

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

CHRIS HORN, Individually and for Others
Similarly Situated,

Plaintiffs,

v.

VERSA INTEGRITY GROUP, INC.,

Defendant.

Case No. 3:20-cv-00089

Jury Trial Demanded

FLSA Collective Action

ORIGINAL COLLECTIVE ACTION COMPLAINT

SUMMARY

1. Versa Integrity Group, Inc. (Versa) has failed to pay Chris Horn (Horn), and other workers like him, overtime as required by the Fair Labor Standards Act (FLSA).

2. Instead, Versa pays Horn, and other workers like him, the same hourly rate for all hours worked, including those in excess of 40 in a workweek.

3. Horn brings this collective action to recover unpaid overtime and other damages.

JURISDICTION AND VENUE

4. 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).

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events giving rise to this action occurred in this District.

6. Horn worked for Versa in this District in Brazoria County, Texas.

THE PARTIES

7. Horn was an hourly employee of Versa.

8. Horn worked for Versa from approximately October 2016 until September 2018.

9. His consent to be a party plaintiff is attached as **Exhibit A**.

10. Horn brings this action on behalf of himself and other similarly situated workers who were paid by Versa's "straight time for overtime" system.

11. The class of similarly situated employees sought to be certified as a collective action under the FLSA is defined as:

All hourly employees of Versa during the past 3 years who were paid straight time for overtime (the "Straight Time Workers").

12. Horn seeks conditional and final certification of the Straight Time Workers in this collective action under 29 U.S.C. § 216(b).

13. Versa is a company doing business throughout the United States, including in Harris County, Texas. Versa may be served by serving its registered agent: **Corporation Service Company d/b/a CSC-Lawyers Inco, 211 E. 7th Street, Suite 620, Austin, TX 78701.**

COVERAGE UNDER THE FLSA

14. At all relevant times, Versa was an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

15. At all relevant times, Versa was an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

16. At all relevant times, Versa was 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), because it 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.

17. At all relevant times, Versa had an annual gross volume of sales made in excess of \$1,000,000.

18. At all relevant times, Horn and the Straight Time Workers (defined above) were engaged in commerce or in the production of goods for commerce.

THE FACTS

19. Versa provides non-destructive testing services for petrochemical, chemical, paper, and other industries.

20. Horn worked for Versa from approximately October 2016 to September 2018.

21. Horn performs work for Versa at its customer's job sites throughout Texas and Louisiana, including in Lake Jackson, Texas; Winnie, Texas and; Sulphur, Louisiana.

22. Horn was a Level II Technician for Versa.

23. As a Technician, Horn performed inspections of pipe and welding construction, including visual inspections and radiographic or particle testing inspections.

24. Horn reports the hours he works to Versa on a regular basis.

25. Horn was not guaranteed a salary.

26. If Horn worked fewer than 40 hours in a week, he is only paid for the hours works.

27. Horn regularly worked over 40 hours in a week.

28. In fact, Horn routinely worked seven 12-hour shifts per week.

29. Although he often worked 80 to 90 hours per workweek, Versa never paid Horn any overtime but, rather, paid him straight-time-for-overtime.

30. The hours Horn and the Straight Time Workers (defined above) work are reflected in Versa's records.

31. Rather than receiving time and half as required by the FLSA, Horn only received "straight time" pay for overtime hours worked.

32. Versa's "straight time for overtime" payment scheme violates the FLSA.

33. Versa was and is aware of the overtime requirements of the FLSA.

- 34. Versa nonetheless fails to pay certain employees, such as Horn, overtime.
- 35. Versa did not guarantee Horn and Straight Time Workers a salary.
- 36. Versa's failure to pay overtime to these workers was, and is, a willful violation of the FLSA.

FLSA COLLECTIVE ACTION ALLEGATIONS

- 37. Versa's illegal "straight time for overtime" policy extends beyond Horn.
- 38. It is the "straight time for overtime" payment plan that is the "policy that is alleged to violate the FLSA" in this FLSA collective action. *Bursell v. Tommy's Seafood Steakhouse*, No. CIV.A. H-06-0386, 2006 WL 3227334, at *3 (S.D. Tex. Nov. 3, 2006); *Wellman v. Grand Isle Shipyard, Inc.*, No. CIV.A. 14-831, 2014 WL 5810529, at *5 (E.D. La. Nov. 7, 2014) (certifying "straight time for overtime" claim for collective treatment).
- 39. Versa pays dozens of workers using the same unlawful scheme.
- 40. Any differences in job duties do not detract from the fact that these workers were entitled to overtime pay.
- 41. The workers impacted by Versa's "straight time for overtime" scheme should be notified of this action and given the chance to join pursuant to 29 U.S.C. § 216(b).

COLLECTIVE CAUSES OF ACTION

- 42. Horn incorporates all previous paragraphs and alleges that the illegal pay practices Versa imposed on Horn were likewise imposed on the Straight Time Workers.
- 43. Numerous individuals were victimized by this pattern, practice, and policy which is in willful violation of the FLSA.
- 44. Numerous other individuals, like Horn, indicated they were paid in the same manner and were not properly compensated for all hours worked as required by the FLSA.

45. Based on his experiences and tenure with Versa, Horn is aware that Versa's illegal practices were imposed on the Straight Time Workers.

46. The Straight Time Workers were all paid straight time for overtime and not afforded the overtime compensation when they worked in excess of forty (40) hours per week.

47. Versa's failure to pay wages and overtime compensation at the rates required by the FLSA results from generally applicable, systematic policies, and practices which are not dependent on the personal circumstances of the Straight Time Workers.

48. The specific job titles or precise job locations of the various Straight Time Workers does not prevent collective treatment.

49. A collective action, such as the instant one, is superior to other available means for fair and efficient adjudication of the lawsuit.

50. Although the issue of damages may be somewhat individual in character, there is no detraction from the common nucleus of liability facts. Therefore, this issue does not preclude collective action treatment.

JURY DEMAND

51. Horn demands a trial by jury

PRAYER

52. Horn prays for relief as follows:

- a. An Order designating the Straight Time Workers as a collective action and permitting the issuance of a notice pursuant to 29 U.S.C. § 216(b) to all Straight Time Workers with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);

- b. For an Order pursuant to Section 16(b) of the FLSA finding Versa liable for unpaid back wages due to Horn and the Straight Time Workers for liquidated damages equal in amount to their unpaid compensation;
- c. For an Order awarding attorneys' fees, costs and pre- and post-judgment interest; and
- d. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

By: /s/ Michael A. Josephson

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