

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PALM BEACH DIVISION**

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

CASE NO.

**Plaintiff,
vs.**

JURY TRIAL DEMANDED

**E&S COMMUNICATIONS, LLC, a
Florida Limited Liability
Company, SAMANTHA R. QUIMBY, an
individual, and ELLIJAH D.
SCHAEFFER, an individual,**

**COLLECTIVE ACTION PURSUANT TO
29 U.S.C. 216(b)**

Defendants.

COLLECTIVE ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Daniel Browder, individually and on behalf of all other similarly situated individuals (collectively, “Plaintiffs”), by and through undersigned counsel, sue Defendants E&S COMMUNICATIONS, LLC, a Florida Limited Liability Company, (“E&S”), SAMANTHA R. QUIMBY (“Quimby”) and ELLIJAH D. SCHAEFFER (“Schaeffer”, along with Quimby and E&S, the “Defendants”) on a collective basis pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219.

INTRODUCTION

1. The FLSA is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its purposes, the FLSA requires three things. First, the FLSA requires payment of minimum wages. 29 U.S.C. § 206(a). Second, the FLSA requires overtime pay for covered employers whose employees work in excess of 40 hours per

workweek. 29 U.S.C. 207(a). And third, the FLSA establishes minimum recordkeeping requirements for covered employers. 29 U.S.C. § 211(a); 29 U.S.C § 516.2(a)(7).

2. Plaintiff, and those similarly situated, were cell tower install laborers for the Defendants who were paid on a purported day rate for work performed. Due to Defendants' company-wide policies and procedures of not paying overtime compensation, Plaintiff, and those similarly situated were deprived of wages owed.

3. Plaintiff, Daniel Browder, now brings this action individually and on behalf of all other similarly situated current and former non-exempt cell tower laborers who were paid a day rate and who have been employed by Defendants ("Plaintiffs" or "Putative Class Members") throughout the United States, at any time from three years before the filing of this Complaint through the final disposition of this matter, and have timely filed consent forms to join this collective action. These class members should be informed of the pendency of this action and apprised of their rights.

THE PARTIES

4. Plaintiff Daniel Browder ("Browder") worked at E&S in the State of Florida during the relevant time period. Plaintiff Browder's written consent to be a party plaintiff in this action is attached hereto as **Exhibit "A."**

5. Defendant E&S, Communications, LLC ("E&S") is a Florida Limited Liability Company, licensed to and doing business in the State of Florida. E&S may be served with process by serving its registered agent, **Ellijah D. Schaeffer, 13303 61st Street N, West Palm Beach, FL 33412**. Defendant E&S is a covered employer under the FLSA and acted as such in relation to Plaintiff and the Putative Class Members.

6. SAMANTHA R. QUIMBY is a citizen and resident of Florida, and can be served

with process at the company's principal place of business at: **13303 61st Street N, West Palm Beach, FL 33412**. Defendant Quimby is a covered employer under the FLSA and acted as such in relation to Plaintiff and the Putative Class Members

7. ELLIJAH D. SCHAEFFER is a citizen and resident of Florida, and was served with process at the company's principal place of business at: **13303 61st Street N, West Palm Beach, FL 33412**. Defendant Schaeffer is a covered employer under the FLSA and acted as such in relation to Plaintiff and the Putative Class Members

SUBJECT MATTER JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the FLSA claim pursuant to 28 U.S.C. § 1331 as this is an action arising under 29 U.S.C. §§ 201 *et. seq.*

9. This Court has general and specific personal jurisdiction over Disposal Services because the cause of action arose within this District as a result of Defendants' conduct within this District and because Defendants are headquartered in Florida and organized under Florida law.

10. Venue is proper in this District because Plaintiff Browder performed his work for Defendant within this District.

11. Specifically, Defendants have maintained a working presence throughout Palm Beach County, Florida.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391.

FLSA COVERAGE

13. At all material times, Defendants have been an employer within the meaning of section 203(d) of the FLSA, which is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee. 29 U.S.C. § 203(d).

14. At all material times, Defendants have been an enterprise in commerce or in the production of goods for commerce within the meaning of section 203(s)(1) of the FLSA because Defendants had and continue to have employees engaged in commerce. 29 U.S.C. § 203(s)(1).

15. At all material times, Plaintiff, and those similarly situated, was an employee who engaged in commerce or in the production of goods for commerce as required by sections 206 and 207 of the FLSA. 29 U.S.C. §§ 206–07.

16. At all material times, Defendants had and continue to have, an annual gross business volume in excess of the statutory standard of \$500,000.00.

17. During Plaintiff's employment, Defendants employed at least two employees who handled goods, materials and supplies used to run the business and provide services to the community which travelled in interstate commerce, including but not limited to:

- a. Vehicles—vehicles owned by the Defendants, which on information and belief, were manufactured outside of the state of Florida;
- b. Vehicle Components—tires, batteries, parts, hydraulic cylinders, fuel and oil etc. used to maintain and service the vehicles, which on information and belief, were manufactured outside the state of Florida;
- c. Cell Tower Components—monopoles, guy towers, tension wires, guy wires, bolt-on and anchor components, specialized antenna mount fabrications, waveguide bridge and ladder components, antenna verification and coax sweep testing tools and components, as well as all replacement and upgrade parts, tools, and other components, which on information and belief, were manufactured outside the state of Florida; and
- d. Other Products Used in Business—computers, servers, tablets, laptops, and software used in the administration and operation of the business, which on information and belief were manufactured outside the state of Florida.

18. Therefore, at all material times relevant to this action, Defendants were an enterprise covered by the FLSA, and as defined by 29 U.S.C. §§ 203(r) and 203(s). *See Polycarpe v. E&S Landscaping Ser., Inc.*, 616 F.3d 1217, (11th Cir. 2010); *Burman v. Everkept, Inc.*, 2017 WL 1150664, *6-9 (W.D. Mich. 2017)(citing *Polycarpe* and finding local waste

disposal company was enterprise covered by the FLSA).

WAGE VIOLATIONS

19. Defendants violated the FLSA by failing to pay Plaintiff, and those similarly situated, time and one-half for each hour worked in excess of 40 hours per workweek.

20. Further, Defendants have improperly calculated Plaintiff's and the Putative Class Members' regular rate resulting in further miscalculation of Plaintiff's overtime pay. Specifically, Plaintiff and those similarly situated should have received overtime compensation at a rate not less than one and one-half times their true regular rate.

21. Plaintiff, and those similarly situated, were paid under a purported day rate plan whereby they were supposed to be paid for each day worked regardless of the number of hours worked each day. *See* 29 C.F.R. § 778.112.

22. Defendants violated the day rate regulation by failing to pay additional overtime compensation for hours worked over forty in a workweek, instead solely paying the day rate.

23. At all times relevant to this action, Defendants failed to comply with the FLSA because Plaintiff, and those similarly situated, performed services for Defendants for which no provisions were made by Defendants to properly pay Plaintiff, or those similarly situated, for all hours worked or at the correct prevailing rate.

COLLECTIVE ACTION ALLEGATIONS

24. Plaintiff brings this action as a collective action on behalf of a class of individuals similarly situated. Specifically, Plaintiff brings these claims under the Fair Labor Standards Act as a collective action and will request the Court to grant conditional certification under 29 U.S.C. § 216(b), and to order notices to potential opt-in individuals who are or were employed by Defendants as cell tower laborers within three (3) years prior to the commencement of this lawsuit (the "FLSA Class").

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