

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ERIC COBB, individually and on
behalf of other similarly situated,

Plaintiff,

v.

DEERFIELD ROADSIDE, LLC, and
CAROLE ANNE HICE, individually,

Defendants.

Case No.:

COMPLAINT & DEMAND FOR JURY TRIAL

Plaintiff, ERIC COBB, individually and on behalf of other similarly situated (hereinafter “Plaintiff”), by and through the undersigned attorney, sues the Defendants, DEERFIELD ROADSIDE, LLC, and CAROLE ANNE HICE, individually, (collectively referred to as “Defendants”), and alleges as follows:

INTRODUCTION

1. This is an action by the Plaintiff against his former employers for overtime wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 206 and 29 U.S.C. § 216(b) (the “FLSA”), and any other relief available.

2. This action is brought under the FLSA to recover from Defendants overtime compensation, liquidated damages, and reasonable attorneys' fees and costs.

PARTIES

3. During Plaintiff's employment with Defendants, he served as a roadside technician and performed related activities in DeKalb County, Georgia.

4. Defendant, DEERFIELD ROADSIDE, LLC, is a Georgia Corporation which operates and conducts business in several counties including DeKalb County, Georgia, and is therefore within the jurisdiction of this Court.

5. Defendant, CAROLE ANNE HICE, is a corporate officer of, and exercised operational control over the activities of, corporate Defendant, DEERFIELD ROADSIDE, LLC, and resides in the State of Georgia. This Court has personal jurisdiction over this Defendant because said Defendant is a resident of the State of Georgia.

JURISDICTION

6. This action arises under the FLSA, 29 U.S.C. §210, *et. seq.* The Court has jurisdiction over the FLSA claim pursuant to 29 U.S.C. § 206 and 29 U.S.C. § 216(b).

VENUE

7. The venue of this Court over this controversy is proper based upon the claim arising in the DeKalb County, Georgia.

FACTS

8. Defendants employed Plaintiff at their business within the relevant time period (2014 – 2017).¹

9. Plaintiff worked for Defendants without being paid the correct overtime premium rate of time and one-half his regular rate of pay for all hours worked in excess of forty (40) hours within a work week.

10. Specifically, Defendants paid overtime hours worked in excess of forty (40) hours within a work week at the regular rate of pay for all hours.

11. Defendants each controlled and/or were responsible for the work of Plaintiff.

12. Plaintiff worked as a “service technician” for Defendants and performed related activities in DeKalb County, Georgia.

13. In this capacity, Plaintiff was responsible for performing, including, but not limited to: (a) perform basic diagnostic procedures and repairs; (b) tow

¹ All references to material times relevant to this action shall mean to encompass from 2014 through 2017.

disabled vehicles; and (c) recharge batteries, change tires, and disengage locks on vehicles.

14. Plaintiff worked for the Defendants from approximately November 2015 – Present.

15. During the relevant time period, Plaintiff was paid a salary at \$525 per week.

16. Plaintiff was not paid proper overtime wages for all hours worked on a weekly basis throughout the period when he was paid a salary.

17. Despite working more than forty (40) hours per week, Plaintiff was not paid all compensation for hours worked over forty (40) hours within a work week during several weeks of employment.

18. Defendants were aware of the overtime hours worked.

19. Upon information and belief, the records, to the extent any exist, concerning the number of hours worked and amounts paid to Plaintiff are in the possession and custody of the Defendants.

COVERAGE

20. 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).

21. At all material times relevant to this action, Defendants made gross earnings of at least \$500,000 annually.

22. At all material times relevant to this action, Defendants accepted payments from customers based on credit cards issued by out-of-state banks, nationwide.

23. At all material times relevant to this action, Defendants routinely ordered materials, merchandise, products, and supplies from out-of-state vendors and/or entities (i.e., battery chargers, gasoline tanks, and tire service tools, etc.).

24. At all material times relevant to this action, Defendants had two (2) or more employees engaged in commerce, handling or otherwise working on materials that have been moved in or produced for commerce (i.e., battery chargers, gasoline tanks, and tire service tools, etc.).

25. At all material times relevant to this action, Plaintiff was individually engaged in commerce during his employment with Defendants, by travelling on interstate highways and assisting customers with their interstate travel through interstate highways.

COLLECTIVE/CLASS ALLEGATIONS

26. Plaintiff and the class members performed the same or similar job duties as one another for Defendants in that they provided road side service.

27. Further, Plaintiff and the class members were subjected to the same pay provisions in that they were **paid a salary** and not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

28. Thus, the class members are owed overtime compensation for the same reasons as Plaintiff.

29. Defendants' failure to compensate employees for hours worked in excess of forty (40) hours in a workweek as required by the FLSA results from a policy or practice of failure to assure that roadside technicians were paid for all overtime hours worked based on the Defendants' failure to credit the roadside technician with all hours worked.

