

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**BRIAN PARKER, MICHAEL FRANK,
MARK DAILEY, and JEREMY
COZART, on behalf of themselves and
others similarly-situated,**

Plaintiffs,

v.

**ABC DEBT RELIEF, LTD. CO.,
THE DEBT ANSWER, LLC,
LLOYD WARD, P.C. d/b/a LLOYD
WARD & ASSOCIATES, LLOYD
REGNER, and LLOYD WARD,**

Defendants.

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CIVIL ACTION NO. 3:10-CV-1332-P

PLAINTIFFS' FIRST AMENDED COLLECTIVE ACTION COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs Brian Parker, Michael Frank, Mark Dailey, and Jeremy Cozart (collectively, the "Plaintiffs"), by and through their counsel, file this First Amended Collective Action Complaint against Defendants ABC Debt Relief, Ltd. Co., The Debt Answer, LLC, Lloyd Ward, P.C. d/b/a Lloyd Ward & Associates, Lloyd Regner, and Lloyd Ward (collectively, the "Defendants"). Plaintiffs seek to recover for Defendants' violations of the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. §§ 201, *et seq.*, and hereby state and allege as follows:

I. INTRODUCTION

1. This is a collective action brought pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-219 (hereinafter the "FLSA") by Plaintiffs, on behalf of themselves and all others similarly-situated, who were formerly or are currently employed as debt consultant and account specialists by Defendants. *See* 29 U.S.C. § 216(b).

2. Defendants required and/or permitted Plaintiffs to work in excess of forty (40) hours per week, but refused to compensate them for such hours. Such conduct by Defendants was in violation of the FLSA which requires non-exempt employees to be compensated for their overtime work. *See* 29 U.S.C. § 207(a).

3. As of result of such violations of the FLSA by Defendants, Plaintiffs bring this action seeking legal and equitable relief provided under the FLSA.

II. JURISDICTION

4. This Court has jurisdiction over the subject matter of this action pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 216(b) and 28 U.S.C. §§ 1331, 1337.

5. Venue is proper in the Northern District of Texas under 28 U.S.C. § 1391(b)(1) because Defendants maintain offices in Dallas County, Texas and are thus deemed to reside within this District. Venue is also proper in the Northern District of Texas because a substantial portion of the events forming the basis of this Complaint occurred in this District.

III. THE PARTIES

6. Plaintiff Brian Parker (“Mr. Parker”) is a debt consultant formerly employed by Defendants. He presently resides in Dallas County and has been a resident of Dallas County during all material times. Mr. Parker worked for Defendants as a debt consultant at their offices in Dallas County during all material times. Finally, Plaintiff was, at all material times, a covered, non-exempt employee of Defendants within the meaning of the FLSA, 29 U.S.C. §§ 203(e), (g).

7. Plaintiff Michael Frank (“Mr. Frank”) is a debt consultant formerly employed by Defendants. He presently resides in Dallas County and has been a resident of Dallas County during all material times. Mr. Parker worked for Defendants as a debt consultant at their offices

in Dallas County during all material times. Finally, Plaintiff was, at all material times, a covered, non-exempt employee of Defendants within the meaning of the FLSA, 29 U.S.C. §§ 203(e), (g).

8. Plaintiff Mark Dailey (“Mr. Dailey”) is a debt consultant formerly employed by Defendants. He presently resides in Dallas County and has been a resident of Dallas County during all material times. Mr. Parker worked for Defendants as a debt consultant at their offices in Dallas County during all material times. Finally, Plaintiff was, at all material times, a covered, non-exempt employee of Defendants within the meaning of the FLSA, 29 U.S.C. §§ 203(e), (g).

9. Plaintiff Jeremy Cozart (“Mr. Cozart”) is an account specialist formerly employed by Defendant. He presently resides in Dallas County and has been a resident of Dallas County during all material times. Mr. Cozart worked for Defendants as an account specialist in their offices in Dallas County during all material times. Mr. Cozart was, at all material times, a covered, non-exempt employee of Defendants within the meaning of the FLSA, 29 U.S.C. §§ 203(e), (g).

10. Defendant ABC Debt Relief, Ltd. Co. (“ABC”) is a for-profit, Texas limited liability company primarily marketing and providing debt settlement plans to members of the general public. ABC has made an appearance in these proceedings by filing a Motion to Dismiss and failing to object to this Court’s jurisdiction.

11. Defendant The Debt Answer, LLC (“The Debt Answer”) is a for-profit, Texas limited liability company primarily marketing and providing debt settlement plans to members of the general public. The Debt Answer has made an appearance in these proceedings by filing a Motion to Dismiss and failing to object to this Court’s jurisdiction.

12. Defendant Lloyd Ward, P.C. d/b/a Lloyd Ward & Associates (“Lloyd Ward, P.C.”) is a law firm that provides debt reduction and debt settlement plans to members of the general public. Lloyd Ward, P.C. d/b/a Lloyd Ward & Associates has made an appearance in these proceedings by filing a Motion to Dismiss and failing to object to this Court’s jurisdiction.

