalf of himself and all other similarly situated employees to recover unpaid overtime wages from Defendants Candia, Inc., Falls of Las Villas, LLC, Falls of Chelsea, LLC, Falls of Braeswood, LP, Falls of Town Park, LP, Falls of Birchbrook Apartments, Ltd., Falls of Deer Park, LP, Key West Village, LP, Falls of Braeburn, LLC, Falls of Westpark Apartments, Ltd., Falls of Wilcrest, LP, Falls of Edgebrook, LP, Falls of Beechnut, LP, Stemaco International, Inc., Falls of Dairy Ashford, LLC, Falls of West Oaks, LP, Pelican Associates, LLC, Falls of Bellaire, L.P., Northwest Miami Gardens, L.P., Falls of Point West, LLC, SP Sheffield, LP, Falls of Kirkwood, LP, and Rao Polavarapu (collectively referred to as “Defendants”). In support thereof, he would respectfully show the Court as follows:

I. Nature of Suit

1. Aguilar’s claims arise under the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (“FLSA”).

2. The FLSA was enacted to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its humanitarian goals, the FLSA defines appropriate pay deductions and sets overtime pay, minimum wage, and recordkeeping requirements for covered employers. 29 U.S.C. §§ 206(a), 207(a), 211(c).

3. Defendants violated the FLSA by employing Aguilar and other similarly situated nonexempt employees “for a workweek longer than forty hours [but refusing to compensate them] for [their] employment in excess of [forty] hours ... at a rate not less than one and one-half times the regular rate at which [they are or were] employed.” 29 U.S.C. § 207(a)(1).

4. Defendants violated the FLSA by failing to maintain accurate time and pay records for Aguilar and other similarly situated nonexempt employees as required by 29 U.S.C. § 211(c) and 29 C.F.R. pt. 516.

5. Aguilar brings this collective action under 29 U.S.C. § 216(b) on behalf of himself and all other similarly situated employees to recover unpaid overtime wages.

II. Jurisdiction & Venue

6. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) because it arises under the FLSA, a federal statute.

7. Venue is proper in this district and division pursuant to 28 U.S.C. §§ 1391(b)(1), (2) because Defendants reside in the Houston Division of the Southern District of Texas and/or a substantial part of the events or omissions giving rise to Aguilar’s claims occurred in the Houston Division of the Southern District of Texas.

III. Parties

8. Plaintiff Jose Aguilar is an individual who resides in Houston, Texas and who was employed by Defendants during the last three years.

9. Defendant Candia, Inc. is a limited liability company that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Candia, Inc. cannot with reasonable diligence be found at the company's registered office, Candia, Inc. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

10. Defendant Falls of Las Villas, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Las Villas, LLC cannot with reasonable diligence be found at the company's registered office, Falls of Las Villas, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

11. Defendant Falls of Chelsea Lane, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Chelsea Lane, LLC cannot with reasonable diligence be found at the company's registered office, Falls of Chelsea Lane, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

12. Defendant Falls of Braeswood, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Braeswood, LP cannot with reasonable diligence be found at the company's registered office, Falls of Braeswood, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

13. Defendant Falls of Town Park, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Town Park, LP cannot with reasonable diligence be found at the company's registered office, Falls of Town Park, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

14. Defendant Falls of Birchbrook Apartments, Ltd. is a limited partnership that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Birchbrook Apartments, Ltd. cannot with reasonable diligence be found at the company's registered office, Falls of Birchbrook Apartments, Ltd. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

15. Defendant Falls of Deer Park, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Deer Park, LP cannot with reasonable diligence be found at the company's registered office, Falls of Deer Park, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

16. Defendant Key West Village, LP is a limited partnership that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Key West Village, LP cannot with reasonable diligence be found at the company's registered office, Key West Village, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

17. Defendant Falls of Braeburn, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao J Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Braeburn, LLC cannot with reasonable diligence be found at the company's registered office, Falls of Braeburn, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

18. Defendant Falls of Westpark Apartments, Ltd. is a limited partnership that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Westpark Apartments, Ltd. cannot with reasonable diligence be found at the company's registered office, Falls of Westpark Apartments, Ltd. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

19. Defendant Falls of Wilcrest, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Wilcrest, LP cannot with reasonable diligence be found at the company's registered office, Falls of Wilcrest, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

20. Defendant Falls of Edgebrook, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Edgebrook, LP cannot with reasonable diligence be found at the company's registered office, Falls of Edgebrook, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

21. Defendant Falls of Beechnut, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Beechnut, LP cannot with reasonable diligence be found at the company's registered office, Falls of Beechnut, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

22. Defendant Stemaco International, Inc. is a limited liability company that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Stemaco International, Inc. cannot with reasonable diligence be found at the company's registered office, Stemaco International, Inc. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

23. Defendant Falls of Dairy Ashford, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao J. Polavarapu
5850 Parkfront Drive, 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Dairy Ashford, LLC cannot with reasonable diligence be found at the company's registered office, Falls of Dairy Ashford, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

