UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

RICARDO RODRIGUEZ, individually and
On behalf of all others similarly situated

Plaintiff,

V. Case No:

GUARDIAN FLEET SERVICES INC., d/b/a
ACE WRECKER; A SUPERIOR TOWING
COMPANY, ALLIGATOR TOWING
AND RECOVERY INC., CROCKETT'S
TOWING LLC, KAUFF'S INC., KAUFF'S
OF MIAMI INC. , KAUFF'S OF PALM
BEACH INC., KAUFF'S OF FT. PIERCE INC.
D/B/A KAUFF'S TRANSPORTATION SYSTEMS;
ROBFLETCH INC. d/b/a
PROFESSIONAL TOWING

Defendants.
_____.

FLSA SECTION 216B COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, RICARDO RODRIGUEZ, individually, and on behalf of all others similarly situated who consent to their inclusion in this collective action, bring this lawsuit pursuant to §216(b) of the Fair Labor Standards Act ("FLSA"), against Defendants, GUARDIAN FLEET SERVICES INC., A SUPERIOR TOWING

COMPANY, ACE WRECKER INC., ALLIGATOR TOWING AND RECOVERY INC., CROCKETT'S TOWING LLC, KAUFF'S INC., KAUFF'S OF MIAMI INC., KAUFF'S OF PALM BEACH, INC., KAUFF'S OF FT. PIERCE INC. all d/b/a KAUFF'S TRANSPORTATION SYSTEMS; ROBFLETCH INC. d/b/a PROFESSIONAL TOWING (herein collectively "Defendants" or "GFS"), for violations of the Fair Labor Standards Act, 29 U.S.C. §201 *et. seq.* for failure to pay all overtime compensation (premium Pay) at the lawful and correct rates to non-exempt employees.

INTRODUCTION

1. The Fair Labor Standards Act is our nation's foremost wage law. The overtime requirements of the FLSA were designed 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 goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. 29 U.S.C. §§ 206(a) and 207(a). It requires minimum wage and overtime pay for certain non-exempt employees. 29 U.S.C. §213.

2. Plaintiff, RICARDO RODRIGUEZ ("Rodriguez" or "Plaintiff") worked for Defendant Guardian Fleet Services Inc. and one or more of the other named Defendant's including but not limited to Kauff's Inc., from on or about

December 15, 2021 through the present, hired from the Opa Locka office and reporting to and working from Defendant's Davie and Opa Locka terminals, as a "wrecker" driver, also known as a tow truck driver.

3. Defendants have maintained a scheme to avoid its obligations to pay full, accurate and legally required overtime wages to its non-exempt employees in order to save millions of dollars in labor costs and maximize profits all to the detriment of its employees.

4. Defendants willfully, or with reckless disregard for the FLSA, underpays Plaintiff and all other "drivers" for their overtime hours by failing to pay overtime wages wages at the required and mandated rate of time and one half the employee's regular rate of pay.

5. Defendants do not include earned commissions in the calculations of the regular rates of pay as required by the FLSA, and thus have underpaid all drivers who earned commissions during any workweek he or worked more than 40 hours for the workweek.

6. Plaintiff, like his fellow driver employees, and who are members of this putative Class, worked out of and reported to more than 50 of Defendants' locations (aka "terminals), throughout Florida and the SouthEast United States.

7. Plaintiff, like his fellow Drivers employed within the past three (3) years preceding the filing of this complaint, and still to this day, were systematically denied the payment of the lawfully required overtime premium pay for hours they worked in excess of forty (40) on behalf of Defendant.

8. Defendants maintained this unlawful pay practice applicable to all hourly paid drivers, failing to include commissions in the regular rates of pay, and thus underpaying all drivers for the overtime hours they worked.

9. Accordingly, Plaintiff, individually, and on behalf of all others similarly situated who consent to their inclusion in this collective action, sue Defendants for violations of the Fair Labor Standards Act for failing to pay Plaintiff and others similarly situated the lawfully required overtime compensation (aka premiums).

FLSA CLASS DEFINITION AND RELIEF SOUGHT

10. This collective action is to recover from Defendant overtime compensation, liquidated damages, prejudgment interest, and the costs and reasonable attorney's fees under 29 U.S.C. §216(b) on behalf of the Plaintiff and all similarly situated persons composed of:

> **All persons employed as hourly paid tow truck or wrecker drivers ("drivers") working for GUARDIAN FLEET SERVICES INC., A SUPERIOR TOWING COMPANY, ACE WRECKER; ALLIGATOR TOWING AND RECOVERY INC.,**

CROCKETT'S TOWING LLC, KAUFF'S INC., KAUFF'S OF MIAMI INC., KAUFF'S OF PALM BEACH, INC., ROBFLETCH INC. d/b/a PROFESSIONAL TOWING, currently within the preceding 3 years of the filing of this complaint, who worked any overtime hours.