13. Defendant Lloyd Regner (“Regner”) is the chief executive officer of ABC Debt Relief, Ltd. Co. and The Debt Answer, LLC. During all material times, Regner was a supervisor of Plaintiff actively involved in the management of ABC and The Debt Answer. Lloyd Regner has made an appearance in these proceedings by filing a Motion to Dismiss and failing to object to this Court’s jurisdiction

14. Defendant Lloyd Ward (“Mr. Ward”) is an individual who practices law in the law firm of Lloyd Ward, P.C. During all material times, Mr. Ward was a supervisor of Plaintiffs actively involved in the management of ABC and The Debt Answer. Mr. Ward may be served with process at 12655 N. Central Expressway, Suite 800, Dallas, Texas 75243, or wherever he may be found.

IV. COVERAGE

15. Defendants transact business in the Northern District of Texas.

16. At all material times, Defendants have been an employer within the meaning of the FLSA, 29 U.S.C. § 203(d). Each of the Defendants has acted directly or indirectly in the interest of an employer in relation to each of the Plaintiffs.

17. At all material times, Defendants have been an enterprise within the meaning of the FLSA, 29 U.S.C. § 203(r).

18. At all material times, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA because it has engaged employees in commerce. 29 U.S.C. § 203(s)(1).

19. Defendants have had, and continue to have, an annual gross income of sales made or business done of not less than \$500,000. 29 U.S.C. § 203(s)(1).

20. At all material times, Plaintiffs were individual employees engaged in commerce as required by the FLSA, 29 U.S.C. §§ 206, 207.

V. GENERAL FACTUAL ALLEGATIONS

21. Plaintiffs were employed by Defendants as debt consultants or account specialists. Plaintiffs have been required and/or permitted to work in excess of forty (40) hours per workweek but not paid time and one-half for all hours worked over forty (40) hours in a given workweek. Plaintiffs were paid on a commission-only basis and/or on an hourly basis with performance bonuses attributed to sales.

22. For at least three (3) years prior to filing this Complaint and continuing (hereinafter the “Liability Period”), Defendants have had a policy and practice of not correctly compensating their debt consultants and account specialists for work performed for the benefit of Defendants over and above forty (40) hours per week, to wit: virtually all debt consultants received a forgivable draw during their first ninety (90) days of employment and a non-forgivable draw per month thereafter.

23. At all times relevant, Plaintiffs were under the control of each of the named Defendants. For example, Plaintiffs have received emails from superiors at The Debt Answer asking that Plaintiffs conduct certain business on behalf of Lloyd Ward, P.C. In addition,

Defendants maintain a common information directory that contains contacts for each of the named Defendants. Defendants' operations are run as a single enterprise.

24. Debt consultants qualify debtors for debt settlement plans of Defendants by verifying that the debtor possesses at least ten thousand dollars (\$10,000) in debt. Next, debt consultants analyze whether each creditor comprising the ten thousand dollars (\$10,000) is owed at least six hundred dollars (\$600) and if there are contracts in place between the creditor and Defendants. The debt consultant sets up an account with Defendants for each creditor. Lastly, the debt consultant verifies the debtor's bank accounts and assists the debtor in picking a payment plan.

25. Once a plan is chosen, the debt consultant, using Defendants' guidelines, sets up a monthly draft on the debtor's bank account whereby Defendants obtains their fee and moneys to satisfy the debtor's creditors. Eighty-five percent (85%) of Defendants' fee is collected from debtors' accounts within the first ninety (90) days. Debt consultants receive a fee from the first monthly draft which is a percentage determined by the total volume of drafts occurring monthly attributable to that debt consultant.

26. Account specialists are assigned to work on certain accounts of the debtors after the debtors have been signed up as customers with the Defendants by the debt consultants.

27. Debt consultants and account specialists are generally required to work a minimum of twelve (12) hours per day but are expected to work as many hours as necessary to reach assigned sales goals at the behest of the Defendants. Accordingly, debt consultants and account specialists regularly work fourteen to sixteen (14-16) hours per day.

28. Debt consultants and account specialists work at least six (6) days per week.

29. As stated above, debt consultants and account specialists do not receive overtime for hours worked over forty (40) in any week.

VI. COLLECTIVE ACTION ALLEGATIONS

30. Paragraphs 1-29 are incorporated herein as if set forth in full.

31. Plaintiffs (the “Collective Action Representatives”) bring this FLSA claim, as an “opt-in” collective action pursuant to 90 U.S.C. § 216(b) (the “Collective Action”). In addition to the claims of the individually named Plaintiffs, Plaintiffs bring this action as representatives of all similarly-situated former and current employees of the Defendants. The potential class of “opt-in” employees can be defined as:

All current and former debt consultants and account specialists paid under a compensation system where they were not compensated for all hours worked or related overtime at the rate of time and one-half for all hours worked over forty (40).

32. FLSA claims may be pursued by those who opt-in to this case, pursuant to 29 U.S.C. § 216(b).

33. Plaintiffs, individually and on behalf of other similarly-situated employees, seek relief on a collective basis challenging, among other FLSA violations, the following: (1) Defendants’ practice of failing to accurately record all hours worked; and (2) Defendants’ failure to pay employees overtime compensation.