24. Defendant Falls of West Oaks, LP is a limited partnership that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of West Oaks, LP cannot with reasonable diligence be found at the company's registered office, Falls of West Oaks, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

25. Defendant Pelican Associates, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Pelican Associates, LLC cannot with reasonable diligence be found at the company's registered office, Pelican Associates, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

26. Defendant Falls of Bellaire, L.P. is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Bellaire, L.P. cannot with reasonable diligence be found at the company's registered office, Falls of Bellaire, L.P. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

27. Defendant Northwest Miami Gardens, L.P. is a limited partnership that may be served with process by serving its registered agent:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Northwest Miami Gardens, L.P. cannot with reasonable diligence be found at the company's registered office, Northwest Miami Gardens, L.P. may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

28. Defendant Falls of Point West, LLC is a limited liability company that may be served with process by serving its registered agent:

Rao Polavarapu
5850 Parkfront
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Point West, LLC cannot with reasonable diligence be found at the company's registered office, Falls of Point West, LLC may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

29. Defendant SP Sheffield, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J. Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of SP Sheffield, LP cannot with reasonable diligence be found at the company's registered office, SP Sheffield, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

30. Defendant Falls of Kirkwood, LP is a limited partnership that may be served with process by serving its registered agent:

Rao J Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

Alternatively, if the registered agent of Falls of Kirkwood, LP cannot with reasonable diligence be found at the company's registered office, Falls of Kirkwood, LP may be served with process by serving the Texas Secretary of State pursuant to TEX. BUS. ORG. CODE § 5.251 and TEX. CIV. PRAC. & REM. CODE § 17.026.

31. Defendant Rao Polavarapu ("Polavarapu") is an individual who may be served with process at:

Rao Polavarapu
9303 Town Park Dr., 2nd Floor
Houston, Texas 77036

or wherever he may be found. Polavarapu may also be served with process pursuant to TEX. CIV. PRAC. & REM. CODE § 17.021 by serving an agent or clerk employed at his office or place of business because this action grows out of or is connected with the business he transacts in this state.

32. Whenever it is alleged that Defendants committed any act or omission, it is meant that the company's officers, directors, vice-principals, agents, servants or employees committed such act or omission and that, at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendants or was done in the routine and normal course and scope of employment of the company's officers, directors, vice-principals, agents, servants or employees.

IV. Facts

33. Defendants are apartment complexes in Houston, Texas; they do business in the territorial jurisdiction of this Court.

34. Defendants employed Aguilar as a Maintenance Technician from approximately February 2011 until January 2020.

35. Throughout Aguilar's employment with Defendants, he was paid on an hourly basis.

36. During Aguilar's employment with Defendants, he regularly worked in excess of forty hour per week.

37. Defendants knew or reasonably should have known that Aguilar worked in excess of forty hours per week.

38. Defendants did not pay Aguilar the entirety of his overtime “at a rate not less than one and one-half times the regular rate at which [he was] employed.” 29 U.S.C. § 207(a)(1).

39. Additionally, Defendants failed to pay Plaintiff for all hours worked. For example, travel time between job assignments during the day was not compensated.

40. Instead, Defendants paid Aguilar straight time for overtime for a portion of his hours each workweek.

41. In other words, Defendants paid Aguilar for part of his overtime hours at a rate less than one and one-half times the regular rate at which he was in employed in violation of the FLSA.

42. Defendants knew or reasonably should have known that Aguilar was not exempt from the overtime provisions of the FLSA.

43. Aguilar’s primary duties were nonexempt.

44. Aguilar’s primary duties did not include office or nonmanual work.

45. Aguilar’s primary duties were not directly related to the management or general business operations of Defendants or their customers.

46. Aguilar’s duties did not differ substantially from the duties of traditionally nonexempt hourly workers.

47. Aguilar did not exercise a meaningful degree of independent discretion with respect to the exercise of his duties.

48. Aguilar did not have the discretion or authority to make any decisions with respect to matters of significance.

49. Instead, Aguilar was required to follow the policies, practices and procedures set by Defendants.

50. Aguilar did not have any independent authority to deviate from these policies, practices and procedures.

51. During Aguilar's employment with Defendants, he was engaged in commerce or the production of goods for commerce.

52. During Aguilar's employment with Defendants, the company had employees engaged in commerce or in the production of goods for commerce or had employees handling, selling or otherwise working on goods or materials that had been moved in or produced for commerce by others.

53. During Aguilar's employment with Defendants, the company had an annual gross volume of sales made or business done of at least \$500,000.

54. Defendants failed to maintain accurate time and pay records for Aguilar as required by 29 U.S.C. § 211(c) and 29 C.F.R. pt. 516.

55. Defendants knew or showed a reckless disregard for whether its pay practices violated the FLSA.

56. Defendants are liable to Aguilar for his unpaid overtime wages, liquidated damages and attorney's fees and costs pursuant to 29 U.S.C. § 216(b).