JURISDICTION AND VENUE

13. This Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, since this action involves a federal question under the Fair Labor Standards Act, 29 U.S.C., §§201-219, inclusive.

14. This Court has personal jurisdiction over this action because the Defendant is engaged in business within the State of Florida.

15. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §1391(b) since the acts complained of herein took place in this District, this is the home District where Defendants maintain a local office from where Plaintiff reported to for work. In addition, Defendant Guardian Fleet Services' Inc. corporate office is located in West Palm Beach, Florida are likewise within this district and from where the unlawful policies and practices complained of herein were created, carried out, and enforced.

16. Upon information and belief, each Defendant individually has revenues of $500,000.00 or more in the previous three (3) years and employs ten

(10) or more employees; combined as GFS Defendants earn more than $500,000 annually.

17. Plaintiff is not engaged in interstate commerce.

18. Defendants are Enterprises and employers as defined by Section 203 of the FLSA and subject to the overtime requirements of the FLSA.

THE PARTIES

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19. At all times relevant to this action, Representative Plaintiff Ricardo Rodriguez resided in Tamarac, Florida, and within this district, and at all times material, worked for Defendants as a wrecker driver working from and out of tow of Defendant's terminal locations, Davie and Opa Locka Florida.

20. Plaintiff was an hourly paid, non-exempt employee who routinely worked overtime hours throughout his employment.

21. Plaintiff was eligible for and was paid commissions pursuant to some unwritten and unknown formula.

22. Plaintiff's primary job was working as a wrecker driver or "driver".

23. Defendant, GUARDIAN FLEET SERVICES INC. (GFS) is a Florida for profit corporation with principal place of business located at 4701 EAST AVENUE WEST PALM BEACH, FL 33407. Defendant may be served through

its registered agent, CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

24. At all times material, GFS also did business under the business name (fictitious name) of Ace Wrecker.

25. Defendant, A SUPERIOR TOWING COMPANY is a Florida for profit Corporation, with principal place of business located at 2385 SW 66TH TERRACE DAVIE, FL 33317. Defendant's registered agent is the same as GFS.

26. Defendant Alligator Towing and Recovery Inc., is a wholly owned subsidiary of Defendant GFS, with principal place of business located at 4871 DR. MLK JR. BLVD., FT. MYERS, FL 33905-3729. Defendant's registered agent is Hutchison, David, located at: 103200 Overseas Highway Suite #7 Key Largo, FL 33037.

27. Defendant Crockett's Towing LLC is a Florida limited Liability Company with principal place of business located at 9621 LAND O' LAKES BOULEVARD, LAND O' LAKES, FL 34638. Defendant may be served through its registered agent: CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

28. Defendant Kauff's Inc., is a Florida profit corporation with shared principal place of business of the GFS corporate offices located at 4701 EAST

AVENUE WEST PALM BEACH, FL 33407. Defendant may be served through its registered agent, CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

29. Defendant Kauff's of Miami Inc. is a Florida profit Corporation with principal place of business located at 2435 ALI BABA AVENUE, OPA LOCKA, FL 33054. Defendant may be served through the same registered agent of GFS: CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

30. Defendant Kauff's of Palm Beach Inc. is a Florida profit Corporation with principal place of business located at the GFS corporate offices located at 4701 EAST AVENUE WEST PALM BEACH, FL 33407. Defendant may be served through its registered agent, CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

31. Defendant Kauff's of Ft. Pierce Inc. is a Florida profit Corporation with principal place of business located at the GFS corporate offices located at 4701 EAST AVENUE WEST PALM BEACH, FL 33407. Defendant may be served through its registered agent, CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

32. Defendant Robfletch Inc. is a Florida profit corporation with principal place of business located at 960 E Dr Martin Luther King Jr Blvd. Seffner, FL 33584. Defendant may be served through its registered agent, CAPITOL CORPORATE SERVICES, INC., 515 E PARK AVE, 2nd Floor, TALLAHASSEE, FL 32301.

