

MICHAEL MERKLEY,

Claimant,

v.

**HALLIBURTON ENERGY SERVICES,
INC.,**

Respondent.

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**RE: AMERICAN ARBITRATION
ASSOCIATION**

CLAIM NO.: _____

CLAIMANT’S ARBITRATION DEMAND

I. SUMMARY

1. Respondent Halliburton Energy Services, Inc. (“Respondent”) required Claimant Michael Merkley (“Claimant”) to work more than forty hours in a workweek as a Materials Control Specialist. Respondent misclassified Claimant as exempt from overtime under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.* However, the job duties of a Material Control Specialist do not satisfy the exemption test for any exemption under the FLSA.

2. Consequently, Respondent’s compensation policies violate the FLSA which requires non-exempt employees to be compensated at one and one-half times their regular rate for each hour worked over forty (40) in a workweek. Respondent owes Claimant back pay at the rate of time and one-half the regular rate of pay for all hours worked over 40 in a workweek, liquidated damages, attorneys’ fees, and arbitration costs.

II. BASIS OF JURISDICTION AND VENUE

3. Attached hereto as “Exhibit A” is the Dispute Resolution Policy between Claimant and Respondent.

4. Additionally, the American Arbitration Association has jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*

5. Claimant requests to convene this arbitration in Houston, Texas.

III. PARTIES

6. Claimant Merkley is an individual residing in Ada County, Idaho. His written consent to this action is attached hereto as Exhibit “B.”

7. Respondent Halliburton Energy Services, Inc. is a foreign corporation organized under the laws of Delaware. Respondent may be with notice of this arbitration demand through its registered agent in CT Corporation System, 206 E. 9th Street, Suite 1300, Austin, Texas or through its attorney Vanessa Griffith of Vinson & Elkins, LLP 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201, vgriffith@velaw.com.

IV. FLSA COVERAGE

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

9. At all material times, Respondent has been an enterprise in commerce or in the production of goods for commerce within the meaning of the FLSA. 29 U.S.C. § 203(s)(1).

10. At all material times, Respondent has had an annual gross business volume in excess of the statutory standard.

11. At all material times, Claimant was an employee engaged in commerce or the production of goods for commerce as required by 29 U.S.C. § 207.

V. FACTS

12. Respondent Halliburton Energy Services, Inc. is one of the largest oil field services companies in North America.

13. Claimant worked for Respondent in Williston, North Dakota from approximately October of 2013 to January of 2015 as a Materials Control Specialist in Respondent’s drilling sand

department. That department was responsible for providing sand and proppant used in well fracturing operations.

14. The statute of limitations applicable to Claimant's claims has been tolled by virtue of his filing a consent form in an action current pending against Respondent. *See Henderson v. Halliburton*, Civil Action No. 1:15-cv-01846, District of Colorado, Doc. 33. According, for statute of limitations purposes, this arbitration is treated as though it was filed on December 9, 2015.

15. Claimant's duties were largely clerical in nature. He was responsible for data entry, fielding calls from customers regarding the status of their sand deliveries, and compiling a daily report listing the locations of the train cars bringing sand to Williston, North Dakota.

16. Claimant was not a supervisor. He had no employees working underneath him and he made neither decisions nor recommendations with respect to hiring or firing other employees.

17. Claimant exercised no independent judgment and discretion in his work. He made no decisions concerning the quantity or quality of material to be used. Instead, he simply tracked orders and provided updates regarding delivers.

18. Claimant made no purchases and lacked authority to bind Respondent to make purchases.

19. Claimant had no authority to implement management policies or operating practices. Similarly, he lacked authority to deviate from Respondent's standard operating practices.

20. All decisions Claimant made, if any, were not regarding matters of significance.

21. Claimant earned less than \$100,000 per year.

22. Under these facts, Claimant is a non-exempt employee under the FLSA. However, Respondent classified him as exempt and paid him only a straight salary without overtime.

23. In fact, Claimant's immediate supervisor in the sand department was himself classified as a non-exempt employee and paid hourly with overtime.

24. Claimant worked a substantial number of overtime hours per week.

25. His "in office" daily hours were from at least 8 a.m. in the morning to 6:30 p.m. or later every evening and his typical rotation was 10 days on, followed by 4 days off. He was also Respondent's Williston, North Dakota after hours point of contact and was required to field phone calls and emails late into the night from his company provided housing. He easily worked 80 hours a week in most weeks.

26. Respondent's method of paying the Claimant in violation of the FLSA was willful and was not based on a good faith and reasonable belief that its conduct complied with the FLSA.

27. Respondent knew about the requirements to pay overtime but chose not to pay overtime to the Claimant.

VI. CAUSE OF ACTION

Violation of the Fair Labor Standards Act Failure to Pay Overtime

28. Claimant incorporates the preceding paragraphs by reference.

29. Respondent violated the FLSA by misclassifying Claimant as an exempt employee and failing to pay overtime.

30. Respondent has, therefore, violated and continues to violate the FLSA by not paying Claimant consistent with the FLSA for his overtime.

31. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to the Respondent or the Claimant.

32. Respondent's failure to pay overtime in accordance with the FLSA was willful and not based on a good faith belief that its conduct did not violate the FLSA. As such, the foregoing conduct, as alleged, constitutes a willful violation within the meaning of the FLSA. 29 U.S.C. § 255(a).

VII. WAGE DAMAGES SOUGHT UNDER 29 U.S.C. § 216(b)

33. Claimant is entitled to recover his unpaid overtime premiums for all time worked in excess of forty (40) hours in a single week.

34. Claimant is entitled to recover an equal amount of his unpaid overtime premiums as liquidated damages.

35. Claimant is also entitled to recover his attorney's fees and costs, as required by the FLSA.

VIII. PRAYER FOR RELIEF

36. For these reasons, Claimant respectfully requests that judgment be entered in favor of himself awarding him:

- a. Overtime compensation for all hour works in excess of forty (40) per week at the rate of one and one-half times his regular rates of pay;
- b. An equal amount of his unpaid overtime premiums as liquidated damages, as allowed under the FLSA;
- c. Reasonable attorney's fees, costs, and expenses of this action as provided by the FLSA; and
- d. Such other and further relief to which Claimant may be entitled, both in law and in equity.

Respectfully submitted,

By: /s/ Beatriz Sosa-Morris
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