

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

**JUAN LOPEZ BARRIOS,
AND JOSE FRAIRE HERNANDEZ,**

**Individually, and on behalf of
all others similarly situated,**

Plaintiffs,

V.

LOAD TRAIL, LLC,

Defendant.

CIVIL ACTION NO.

PLAINTIFFS' ORIGINAL COMPLAINT

I.

INTRODUCTION

Plaintiffs Juan Lopez Barrios (“Lopez”) and Jose Fraire Hernandez (“Fraire”), individually and on behalf of all others similarly situated (Plaintiff Class), file this Original Complaint against Defendant Load Trail, LLC (“Defendant”).

II.

PARTIES

1. Plaintiff Juan Lopez Barrios is an individual and a resident of Lamar County, Texas.
2. Plaintiff Jose Fraire Hernandez is an individual and a resident of Hunt County, Texas.
3. Defendant is a corporation organized under the laws of the state of Texas with its principal place of business located at 220 FM 2216, Sumner, Texas 75486. Defendant may be served with process, including summons and a copy of this lawsuit, by serving Defendant's registered agent for service of process, Cornelio Thiessen, at 220 FM 2216, Sumner, Texas 75486, or wherever he may be found.

III.

JURISDICTION

4. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs assert a claim arising under federal law.¹

IV.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in Lamar County, and pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in Lamar County.
6. Lamar County lies within the Sherman Division of the Eastern District of Texas, as set forth in 28 U.S.C. § 124(c)(3).

¹ 28 U.S.C. § 1331.

V.

COVERAGE ALLEGATIONS

7. Defendant transacts substantial business in this judicial district.

8. At all material times, Defendant has been an employer within the meaning of 29 U.S.C. § 203(d).

9. At all material times, Defendant has been an enterprise within the meaning of 29 U.S.C. § 203(r).

10. At all material times, Defendant has been an enterprise engaging in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1), in that said enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

11. At all times relevant to this lawsuit, Defendant employed two or more employees who engaged in commerce and/or who handles, sold, and/or otherwise worked on goods and/or materials that have been moved in and/or produced for commerce by any person.

12. For example, Defendant employed two or more employees who regularly handled, sold, and/or otherwise worked on goods and/or materials in their daily work that were moved in and/or produced for commerce.

13. Examples of such goods and/or materials include trailers, trailer components/parts, welding equipment, welding supplies, office supplies, and other goods and/or materials used in connection with Defendant's business operations.

14. At all materials times, Plaintiffs were individual employees of Defendant who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

VI.

BACKGROUND FACTS

15. Plaintiffs Lopez and Fraire are former employees of Defendant Load Trail, LLC.

16. Lopez and Fraire worked for Defendant from 2007 and 2013, respectively, until on or around August 28, 2018.

17. Defendant maintains a business in Sumner, Texas, where it manufactures trailers.

18. Lopez and Fraire worked at Defendant's facility as welders.

19. During that time, Defendant maintained a practice with Lopez, Fraire, and others, where it paid them on a piece rate basis.

20. Lopez, Fraire, and others regularly, if not universally, worked in excess of forty hours per workweek and were not paid all overtime premium compensation for such overtime hours.

21. Lopez and Fraire consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b).²

VII.

COLLECTIVE ALLEGATIONS

22. Like Plaintiffs, other employees have been victimized by these unlawful practices.

23. Many of these employees have worked with Plaintiffs, and have reported that they were paid in the same manner as Plaintiffs with no overtime pay for time worked in excess of forty hours per workweek.

24. From discussions with these employees, Plaintiffs are aware that Defendant's illegal policies and practices have been uniformly imposed on the Class Members.

² Exhibit A and B are true and correct copies of Lopez and Fraire's executed consent forms.

25. The Class Members perform the same or similar job duties, including that they all perform non-exempt work.

26. These employees are similarly situated to Plaintiffs in terms of job duties and pay provisions.

27. Defendant's failure to pay minimum wage and overtime compensation at the rates required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of the Class Members.

28. Thus, Plaintiffs' experiences are typical of the experiences of the Class Members.

29. The specific job titles or precise job requirements of the various Class Members do not prevent collective treatment.

30. All Class Members, regardless of their precise job requirements or rates of pay, are entitled to overtime compensation (one and one half their regular rate of pay) for all time worked in excess of forty hours per workweek.

31. Although the issue of damages may be individual in character, there is no detracting from the common nucleus of liability facts.

32. The questions of law and fact are common to Plaintiffs and the Class Members.

33. Accordingly, the class of similarly situated plaintiffs is properly defined as:

All Current or Former Employees of Defendant who were paid on a piece rate basis and were not paid 150% of their respective rates of pay for all hours worked over forty in each workweek.

34. As a collective action, Plaintiffs seek this Court's appointment and/or designation as representative of a group of similarly situated individuals as defined.

VIII.

CAUSES OF ACTION

**A. First Cause of Action—Failure to Pay Wages in Accordance with the FLSA—
Plaintiffs and the Plaintiff Class**

35. Plaintiffs and the Plaintiff Class incorporate each of the foregoing paragraphs.

36. Defendant's practice of not paying employees, including Plaintiffs, one and one half times their regular rate of pay for all hours worked in excess of forty hours in a workweek

37. Defendant's actions violate 29 U.S.C. §§ 206, 207, and 215(a)(2).

IX.

DAMAGES

38. Plaintiffs and the Plaintiff Class incorporate each of the foregoing paragraphs.

39. Defendant's actions violated 29 U.S.C. § 207(a).

40. Pursuant to 29 U.S.C. § 216(b), Plaintiffs and the Plaintiff Class seek to recover all unpaid minimum wages and unpaid overtime compensation.

41. Plaintiffs and the Plaintiff Class also seek as liquidated damages an amount equal to that recovered for unpaid minimum wages and unpaid overtime compensation.

42. Plaintiffs and the Plaintiff Class seek all damages available to them under federal law.

X.

ATTORNEYS' FEES AND COSTS

43. Plaintiffs and the Plaintiff Class incorporate each of the foregoing paragraphs.

44. Plaintiffs retained the services of undersigned counsel to prosecute their claims.

45. Plaintiffs and the Plaintiff Class are entitled to recover a reasonable attorneys' fee from Defendant, including costs.

XI.

JURY DEMAND

46. Plaintiffs and the Plaintiff Class demand a trial by jury.

XII.

CONCLUSION AND PRAYER

47. Plaintiffs and the Plaintiff Class respectfully request that Defendant be cited to appear and answer, and that upon final trial of this matter, the Court enter judgment against Defendant, awarding Plaintiffs and the Plaintiff Class:

- A. All unpaid minimum wages and unpaid overtime compensation;
- B. All unpaid wages and commissions;
- C. Liquidated damages equal to the amount in subsection (A) above;
- D. Reasonable attorneys' fees and expert fees;
- E. Court costs;
- F. Pre-judgment and post-judgment interest at the rate set by law; and
- G. All legal or equitable relief this Court deems proper.

Respectfully submitted,

/s/ Javier Perez

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