33. At all material times, Robfletch Inc. operated and did business under the fictitious name of Professional Towing.

34. Defendant GFS, independently and through all its subsidiary and affiliated companies employed upwards of 200 or drivers in Florida, working from and reporting to the various terminals, and ultimately whose work and pay practices were directed from and created by GFS from the corporation office in West Palm Beach Florida.

35. Defendants are all Joint Employers of Plaintiff and the class of similarly situated drivers; GFS paid the Plaintiff; GFS created and instituted the unlawful pay practices alleged herein, and GFS ultimately directed the work of Plaintiff.

36. Defendants all act as a single integrated business enterprise, and as a joint enterprise and thus are under the law, one company for liability purposes under the FLSA.

37. Defendant GFS operates all these business as a single, integrated business enterprise, with shared employees, company policies and procedures, benefits, insurance, offices, officers and intermingles and assigns work to Plaintiff and the class of similarly situated drivers as needed, but all of whom are paid by GFS.

38. Pursuant to the FLSA, Plaintiff and the class of similarly situated need not have worked for every subsidiary and affiliated company to hold the same liable here for the underpaid wages of those similarly situated drivers. Multiple entities may be considered a single employer for the purposes of FLSA under the "the single employer/enterprise theory" because all the named Defendants are actually part of a single integrated enterprise,' such that an employee need not have worked at each entity in order to hold each liable for employment-related violations." Chang Yan Chen v. Lilis 200 W. 57th Corp., No. 19-cv-7654, 2020 U.S. Dist. LEXIS 244695, 2020 WL 7774345, at *3 (S.D.N.Y. Dec. 30, 2020). Ding v. Mask Pot, No. 20-CV-06076 (LDH), 2022 U.S. Dist. LEXIS 180242, at *5 (E.D.N.Y. Sep. 30, 2022).

39. Defendants are also "joint employers" of Plaintiff and the class of similarly situated, as they performed work interchangeably for some or all of the named Defendants, and their work was directed by GFS, they were all paid by

GFS; and GFS also was responsible for the unlawful pay practices complained of. Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as: (1) Where there is an arrangement between employers to share an employee's services or to interchange employees; (2) Where one employer acts directly or indirectly in the interest of the other employer in relation to the employee; or, (3) Where the employers are not completely disassociated with respect to the employee's employment and may be deemed to share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer. Covelli v. Avamere Home Health Care LLC, No. 3:19-cv-00486-JR, 2020 U.S. Dist. LEXIS 60072, at *6-7 (D. Or. Jan. 23, 2020).

40. **GENERAL FACTUAL ALLEGATIONS**

41. Plaintiff, like these driver employees under the title of tow truck driver or wrecker driver, were paid on an hourly, non-exempt basis, and with a commission structure or plan for the jobs or services performed paid on a weekly basis.

42. Plaintiff worked a schedule of 5 days, and was on call 2 other days, which routinely resulted in being called to do work by Defendants.

43. At not time did Defendants distinguish between assignments or work being or to be performed for any of the named Defendant companies, or their fictitious companies.

44. Plaintiff was advised that he was performing work for one or more of Kauff's "brands", but it was made clear to him that whoever or whatever entity he was doing work for, he was being paid by GFS, and that all the companies were operating under the GFS brand, ownership, management and control.

45. Plaintiff's job duties included being informed by one or more dispatchers of primarily pickup trucks which require being transported on the wrecker.

46. Each day, Plaintiff drove to the Davie Terminal, and then picked up a company vehicle, and then drove that vehicle to yet another terminal in Opa Locka, and then commenced with his daily routes and assigned jobs.

47. At the end of each shift, Plaintiff returned to the Opa Locka Terminal, and then back to the Davie terminal, and from there drove home.

48. Plaintiff routinely worked more than 40 hours in his work weeks throughout the term of her employment, and was paid a premium of time and one half of just his base hourly rate of pay for the clocked overtime hours worked.

49. However, the overtime pay was strictly time and ½ the base hourly rate and did not factor in or include the commissions earned in the rates as required by the FLSA.

50. Plaintiff also did not receive any overtime supplement or sure-up when commissions were paid for the weeks she worked more than 40 hours and earned commissions for these work weeks.

51. Commissions were paid by Defendant to drivers, including to Plaintiff, on a weekly basis along with the base hourly wages.

52. Dispatchers would assign Plaintiff new jobs to perform throughout each day.

53. Managers and supervisors could see Plaintiff and other Drivers at their desks, eating and working, but Drivers were not permitted to claim this time as compensable work hours.

54. Plaintiff was led to believe by Defendant that the time she spent working during her meal breaks were not required to be paid, and thus was on her own dime.

