

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

<b>DONALD GOUDGE on Behalf of Himself</b>	§	
<b>and on Behalf of All Others Similarly</b>	§	
<b>Situated,</b>	§	<b>CIVIL ACTION NO. : 5:18-cv-130</b>
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>ACE NDT, LLC,</b>	§	
<b>Defendant.</b>	§	<b>JURY TRIAL DEMANDED</b>

**PLAINTIFF’S ORIGINAL COMPLAINT,  
COLLECTIVE ACTION & JURY DEMAND**

**I. SUMMARY**

1. Plaintiff Donald Goudge and the employees he seeks to represent (“Class Members”) are current and former employees paid on an hourly basis by Defendant Ace NDT, LLC (“Defendant”). Defendant knowingly and deliberately failed to compensate Plaintiff and Class Members for their overtime hours based on the time and half formula under the FLSA.

2. Defendant violated the FLSA by failing to pay Plaintiff and Class Members for all the hours they worked and by failing to calculate their overtime in accordance with the FLSA.

3. Consequently, Defendant’s compensation policy violates the FLSA’s mandate that non-exempt employees, such as Plaintiff and Class Members, be compensated at one and one-half times their regular rate of pay for each hour worked over forty (40) in a week.

4. Plaintiff seeks to recover, on behalf of himself and the Class Members, all unpaid wages and other damages owed under the FLSA as a collective action pursuant to 29 U.S.C. § 216(b).

5. Plaintiff also prays that the class of similarly situated workers be notified of the pendency of this action to apprise them of their rights and provide them an opportunity to opt into this litigation.

**II. SUBJECT MATTER JURISDICTION AND VENUE**

6. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 as this case is brought under the laws of the United States, specifically the FLSA, 29 U.S.C. § 216(b).

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because many of the wrongs alleged herein took place in this District.

**III. PARTIES AND PERSONAL JURISDICTION**

8. Plaintiff Donald Goudge is an individual currently residing in Bexar County, Texas. Plaintiff's written consent to this action is attached hereto as Exhibit "A."

9. The Class Members are all technicians employed by Defendant in the last three years to the present who were paid on an hourly basis.

10. Defendant Ace NDT, LLC, is a limited liability company organized under the laws of Texas that may be served through its registered agent Tommy G. Anderson, 5940 I-H 20, Ranger, Texas 76470.

11. This court has personal jurisdiction over Defendant because, as a Texas business organization, Defendant is a resident of Texas.

**IV. FACTS**

12. Defendant Ace NDT, LLC, is a welding inspection company with multiple locations throughout Texas and Oklahoma.

13. Plaintiff Goudge worked from approximately February of 2015 until June of 2017 as a Non-Destructive Testing Technician.

14. Plaintiff's primary duties were to drive a company truck to a job site, such as a well or pipeline, and perform field x-ray photography on pipes and welds.

15. Defendant paid Plaintiff and its other technicians on an hourly basis, however, Defendant failed to pay its technicians for all hours worked.

16. During the beginning of his employment, Defendant failed to pay Plaintiff and its other technicians at all for their drive time, including driving between different jobs site during the day or from Defendant's office to the first job site of the day.

17. Later during his employment, Defendant began to pay for drive time but did so in a manner that still violated the FLSA. Specifically, Defendant paid for drive time at an hourly rate less than the hourly rate paid for performing inspection work and failed to treat the drive time as compensable work for purposes of calculating overtime.

18. By way of example, Plaintiff's normal hourly rate was \$25. However, once Defendant began for drive time, Defendant only paid Plaintiff \$10 an hour for driving. Furthermore, Defendant only treated time performing inspections as time worked when it calculated overtime. Thus, if Plaintiff worked 50 hours a week doing inspections and 10 hours a week driving (for a total of 60 hours worked), Defendant would pay him as follows:

**40** regular hours at \$25 an hour = \$1,000  
**10** overtime hours at \$37.5 an hour = \$375  
**10** driving hours at \$10 an hour = \$100

19. Even once Defendant began paying for drive time, its overtime calculation paid overtime at too low of a rate because it excluded the drive time hours from the overtime calculation.

