



2.

Defendant is a Georgia corporation, with its principal office located at 450 Satellite Boulevard, NE, Suite K, Suwanee, Georgia 30024. Defendant may be served via its registered agent for service of process, Matthew L. Holtkamp, 2648 E. Maddox Road, Buford, Georgia 30519.

3.

The jurisdiction of this Court is proper pursuant to 28 U.S.C. §§ 1331 and 1337. This Court also has jurisdiction pursuant to 29 U.S.C. § 216(b).

4.

Pursuant to 28 U.S.C. § 1391, venue is appropriate in this judicial district as the Defendant conducts business and maintains a registered agent within the Northern District of Georgia.

### **FACTUAL ALLEGATIONS**

5.

Plaintiff, an air conditioner installer, was an employee of Defendant beginning in April of 2017.

6.

Upon information and belief, Defendant has in the past and currently employs approximately twelve (12) air conditioner installers.

**7.**

At all times material to this Complaint, Plaintiff, and others similarly situated, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

**8.**

The additional persons who may become Plaintiffs in this action are Defendant's current and/or former employees who are/were non-exempt and who, during one or more work weeks within the three year statute of limitations period, were not paid time and a half wages for all hours they worked in excess of a forty (40) hour work week.

**9.**

Plaintiff seeks to represent employees engaged in interstate commerce expressly covered by the protections of the FLSA, 29 U.S.C. § 207(a).

**10.**

Defendant is an employer within the meaning of FLSA § 203(d) and is not an exempt employer under the Act.

**11.**

Plaintiff was required to report to work each work day between 6:15 a.m.-6:30 a.m. to pick up and load into his truck the materials necessary to perform his job. In that process, Plaintiff was required to work a number of overtime hours.

**12.**

After obtaining the necessary materials, Plaintiff would then travel to the job site, typically arriving at a job site between 9:00 a.m. and 9:30 a.m. Plaintiff frequently worked past 5:00 p.m., sometimes even as late as 10:30 p.m., with no lunch break taken.

**13.**

Although Plaintiff could not have accomplished his work without first obtaining the necessary materials and traveling to the work site(s), Defendant refused to pay Plaintiff for the hours he worked between 6:15 a.m. and 9:30 a.m. each work day. Defendant also did not pay Plaintiff for his travel time from work sites, regardless of the time expended by Plaintiff to do so.

**14.**

On Memorial Day 2017, Plaintiff, who had been out of town on the weekend, returned home to find that the company truck he had parked in his driveway, and which contained Plaintiff's personal property, including tools and a garage remote control, was gone.

**15.**

Plaintiff believed that Defendant's agents had retrieved the company truck. Plaintiff attempted to contact Holtkamp but his attempts were unsuccessful.

**16.**

When Plaintiff reported to work on Tuesday, June 1, 2017, Holtkamp confirmed that he had retrieved the company truck from Plaintiff's driveway, and, also advised Plaintiff that he was terminated.

**17.**

Plaintiff asked why he was being terminated. Holtkamp replied "I've got a business to run." No further explanation was provided.

**18.**

Plaintiff told Holtkamp that he wanted his personal property out of the company truck. Holtkamp told Plaintiff that there was nothing in the truck. Plaintiff then described the items and Holtkamp said "[w]e'll check on it."

**19.**

At that time, Plaintiff said that he wanted to be paid any outstanding earnings due him. Holtkamp replied that he wanted Plaintiff's company uniforms returned. As to Plaintiff's outstanding earnings, Holtkamp said "I'll get back to you."

**20.**

Shortly thereafter, Plaintiff returned the uniforms to the company office, but was told that Holtkamp was not in.

**21.**

Subsequently, Plaintiff called several times to speak with Holtkamp about his outstanding earnings. Each time he called, he was told that Holtkamp was unavailable or not in.

**22.**

At the time of his termination, Defendant owed Plaintiff \$725.28 in unpaid earnings: 17.48 hours of overtime pay at \$36.00 per hour; and, 4 hours at his regular pay rate of \$24.00 per hour. Further, Plaintiff also believes that Defendant owes him for his travel time from work sites.

**23.**

Defendant is also liable to Plaintiff for the confiscation of Plaintiff's personal property, the value of which is \$222.04.