55. For purposes of the collective action, Plaintiff Rodrigue by this Complaint, does herein consent to be a party to this action pursuant to 29 U.S.C. §216(b).

56. At all times relevant to this action, Defendants were each an employer and joint employers of Plaintiff and all other Drivers of this proposed FLSA collective action within the meaning of 29 U.S.C. §203(g).

57. Defendants maintained a policy and practice during the preceding three (3) years of the filing of this complaint of willfully underpaying drivers representatives under the titles of wrecker driver, wrecker operator, tow truck driver the required and mandatory overtime wages owed to them.

58. Defendants have willfully violated, and continues to violate §207 of the FLSA by failing to pay Plaintiff and others similarly situated the correct and lawful required overtime compensation and premiums at the mandatory time and one half of their regular rates of pay, as Defendants willfully failed to include commissions in the regular rates of pay calculations for all hours worked in excess of forty (40) per week.

59. Upon information and belief, for the three (3) year period before this filing, (the "Class Period"), the continued violations of FLSA §207 that are

complained of herein have been practiced and imposed upon all of Defendants' Drivers.

60. The FLSA provides that, with certain exceptions, employers must pay employees overtime of at least one and one-half (1.5) times their regular rate of pay for any hours over forty (40) worked in a week. 29 U.S.C. §207(a)(1).

61. The FLSA mandates that earned commissions must be included in the regular rate of pay calculation and that overtime pay for hourly, commissioned employees must include the commissions earned in the time and one half calculations for premiums to be paid for overtime hours worked.

62. Accordingly, Plaintiff and the putative Class of similarly situated seek and are entitled to recover all overtime pay due from overtime hours worked for which compensation was not paid at the correct and lawful rates or not paid at all, plus an equal sum in liquidated damages, prejudgment interest, attorneys' fees and costs under the FLSA's three (3) year statute of limitations.

COLLECTIVE ACTION ALLEGATIONS

63. Plaintiff brings this action individually and on behalf of all others similarly situated who worked as Drivers referenced herein as the putative class, as a collective action pursuant to the Fair Labor Standards Act. 29 USC §216(b).

64. In Young v. Cooper Cameron Corp., the court stated that: "The requirements of Fed. R. Civ. P. 23 do not apply to the approval of a collective action and thus no showing of numerosity, typicality, commonality and representativeness need be made." Young v. Cooper Cameron Corp., 229 F.R.D. 50, 54 (S.D.N.Y. 2005).

65. Still, despite the Young court's ruling, the members of the Class are so numerous that joinder of all members is impracticable and in the interests of justice, as well as in keeping with the legislature's intent in creating Collective Actions under Section 216(b), proceeding as a collective action is proper in this case. While the exact number of the members of the putative Class is unknown to the Plaintiff at this time and can only be ascertained through appropriate discovery, upon information and belief, Plaintiff believes that there are 300 or more individuals in the defined class within the three (3) year relevant class period.

66. Plaintiff will fairly and adequately protect the interests of the putative Class of similarly situated drivers and has retained counsel that is experienced and competent in class/collective actions and employment litigation. Plaintiff remains an employed wrecker driver, and has no interest that is contrary to, or in conflict with, members of the putative Class.

67. A collective action suit, such as the instant one, is superior to other available means for a fair and efficient adjudication of this lawsuit. The damages suffered by individual members of the Class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the Class to individually seek redress for the wrongs done to them.

68. A collective action is, therefore, superior to other available methods for the fair and efficient adjudication of the controversy. Absent these actions, the members of the Class likely will not obtain redress of their injuries and Defendant will retain the proceeds from its violations of the FLSA.

69. Furthermore, even if any member of the Class could afford individual litigation against the Defendant, it would be unduly burdensome to the judicial system. The instant methodology, when compared to voluminous individual actions, has fewer management difficulties and provides the benefits of unitary adjudication, economies of scale, and comprehensive supervision by a single court. Concentrating this litigation in one forum will promote judicial economy and parity among the claims of individual members of the Class and provide for judicial consistency.

70. Upon information and belief, all Drivers performed the same basic and primary job requirements as the plaintiff and had similar job duties and

responsibilities: go to assigned sites and tow, pick up and transport disabled trucks and vehicles.