34. The number and identity of other plaintiffs yet to opt-in and consent to be party plaintiffs may be determined from the records of Defendants, and potential class members may easily and quickly be notified of the pendency of this action.

35. Potential Collective Action members may be informed of the pendency of this collective action through direct mail and office posting. Plaintiffs believe current and former debt consultants and account specialists may have been affected.

36. There are questions of fact and law common to the class that predominates over any questions affecting only individual members. The questions of law and fact common to the class arising from Defendants' actions include, without limitation, the following:

- (a) Whether Plaintiffs were compensated for all hours worked;
- (b) Whether Plaintiffs worked more than forty (40) hours per week;
- (c) Whether Plaintiffs were compensated time and one half his "regular rate" for all hours worked over forty in any and all weeks;
- (d) Whether Defendants' practices accurately account for the time Plaintiffs actually was working;
- (e) Whether Defendants' compensation policy and practice is illegal; and
- (f) Whether Defendants had a policy and practice of willfully failing to record and compensate employees for overtime.

37. The questions set forth above predominate over any questions affecting only individual persons, and a collective action is superior, with respect to considerations of consistency, economy, efficiency, fairness, and equity, to other available methods for the fair and efficient adjudication of the federal law claims.

38. The Collective Action Representatives' claims are typical of those of the similarly-situated employees in that these employees have been employed in the same or similar positions as the Collective Action Representatives and were subject to the same or similar unlawful practices as the Collective Action Representatives.

39. A collective action is the appropriate method for the fair and efficient adjudication of this controversy. Defendants have acted or refused to act on grounds generally applicable to the similarly-situated current and former employees. The presentation of separate actions by individual similarly-situated current or former employees could create a risk of inconsistent and

varying adjudications, establish incompatible standards of conduct for Defendants, and/or substantially impair or impede the ability of Collective Action members to protect their interests.

40. The Collective Action Representatives are adequate representatives of similarly-situated current and former employees because they are employees of the same entities and their interests do not conflict with the interests of the other similarly-situated current and former employees they seek to represent. The interests of the members of the class of employees will be fairly and adequately protected by the Collective Action Representatives and their undersigned counsel, who has extensive experience prosecuting complex collective action lawsuits. Furthermore, employees are interchangeable as production needs dictate and, as a result, they are all similar regardless of title or supervisor.

41. Maintenance of this action as a collective action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each member of the collective action who suffered harm to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications. On the other hand, a single collective action can determine, with judicial economy, the rights of all collective action members.

VII. COUNT I
(Violation of FLSA, 29 U.S.C. § 207(a))

42. Paragraphs 1-41 are incorporated herein as if set forth in full.

43. At all material times, Plaintiffs have been employees of Defendants.

44. The Plaintiffs were non-exempt employees.

45. At all material times, Defendants required and/or permitted Plaintiffs to work in excess of forty (40) hours per week, but refused to compensate them for such hours.

46. Such conduct by Defendants was a violation of the FLSA which requires non-exempt employees to be compensated for their overtime work. *See* 29 U.S.C. § 207(a).

47. Accordingly, Plaintiffs and all persons similarly-situated have been deprived overtime compensation in amounts to be determined at trial.

48. Further, Plaintiffs and all persons similarly-situated are entitled to recovery of such amounts in addition to liquidated damages, including without limitation costs of court, expenses, and attorneys' fees. *See* 29 U.S.C. § 216(b).

VIII. PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that this Court enter judgment in Plaintiffs' favor, granting the following relief:

- (a) at the earliest possible time, issue an Order allowing Notice or issue such Court supervised Notice to all similarly-situated current and former employees of Defendants, as described above, of this action and their rights to participate in this action. Such Notice shall inform all similarly-situated current and qualified former employees of the pendency of this action, the nature of this action, and of their right to "opt in" to this action if they did not receive proper overtime for hours worked in excess of forty (40) in a week;
- (b) issue an Order directing and requiring Defendants to pay Plaintiffs and all other similarly-situated employees damages in the form of reimbursement for unpaid premium overtime wages (past and future) for all time spent in excess of forty (40) hours per week performing compensable work for which they were not paid pursuant to the rate provided by the FLSA;
- (c) issue an Order directing and requiring Defendants to pay Plaintiffs and all other similarly-situated employees liquidated damages pursuant to the FLSA in an amount equal to, and in addition to the amount of overtimes wages owed to them;
- (d) issue an Order directing Defendants to reimburse Plaintiffs and other similarly-situated employees for the costs of court, expenses, and attorneys' fees expended in the course of litigating this action, with pre-judgment and post-judgment interest; and
- (e) provide Plaintiffs with such other and further relief as the Court deems just and proper.

IX. DEMAND FOR JURY TRIAL

Plaintiffs hereby request trial by jury of all issues triable by jury under Federal law.

Dated: July 27, 2011

Respectfully submitted,

By: /s/ Charles W. Branham, III

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of themselves and others similarly-situated**

CERTIFICATE OF SERVICE

On July 27, 2011, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the CM/ECF system which will send a notice of electronic filing to all counsel of record. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Charles W. Branham, III

Charles W. Branham, III