**COUNT I**  
**(Claim For Relief Under FLSA §§ 206 and 207)**

**24.**

Plaintiff incorporates by reference, as though fully set forth herein, the allegations contained in the preceding Paragraphs.

**25.**

Defendant's failure to compensate Plaintiff for all time worked is in violation of §§ 206 and 207 of the Fair Labor Standards Act of 1938, as amended. Such violations are intentional and willful. Said violations give rise to a claim for relief under the FLSA for Plaintiff for unpaid regular and overtime compensation, liquidated damages in an amount equal to all unpaid compensation, declaratory and injunctive relief, and reasonable attorney's fees and expenses of litigation, pursuant to 29 U.S.C. § 216.

**WHEREFORE**, Plaintiff respectfully prays that this Court:

- (a) Take jurisdiction of this matter;
- (b) Permit this case to proceed as a FLSA collective action under 29 U.S.C. § 216 for Defendant's workers, past and present, who elect to participate in this action by filing proper written notice with the Court;
- (c) Grant a trial by jury as to all matters properly triable to a jury;
- (d) Award to Plaintiff all unpaid regular compensation, and liquidated damages in an amount equal to all unpaid regular compensation;
- (e) Award to Plaintiff and to each member of the opt-in class payment for each overtime hour worked in the three years preceding the filing of this Complaint, calculated at one and one-half times the normal rate,

liquidated damages equaling 100% of overtime due each class member, and prejudgment interest on all amounts owed, as required by the FLSA;

- (f) Issue a declaratory judgment that all employees employed prior to November 2017 (or such other date as the evidence may show as the date on which Defendant began to compensate their employees with overtime) are covered by the provisions of the FLSA and that Defendant failed to comply with the requirements of the FLSA;
- (g) Award Plaintiff the costs of his personal property which was confiscated by Defendant;
- (h) Award Plaintiff his costs and expenses of litigation, including an award of reasonable attorney's fees.
- (i) Award such other further relief this Court deems just and proper.

**JURY DEMAND**

Plaintiff herein requests a trial by jury of all issues in this action.

Dated this 13<sup>th</sup> day of November 2017.

**PANKEY & HORLOCK, LLC**

By: /s/ Larry A. Pankey  
Larry A. Pankey  
Georgia Bar No. 560725  
**Attorneys for Plaintiff**



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Atlanta, Georgia 30338-4122  
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Facsimile: 770-670-6249  
Email: [LPankey@PankeyHorlock.com](mailto:LPankey@PankeyHorlock.com)

**CERTIFICATION OF FONT SIZE**

Pursuant to Local rule 5.1C of the Local Rules of the United States District Court for the Northern District of Georgia, I, Larry A. Pankey, Esq., of Pankey & Horlock, LLC, attorney for Plaintiff, George Berry, hereby certify that the foregoing **Complaint** is typewritten in MS Word using Times New Roman font, fourteen (14) point type.

Dated this 13<sup>th</sup> day of November 2017.

**PANKEY & HORLOCK, LLC**

By: /s/ Larry A. Pankey  
Larry A. Pankey  
Georgia Bar No. 560725  
**Attorneys for Plaintiff**

JS 44 (Rev. 12/12)

**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**  
George Berry

(b) County of Residence of First Listed Plaintiff Gwinnett  
*(EXCEPT IN U.S. PLAINTIFF CASES)*

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Larry A. Pankey, Esq. - 770-670-6250  
Pankey & Horlock, LLC  
1441 Dunwoody Village Parkway, Suite 200, Atlanta, GA 30338

**DEFENDANTS**  
Holtkamp Heating & Air Conditioning, Inc.

County of Residence of First Listed Defendant Gwinnett  
*(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

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

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)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER/STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY/RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION	FEDERAL TAX SUITS	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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

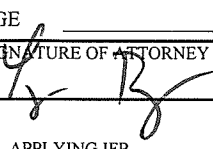
**VI. CAUSE OF ACTION**

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

Brief description of cause:  
Wage and Hour Case

**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: 11/13/2017    SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY: RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Holtkamp Heating & Air Conditioning Employee Seeks Allegedly Unpaid Wages](#)

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