

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

Ederclei Lorussa Lima, Sebastiao Texeira,
Altair Rabelo, Isaias Gonzales Santos,
Sdonge Mendez, Leonardo Cereira de Souza,
Jose Tomas de Aquino Filho,

Case No.: 06-6607

Judge: Fallon

on behalf of themselves and all others
similarly situated,

Magistrate: Knowles

Plaintiffs,

vs.

International Catastrophe Solutions, Inc.,
a Georgia corporation, PJ Services Catastrophe
Solutions, Inc., a Georgia corporation, Corey Pitts,
an individual, C.L.S. Construction & Labor Services, Inc.,
a Florida corporation, and Flavio Burgos, an individual,

Defendants.

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

I. PRELIMINARY STATEMENT

1. This is a civil action brought on behalf of individuals who worked or are working in the reconstruction of New Orleans, Louisiana and along the Gulf Coast and all similarly situated former and current employees (collectively referred to as "Plaintiffs") of the

Defendants¹. Plaintiffs complain that the Defendants engaged in 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 one thousand workers, predominantly immigrants, who engaged in manual labor cleaning and restoring various hotels, retail stores and other buildings in the aftermath of Hurricane Katrina. Plaintiffs were among thousands of migrant laborers who were lured to the Gulf Coast with false promises of high earnings, stable jobs and good living conditions.
3. Plaintiffs generally worked seven days a week and twelve hours a day restoring and cleaning buildings and other property contaminated by mold and floodwater. A majority of the Plaintiffs are individuals who have limited proficiency in English and are unfamiliar with the many labor protections provided by federal law. Defendants 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. Defendants employed Plaintiffs as unskilled manual laborers by using the subcontractor system and intentionally misclassifying Plaintiffs as independent contractors in an effort to circumvent the overtime provisions of the FLSA.² At all times, however, Defendants were joint-employers of the Plaintiffs.

¹ Additional parties, such as other subcontractors and the entities that hired or contracted with the named Defendants to provide 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.

² 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.

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 for damages they have suffered and to ensure that they and future workers will not be subjected by the Defendants 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 Defendants who primarily resided and worked along the Gulf Coast during the time relevant to this action.
9. Defendant International Catastrophe Solutions, Inc. (hereinafter "ICS") is a corporation incorporated in the state of Georgia and registered as a foreign corporation with the Secretary of State of Louisiana whose resident agent is Access Louisiana, Inc., 400 Travis Street, Ste. 504, Shreveport, LA 71101.
10. Defendant PJ Services Catastrophe Solutions, Inc. (hereinafter "PJ Services") is a corporation incorporated in the state of Georgia and registered with the Secretary of State

of Louisiana whose registered agent is the C T Corporation System, 8550 United Plaza Blvd., Baton Rouge, LA 70809.

11. Defendant Corey Pitts (hereinafter "Pitts") is the President, Director and Treasurer of ICS, is the President, Director and officer of PJ Services and whose business address is 4000 Wendell Drive, Atlanta, GA 30336, which is also the corporate headquarters of both ICS and PJ Services.
12. Defendant C.L.S. Construction & Labor Services, Inc. (hereinafter "CLS") is a Florida corporation whose principal place of business is 2393 Lake Debra Dr., Suite 1614, Orlando, FL 32835.
13. Defendant Flavio Burgos (hereinafter "Burgos") is the President of CLS and whose business address is 2393 Lake Debra Dr., Suite 1614, Orlando, FL 32835.

V. GENERAL ALLEGATIONS

14. Defendants PJ Services and ICS were contracted by various businesses to provide services which included structural cleaning and drying, debris removal, and content cleaning among other things.
15. Defendants PJ Services and ICS were permitted to subcontract some or all of the work they were required to provide under these contracts.
16. Defendants PJ Services and ICS contracted with Defendant CLS and other entities to provide labor and other services to fulfill their obligations under the contracts referenced in paragraph 14.
17. Defendant CLS, along with other subcontractors, recruited and hired Plaintiffs to perform the services required under the contracts referenced under paragraph 16.