57. All employees employed by Defendants that were subject to this pay policy are similarly situated to Aguilar because they (1) were subject to the same uniform pay policy or practice; (2) were in traditionally non-exempt positions; (3) regularly worked in excess of forty hours per week; (4) are not paid the entirety of their overtime for the hours they work in excess of forty per week as required by 29 U.S.C. § 207(a)(1) and (5) are entitled to recover their unpaid overtime wages, liquidated damages and attorneys' fees and costs from Defendants pursuant to 29 U.S.C. § 216(b).

**V. Count One—
Failure to Pay Overtime in Violation of 29 U.S.C. § 207(a)**

58. Aguilar adopts by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

59. During Aguilar's employment with Defendants, he was a nonexempt employee.

60. As a nonexempt employee, Defendants were legally obligated to pay Aguilar "at a rate not less than one and one-half times the regular rate at which [he was] employed[]" for the hours that he worked over forty in a workweek. 29 U.S.C. § 207(a)(1).

61. Defendants did not pay Aguilar the entirety of his overtime as required by 29 U.S.C. § 207(a)(1) for the hours he worked in excess of forty per week.

62. Additionally, Defendants failed to pay Plaintiff for all hours worked.

63. Instead, Defendants paid Aguilar straight time for overtime for a portion of the hours he worked each workweek.

64. In other words, Defendants paid Aguilar part of his overtime hours at a rate less than one and one-half times the regular rate at which he was employed in violation of the FLSA.

65. If Defendants classified Aguilar as exempt from the overtime requirements of the FLSA, he was misclassified because no exemption excuses the company's noncompliance with the overtime requirements of the FLSA.

66. Defendants knew or showed a reckless disregard for whether its pay practices violated the overtime requirements of the FLSA; in other words, Defendants willfully violated the overtime requirements of the FLSA.

**VI. Count Two—
Failure to Maintain Accurate Records in Violation of 29 U.S.C. § 211(c)**

67. Aguilar adopts by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

68. The FLSA requires employers to keep accurate records of hours worked by and wages paid to nonexempt employees. 29 U.S.C. § 211(c); 29 C.F.R. pt. 516.

69. In addition to the pay violations of the FLSA described above, Defendants also failed to keep proper time and pay records as required by the FLSA.

**VII. Count Three—
Collective Action Allegations**

70. Aguilar adopts by reference all of the facts set forth above. *See*, Fed. R. Civ. P. 10(c).

71. On information and belief, other employees have been victimized by Defendants' violations of the FLSA identified above.

72. These employees are similarly situated to Aguilar because, during the relevant time period, they were subject to the same pay practice or policy, were in traditionally nonexempt positions, and were compensated in a similar manner and were denied overtime wages at one and one-half times their regular rates for hours worked over forty in a workweek.

73. Defendants' policy or practice of failing to pay the entirety of their employees' overtime compensation is a generally applicable policy or practice and does not depend on the personal circumstances or position of the putative class members.

74. Since, on information and belief, Defendants' experiences are typical of the experiences of the putative class members, collective action treatment is appropriate.

75. All employees of Defendants', regardless of their rates of pay, who were paid at a rate less than one and one-half times the regular rates at which they were employed for all the hours that they worked over forty in a workweek are similarly situated. Although the issue of damages may be individual in character, there is no detracting from the common nucleus of liability facts. The class is therefore properly defined as:

All hourly employees paid straight time for their overtime hours within the last three years and/or not paid for all hours worked.

76. Defendants are liable to Aguilar and the members of the putative class for the difference between what it actually paid them and what it was legally obligated to pay them.

77. Because Defendants knew and/or showed a reckless disregard for whether its pay practices violated the FLSA, the company owes Aguilar and the members of the putative class their unpaid overtime wages for at least the last three years.

78. Defendants are liable to Aguilar and the members of the putative class in an amount equal to their unpaid overtime wages as liquidated damages.

79. Defendants are liable to Aguilar and the members of the putative classes for their reasonable attorneys' fees and costs.

80. Aguilar has retained counsel who are well versed in FLSA collective action litigation and who are prepared to litigate this matter vigorously on behalf of him and all other putative class members.


VIII. Prayer

81. Aguilar prays for the following relief:

- a. an order allowing this action to proceed as a collective action under 29 U.S.C § 216(b);
- b. judgment awarding Aguilar and the members of the putative class all unpaid overtime compensation, liquidated damages, attorneys' fees and costs;
- c. prejudgment interest at the applicable rate;
- d. incentive awards for any class representative(s); and
- e. all such other and further relief to which Aguilar and the putative class may show themselves to be justly entitled.

Respectfully submitted,

MOORE & ASSOCIATES

By: _____

Melissa Moore

State Bar No. 24013189

Federal Id. No. 25122

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State Bar No. 24065414

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ATTORNEYS FOR PLAINTIFF

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