20. In other words, Defendant's overtime calculation did not consider the drive time hours or rate for purposes of calculating overtime.

21. A proper overtime calculation would have included the drive time hours as work hours. For instance, in the example in paragraph 18, Defendant should have calculated Plaintiff's overtime based on a 60 hour week, not a 50 hour week. Furthermore, even if the drive time is not compensable time under the FLSA, the amount that Defendant paid for drive time should have been included in the regular rate for purposes of calculating overtime.

22. Defendant's other technicians performed the same inspection work as Plaintiff and were likewise paid an hourly rate.

23. Like Plaintiff, the other technicians were paid on an hourly basis and originally not paid for their drive time. Defendant began paying its other technicians for their drive time a reduced hourly rate at approximately the same time as Plaintiff.

24. Plaintiff and Defendant's other technicians regularly worked over 40 hours per week. Inclusive of drive time, Plaintiff commonly worked more than 70 hours a week.

25. At all times relevant to this lawsuit, Plaintiff was non-exempt employee.

26. At all times relevant to this lawsuit, all of Defendant's technicians were non-exempt employees.

27. Defendant paid Plaintiff an hourly rate.

28. Defendant paid all Technicians an hourly rate.

29. Plaintiff did not supervise two or more full time employees.

30. Plaintiff did not have authority to hire and fire.

31. Technicians do not have the authority to hire and fire.

32. Technicians do not supervise two or more employees.

33. Plaintiff was not performing work requiring advanced knowledge, defined as work which is predominately intellectual in character.

34. Plaintiff's primary duty was the performance of manual work.
35. All Technicians' primary duty was the performance of manual work.
36. Defendant cannot satisfy its burden to show that any exemption applies.

**V. CAUSES OF ACTION**

COUNT I  
VIOLATION OF THE FAIR LABOR STANDARDS ACT  
FAILURE TO PAY OVERTIME  
(COLLECTIVE ACTION)

37. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

38. This count arises from Defendant's violation of the FLSA for its failure to pay Plaintiff and Class Members overtime compensation based on the FLSA's time-and-a-half formula.

39. For each hour worked in excess of forty (40) each week, Plaintiff and Class Members were entitled to be paid one and one-half times their regular rate of pay. 29 U.S.C. § 207.

40. By failing to pay overtime based on that formula, Defendant violated and continues to violate the FLSA.

41. 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 Defendant, Plaintiff, or Class Members.

42. Defendant paid the Plaintiff nothing for compensable work time. Failing to pay the Plaintiff and Class Members for the drive time between work locations is clearly a willful violation. Defendant's attempt to pay for drive time but failing to include that rate or time into the calculation of overtime, is likewise a willful violation.

43. Defendant did not have a good faith belief that its pay policy did not violate the FLSA.

44. Defendant's failure to pay overtime to Plaintiff and Class Members, in violation of 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).

## **VI. COLLECTIVE ACTION ALLEGATIONS**

45. As part of its regular business practices, Defendant has engaged in a pattern, practice, or policy of violating the FLSA on a class wide basis, as described above.

46. Plaintiff brings this action as an FLSA collective action pursuant to 29 U.S.C. § 216(b) on behalf of all technicians who were or are employed by Defendant and paid on an hourly basis within the three (3) years preceding the filing of this complaint to the present.

47. Although Defendant permitted and/or required Class Members to work in excess of forty (40) hours per workweek, Defendant has denied them full compensation for their hours worked over forty.

48. Plaintiff has actual knowledge, through conversations with his co-workers, that a class of similarly situated Class Members exists who have been subjected to Defendant's policy of not paying the overtime rate for all hours worked over forty. Plaintiff's knowledge stems from his lengthy employment tenure with Defendant.