18. Plaintiffs relied upon various promises made by Defendant CLS and other subcontractors in accepting the employment offered.
19. Defendants PJ Services, ICS and Pitts controlled or supervised the work performed by the Plaintiffs, Defendant CLS and other subcontractors.
20. Plaintiffs worked as unskilled manual laborers on the Gulf Coast for Defendants.
21. Plaintiffs performed substantially similar unskilled manual labor in public and private buildings including but not limited to retail stores such as Wal-Mart, Kirschman's Furniture Stores as well as hotels such as Marriott, Radisson, Crowne Plaza, Sheraton, and Holiday Inn.
22. Plaintiffs routinely worked over 40 hours per week.
23. Defendants did not keep a record of all hours worked by each of the Plaintiffs.
24. Defendants did not keep or maintain records pertaining to each of the Plaintiffs as required under the FLSA.
25. Defendants 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.
26. Defendants did not pay Plaintiffs on regular paydays as required by the FLSA.
27. At all times relevant to this action, Defendants employed Plaintiffs with the meaning of the FLSA, 29 U.S.C. § 203(g).
28. At all times relevant to this action, Plaintiffs were employees of the Defendants within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).
29. At all times relevant to this action, Defendants were employers of Plaintiffs within the meaning of the FLSA, 29 U.S.C. § 203(d).

VI. COLLECTIVE ACTION ALLEGATIONS

30. 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).
31. Named Plaintiffs bring this count on their own behalf and on behalf of all other individuals who (1) worked or are working for Defendants PJ Services and/or ICS performing unskilled manual labor either directly or indirectly through Defendants CLS or other subcontractors in the post-Katrina reconstruction and restoration in the Gulf Coast region from August 29, 2005 until the date of the filing of the present action, and (2) who are or 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.
32. Plaintiffs were hired by Defendant CLS and other subcontractors utilized by Defendants ICS and PJ Services to fill their needs for manual labor in conducting clean up and reconstruction work in the Gulf Coast. However, at all times relevant to this action, Defendants ICS and PJ Services acted as a joint employer of Plaintiffs with those subcontractors.
33. 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).
34. 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.

35. The precise number of individuals in the class is known only to the Defendants. The class is believed to include well over one thousand individuals.
36. The Plaintiffs seek to represent a class consisting of:

“All individuals who worked or are working for Defendants PJ Services and/or ICS performing unskilled manual labor either directly or indirectly through Defendants CLS or other subcontractors in the post-Katrina reconstruction and restoration in the Gulf Coast region from August 29, 2005 until the date of the resolution of the present action, and who are or were eligible for overtime pursuant to the FLSA, 29 U.S.C. § 207 and who did not receive overtime pay.”
37. 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.
38. There are questions of fact common to the class. The common questions of fact include, but are not limited to:
 - a. whether the Defendants engaged in a pattern or practice of failing to keep and maintain accurate payroll records as required by the FLSA;
 - b. whether the Defendants engaged in a pattern or practice of failing to pay Plaintiffs all wages when due in accordance with the FLSA;

- c. whether the Defendants 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.
39. There are questions of law common to the class. The common legal questions include whether the Defendants' actions violated the FLSA and whether any such violations were willful within the meaning of the statute.
40. 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.
41. The Plaintiffs' counsels have handled numerous actions in the federal courts, including collective actions under the FLSA. The Plaintiffs' counsels are prepared to advance litigation costs necessary to vigorously litigate the action.
42. A collective action is superior to other available methods of adjudicating the controversy concerning the Defendants' 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 Defendants by the class members to determine the questions presented;
- d. It is desirable that the claims be heard in this forum since the Defendants are subject to the court's jurisdiction, and the actions giving rise to the claim occurred in this district;
- e. A collective action can be managed without undue difficulty because the Defendants have 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.

- 43. Plaintiffs incorporate paragraphs 1-42 above.
- 44. Pursuant to 29 U.S.C. § 216(b), the named Plaintiffs have consented in writing to be party plaintiffs in this FLSA action. Their written consents are attached to this complaint as Exhibit 1 and incorporated herein.
- 45. At all times relevant to this action, Defendants "suffered or permitted" Plaintiffs to work and thus "employed" Plaintiffs within the meaning of FLSA, 29 U.S.C. §203(g).
- 46. 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.
- 47. The Defendants violated the FLSA by failing to pay the Plaintiffs the overtime wage rate for all hours worked in excess of 40 hours per workweek.
- 48. 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 Defendants.

49. 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
50. The Defendants failed to post or maintain such a notice as referred to in paragraph 55 of this complaint, during all relevant times.
51. Defendants’ violations of the FLSA were willful.
52. 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.
53. As a result of Defendants’ 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 Defendants 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 Defendants, jointly and severally, 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,

s/William Lurye

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