

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION at COVINGTON  
CASE No. 2:14-CV-\_\_\_\_\_

_____	)	
GREG LEE, CHRIS WARD,	)	
RANDY ESSARY,	)	
	)	
Plaintiffs	)	<b>Complaint</b>
	)	
vs.	)	
	)	
S & E FLAG CARS, LLC;	)	
FLAG CARS R US, LLC; ELLEN	)	
ISHMAEL,	)	
	)	
DefendantS	)	
_____	)	

Plaintiffs Greg Lee, Chris Ward and Randy Essary for their complaint against defendants S & E Flag Cars, LLC; Flag Cars R Us, LLC; and, Ellen Ishmael state as follows:

**I**

**Nature of the Action**

1. This is an action pursuant to the Fair Labor Standards Act (FLSA), 29 U.S.C. § 216(b), as amended, and KRS Chapter 337 seeking recovery of unpaid overtime compensation, liquidated damages, attorney’s fees, costs, litigation expenses and prejudgment interest.

**II**

**Jurisdiction and Venue**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, because plaintiffs’ claims raise questions of federal law. The Court’s

supplemental jurisdiction is properly exercised pursuant to 28 U.S.C. § 1367, because plaintiff's federal and state law claims arise from and relate to a common nucleus of operative and material fact. Venue is proper in this court, because defendants maintain their principal place of business and/or are residents of Bracken County, Kentucky.

### III

#### Parties

3. Plaintiff Greg Lee is a resident of Pendleton County, Kentucky. A plaintiff's consent form is tendered as Ex. 1 to this complaint.

4. Plaintiff Chris Ward is a resident of Pendleton County, Kentucky. A plaintiff's consent form is tendered as Ex. 2 to this complaint.

5. Plaintiff Randy Essary is a resident of Bracken County, Kentucky. A plaintiff's consent form is tendered as Ex. 3 to this complaint.

6. Defendant S & E Flag Cars, LLC is a Kentucky limited liability company whose organizer and sole member, according to the records of Kentucky Secretary of State, is Ellen Ishmael, who also serves as its agent for service of process at 2025 Chaney Road, Brooksville, Ky 41004.

7. Defendant Flag Cars R Us, LLC is a Kentucky limited liability company whose sole member, according to the records of Kentucky Secretary of State, is Ellen Ishmael, who also serves as its agent for service of process at 2025 Chaney Road, Brooksville, Ky 41004.

8. Defendant Ellen Ishmael is, upon information and belief, a resident of Bracken County, Kentucky.

#### IV

##### **Facts Giving Rise to the Lawsuit**

9. Defendants S & E Flag Cars and Flag Cars R Us are in the business of providing vehicle escort services for vehicles including semi-trucks hauling and transporting heavy equipment used for “fracking” of natural resources.

10. The escort vehicles provided by S & E Flag Cars and Flag Cars R Us follow along with, lead and assist the semi-trucks on the road while they are transporting the heavy equipment. The semi-trucks and the escort vehicles traveled in and/or affected interstate commerce.

11. At all times pertinent to this action, defendant Ishmael was responsible for the day to day operations of S & E Flag Cars and/or Flag Cars R Us including the hiring and firing of their employees, determining the terms of the employees’ employment including pay, setting determining the location of the employees’ work.

12. Plaintiff Greg Lee has been employed by defendants as an escort driver since on or about April 1, 2012.

13. Plaintiff Chris Ward has been employed by defendants as an escort driver since on or about February 1, 2011, with some interruptions in the interim.

14. Plaintiff Randy Essary has been employed by defendants as an escort driver since on or about March 1, 2012.

15. In order to evade the requirements of the Fair Labor Standards Act, defendants, at all times pertinent to this lawsuit, have misclassified plaintiffs as independent contractors instead of employees.

16. Plaintiffs to perform their jobs as escort drivers for defendants are not required to possess a commercial driver's license (CDL).

17. Plaintiffs to perform their jobs as escort drivers for defendants are not required to undergo or complete any specialized training and/or obtain any special license or certificate.

18. The escort vehicles and all related equipment that plaintiffs use in performing their jobs as escort drivers for defendants are all provided by defendants.

19. The escort vehicles that plaintiffs use in performing their jobs as escort drivers for defendants all have weighed less than 10,000 lbs.

20. Plaintiffs, at all times pertinent to this case, have been paid a straight day-rate that has varied from \$100 up to \$150 with additional per diem compensation.

21. Plaintiffs have had no opportunity to vary or increase their income depending upon the skillfulness with which they perform their tasks for defendants.