49. Class Members are similarly situated to Plaintiff in that they all performed similar duties, were paid on an hourly basis, and were denied complete overtime pay.

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

51. The experience of Plaintiff, with respect to his employment classification and pay, is typical of other workers across Defendant's business.

52. The specific job titles or precise job responsibilities of each Class Member does not foreclose collective treatment.

53. Class Members regularly work or have worked in excess of forty (40) hours during a workweek.

54. Defendant has time sheets for the hours worked by Class Members and Plaintiff.

55. Class Members are not exempt from receiving overtime pay under the FLSA.

56. Like Plaintiff, all Class Members, irrespective of their particular job requirements, are entitled to receive overtime compensation for hours worked in excess of forty during a workweek.

57. The names and addresses of the Class Members are available from Defendant's records. To the extent required by law, notice will be provided to these individuals by first class mail or by the use of techniques and a form of notice similar to those customarily used in representative actions.

58. Although the exact amount of damages may vary among the individual Class Members in proportion to the number of hours they worked, damages for each individual can be easily calculated using a simple formula.

59. The claims of all Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by Defendant that caused harm to all Class Members.

60. As such, the class of similarly situated employees is properly defined as follows:

**All of Defendant's current and former technicians paid on an hourly basis during the three years before the date of the filing of this Complaint to the present.**

**VII. WAGE DAMAGES SOUGHT**

61. Plaintiff and Class Members are entitled to recover their unpaid overtime premiums for the three years preceding the filing of this complaint to the present. 29 U.S.C. § 216(b).

62. Plaintiff and Class Members are entitled to recover an equal amount of their unpaid overtime premiums as liquidated damages. 29 U.S.C. § 216(b).

63. Plaintiff is also entitled to recover his attorney's fees and costs, as required by the FLSA. 29 U.S.C. § 216(b).

**VIII. JURY DEMAND**

64. Pursuant to his rights under the Constitution of the United States, U.S. CONST. amend VII, and FED R. CIV. P. 38(a), Plaintiff hereby demands trial by jury.

**IX. PRAYER FOR RELIEF**

65. For these reasons, Plaintiff, on behalf of himself and on behalf of the Class Members, respectfully request that judgment be entered awarding the following relief in the favor of Plaintiff and the Class Members:

- a. Overtime compensation for all hour worked in excess of forty (40) per week at the rate of one and one-half times their regular rates of pay;
- b. An equal amount of their 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 Plaintiff and Class Members may be entitled, both at law or in equity.



Respectfully submitted,

By: /s/ Beatriz Sosa-Morris  
Beatriz-Sosa Morris  
SOSA-MORRIS NEUMAN  
ATTORNEYS AT LAW  
BSosaMorris@smnlawfirm.com  
Texas State Bar No. 24076154  
5612 Chaucer Drive  
Houston, Texas 77005  
Telephone: (281) 885-8844  
Facsimile: (281) 885-8813

LEAD ATTORNEY IN CHARGE FOR PLAINTIFF AND  
CLASS MEMBERS

CONSENT FORM FOR  
WAGE CLAIM

Printed Name: Donald Goudge

1. I consent and agree to be represented by Sosa-Morris Neuman Attorneys at Law and to pursue my claims of unpaid overtime and/or minimum wage through the lawsuit filed against my employer under the Fair Labor Standards Act and/or applicable state laws.

2. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if the court approves. If someone else serves as the class representative, then I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with the plaintiffs' counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

3. If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

(Signature) 

(Date Signed) 1/29/18

**Exhibit A**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Donald Goudge

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sosa-Morris Neuman, PLLC, 5612 Chaucer Dr., Houston, Tx 77005, 281-885-8844

DEFENDANTS

ACE NDT, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Labor Standards Act, 29 U.S.C. 201, et seq.

Brief description of cause: Failure to Pay Overtime

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 02/07/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Beatriz Sosa-Morris

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.