71. There is a well-defined community of interest in the questions of law and fact affecting the Class as a whole. The question of law and fact common to each of the Class predominate over any questions affecting solely individual members of the action. Among common questions of law and fact are:

a. Whether Defendants employed members of the Class within the meaning of the applicable provisions of the FLSA;

b. Whether Defendants unlawfully underpaid Plaintiff and all other similarly situated Drivers for overtime hours worked by paying less than the lawfully required time and one half their regular rates of pay and by failing to include commissions in the regular rate calculations;

c. Whether Plaintiff and the Class have sustained damages, and if so, what is the proper measure of such damages;

d. Whether Defendants willfully and with reckless disregard, underpaid Plaintiff and the class of similarly situated, even when they did pay a premium for overtime hours worked.

72. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its continued maintenance as a collective action.

COUNT I
VIOLATION OF § 207 OF THE FLSA

73. The foregoing paragraphs are realleged and incorporated as if fully set forth herein.

74. At all relevant times, Defendants employed Plaintiff, and/or each member of the Putative Class of similarly situated jointly and acted in concert as joint employers of Plaintiff, and continued to employ members of the Putative Class, within the meaning of the FLSA.

75. Upon information and belief, all Drivers were paid under a common and similar compensation plan and scheme, consisting of a base hourly rate of pay plus a commission plan and were all classified and treated by Defendants as non-exempt employees under the FLSA.

76. Defendants, in violation of the FLSA, willfully underpaid Plaintiff and all other Drivers overtime premiums by failing to include earned commissions in the regular rate of pay calculations and by strictly paying them time and one half their base hourly rates.

77. As a result of Defendant's unlawful pay practices complained of herein, throughout the three (3) year class period to the present, Defendants have willfully stolen wages wages from Drivers.

78. Defendants knowingly and willfully failed to pay Plaintiff and all other members of the Class, overtime compensation at the appropriate legal rate for all hours they performed work on behalf of Defendants above and beyond forty (40) hours per workweek in violation of the FLSA, in particular 29 U.S.C. § 207.

79. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).

80. Defendants cannot and does not have a good faith basis under the FLSA for its willful actions and conduct of failing to include commissions in the regular rate of pay calculations and for strictly paying overtime premiums based upon the base rates of pay.

81. Plaintiff and the class of similarly situated thus are entitled to, and should be awarded liquidated damages of an equal sum of the overtime wages awarded or recovered for a period of three (3) years preceding the filing of this action to the present and continuing.

82. Due to Defendants' willful FLSA violations, Plaintiff alleges on behalf of the members of the Class that they have suffered damages and are

entitled to recover from Defendants the unpaid and underpaid overtime compensation due and owing for all hours worked in excess of forty (40) in each and every workweek, an additional equal amount as liquidated damages, prejudgment interest, reasonable attorneys' fees, costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

83. Plaintiff and the class of similarly situated have suffered financial harm and loss of monies owed to them as a direct and proximate result of Defendant's unlawful pay practices complained of herein.

WHEREFORE Plaintiff, RICARDO RODRIGUEZ prays for:

a. An order designating this action as a collective action and issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated individuals across the nation with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Join this action as plaintiffs pursuant to §216(b); and that notice be sent to all past and present employees of all named Defendants. any time during the three (3) year period immediately preceding the filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice;

b. An order awarding attorneys' fees and costs pursuant to §216 of the FLSA;

c. That the Court find Defendants in violation of the overtime compensation provision of the FLSA, section 207a, and that the Court find that Defendants violations of the FLSA were and are willful;

d. That the Court award Plaintiff Middleton and the putative Class of all similarly situated employees, the balance of overtime compensation owed for the underpaid wages by the Defendants associated with all the previous hours worked over forty (40) hours in each and every workweek during the preceding 3 years to the present and continuing, AND an equal sum in liquidated damages. In addition, interest on said award pursuant to §216 of the FLSA;

e. That the court award Plaintiff and the putative class of similarly situated, overtime wages for all unpaid hours worked in each and every work week in the preceding 3 years to the day of trial, plus an equal sum in liquidated damages, and interest on said award;

f. That the Court enjoin Defendants from further violating the FLSA for the same unlawful actions;

g. That the Court appoint Mitchell Feldman, Esq. and the firm of Feldman Legal Group as class counsel in the FLSA collective action, and appoint RICARDO RODRIGUEZ as class representative for all those similarly situated with the authority to negotiate on all opt in plaintiffs behalf; and

h. That the Court award any other legal and equitable relief as this Court may deem appropriate, fair and just.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all questions of fact raised by this Complaint and on all other issues so triable.

Filed this 24th day of October 2022.

Respectfully submitted,

/s/Mitchell Feldman, Esq.
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