22. Defendants, at all times pertinent to this case, have exercised complete control over the manner and means by which plaintiffs have performed their work duties.

23. Defendants were, at all times pertinent to this case, and are the employer of plaintiffs within the meaning of 29 U.S.C. § 203(d) and KRS 337.010(1)(d).

24. Plaintiffs were, at all times pertinent to this case, and are, each of them, an “employee” of defendants within the meaning of 29 U.S.C. § 203(e) and KRS 337.010(1)(e).

25. Throughout their employment by defendants the plaintiffs have been regularly and routinely required to and have regularly worked in excess of forty (40) hours per workweek.

26. At all times pertinent to this case, defendants knew, required, approved and/or suffered Lee, Ward and/or Essary to work in excess of forty (40) hours per workweek.

27. At all times pertinent to this case, each of the plaintiffs was an “employee” of the defendants, not an independent contractor, and the plaintiffs were each employed by and performed work for defendants in positions that were not exempt from the overtime pay requirements established by the FLSA and/or KRS Chapter 337.

28. Defendants required Lee, Ward and Essary to work more than forty (40) hours per workweek without paying them overtime compensation even though all three were employed in non-exempt positions.

29. Defendants willfully and intentionally required, approved and/or suffered Lee, Ward and Essary to work more than forty (40) hours per

workweek, while willfully and unlawfully designating their positions as independent contractors exempt from the overtime compensation requirements established by the FLSA and KRS Chapter 337.

**V**

**Causes of Action**

**Count 1 – Failure to Pay Overtime In Violation of FLSA**

30. Plaintiffs incorporate and reallege herein the preceding paragraphs 1 – 29 as if fully set forth herein.

31. Under the FLSA, 29 U.S.C. § 207, *et seq.*, defendants were and are required to compensate Lee, Ward and Essary for all hours worked in excess of forty (40) hours per workweek.

32. The FLSA requires that overtime compensation be paid at a rate not less than one and one-half (1.5) the regular rate of pay of Lee, Ward and Essary.

33. For purposes of calculating overtime compensation, the FLSA provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

34. Defendants have required, suffered and/or permitted Lee, Ward and Essary to work in excess of forty (40) hours per workweek but did not compensate any of them for such overtime work.

35. As a result of defendants' policy and practice of failing to pay overtime compensation, Lee, Ward and Essary have been damaged in that

none has been paid by defendants the overtime compensation that each has earned.

36. Defendants' failure to pay Lee, Ward and Essary the overtime compensation each earned was a willful and intentional violation of the FLSA.

**Count 2 – Failure to Pay Overtime In Violation of KRS Chapter 337**

37. Plaintiffs incorporate and reallege herein the preceding paragraphs 1 – 36 as if fully set forth herein.

38. Under KRS Chapter 337, defendants were and are required to compensate Lee, Ward and Essary for all hours worked in excess of forty (40) hours per workweek.

39. KRS Chapter 337 requires that overtime compensation be paid at a rate not less than one and one-half (1.5) the regular rate of pay of Lee, Ward and Essary.

40. For purposes of calculating overtime compensation, KRS Chapter 337 provides that the regular rate of pay includes all remuneration for employment paid to or on behalf of the employee.

41. Defendants have required, suffered and/or permitted Lee, Ward and Essary to work in excess of forty (40) hours per workweek but did not compensate any of them for such overtime work.

42. As a result of defendants' policy and practice of failing to pay overtime compensation, Lee, Ward and Essary have been damaged in that

none has been paid by defendants the overtime compensation that each has earned.

43. Defendants' failure to pay Lee, Ward and Essary the overtime compensation each earned was a willful and intentional violation of KRS Chapter 337.

## **VI**

### **Demand for Judgment**

Wherefore, plaintiffs Greg Lee, Chris Ward and Randy Essary demand judgment against defendants, jointly and severally, as follows:

(1) entry of a judgment in their favor and against defendants requiring defendants to pay each of them the overtime compensation due and owing each of them along with an additional equal amount as liquidated damages as shown by the evidence at trial;

(2) entry of a judgment awarding each of them prejudgment interest on his unpaid overtime compensation along with the costs, litigation expenses and reasonable attorney's fees pursuant to the FLSA, KRS 337.385 and Fed.R.Civ. Pro. 54; and,

(3) the grant of all other relief to which each of them is shown to be entitled.

### **Demand for Jury Trial**

Plaintiffs demand trial by jury on all issues herein so triable.

Respectfully submitted,

By: /s/ Robert L. Abell

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