30. This policy or practice was applicable to Plaintiff and the class members.

31. Application of this policy or practice does not depend on the personal circumstances of Plaintiff or those joining this lawsuit, rather the same policies or

practices which resulted in the non-payment of overtime to Plaintiff also apply to all class members.

32. Accordingly, the class members are properly defined as:

All roadside technicians who worked for Defendant, DEERFIELD ROADSIDE, LLC, within the last three (3) years and who were paid a salary and not compensated at time and one-half their regular rate of pay for all hours worked in excess of forty (40) hours in a workweek.

33. The precise size and identity of the class should be ascertainable from the business records, tax records, and/or employee or personnel records of Defendants.

34. The exact number of members of each class can be determined by reviewing Defendants' records. Plaintiff, under information and belief, is informed there are numerous of eligible individuals in the defined class.

35. Defendants failed to keep accurate time and pay records for Plaintiff and all class members pursuant to 29 U.S.C. § 211(c) and 29 C.F.R. Part 516.

36. Defendants were aware of the requirements of the FLSA yet it acted willfully in failing to pay Plaintiff and the class members in accordance with the law.

37. Plaintiff has hired the undersigned law firm to represent him in this matter and is obligated to pay them reasonable attorneys' fees and costs if they prevail.

38. The claims under the FLSA may be pursued by others who opt-in to this case pursuant to 29 U.S.C. § 216(b).

39. A collective action suit, such as the underlying, is superior to other available means for fair and efficient adjudication of the lawsuit. The damages suffered by individual members of the class may be relatively small when compared to the expense and burden of litigation, making it virtually impossible for members of the class to individually seek redress for the wrongs done to them

COUNT I
RECOVERY OF OVERTIME COMPENSATION
AGAINST DEERFIELD ROADSIDE, LLC

40. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 39 above.

41. Plaintiff is entitled to be paid time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week.

42. During Plaintiff's employment with Defendant, DEERFIELD ROADSIDE, LLC, Plaintiff worked overtime hours but was not paid time and one-half his regular rate of pay for the same during several weeks.

43. As a result of Defendant's, DEERFIELD ROADSIDE, LLC, intentional, willful, and unlawful acts in refusing to pay Plaintiff time and one-half his regular rate of pay for each hour worked in excess of forty (40) hours per work week in one or more work weeks, Plaintiff has suffered damages plus incurring reasonable attorneys' fees and costs.

44. Defendant, DEERFIELD ROADSIDE, LLC, became aware that its salary provisions for its roadside technicians did not satisfy the overtime requirements of the FLSA in 2016.

45. Defendant, DEERFIELD ROADSIDE, LLC, change its roadside technician pay to a system based on a set amount per job and began paying additional overtime compensation.

46. However, DEERFIELD ROADSIDE, LLC, did not pay any back overtime pay to its roadside technicians.

47. Defendant, DEERFIELD ROADSIDE, LLC, neither maintained nor kept accurate time records as required by the FLSA for Plaintiff.

48. Also, Defendant, DEERFIELD ROADSIDE, LLC, failed to post required FLSA informational listings as required by law.

49. As a result of Defendant's, DEERFIELD ROADSIDE, LLC, willful violation of the FLSA, Plaintiff is entitled to liquidated damages.

COUNT II
RECOVERY OF OVERTIME COMPENSATION
AGAINST CAROLE ANNE HICE

50. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1 – 39 above.

51. Defendant, CAROLE ANNE HICE, is the Owner and President of DEERFIELD ROADSIDE, LLC.

52. Defendant, CAROLE ANNE HICE, is an Owner who acted with direct control over the work, pay, and job duties of Plaintiff.

53. Defendant, CAROLE ANNE HICE, had the power to hire and fire Plaintiff.

54. Defendant, CAROLE ANNE HICE, supervised and controlled Plaintiff's work schedule, job duties and responsibilities, and/or conditions of employment.

55. Defendant, CAROLE ANNE HICE, determined Plaintiff's rate and method of payment.

56. Defendant, CAROLE ANNE HICE, maintained employment records.

57. Defendant, CAROLE ANNE HICE, determines DEERFIELD ROADSIDE, LLC's overtime policies.

58. As such, Defendant, CAROLE ANNE HICE, is charged with the responsibility for violations of Plaintiff's rights to overtime and resulting damages.

WHEREFORE, Plaintiff, ERIC COBB, individually and on behalf of other similarly situated demands judgment against DEERFIELD ROADSIDE, LLC, and CAROLE ANNE HICE, individually, for the payment of all unpaid wages, overtime hours at time and one-half the regular rate of pay for the hours worked by them for which Defendants did not properly compensate them, liquidated damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court determines to be just and appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable.

Respectfully submitted,

/s/ Carlos V. Leach _____

Carlos V. Leach, Esq.

Ga. Bar No.: 488443

MORGAN & MORGAN, P.A.

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Attorneys for Plaintiff(s)

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

ERIC COBB, individually and on behalf of other similarly situated

DEFENDANT(S)

DEERFIELD ROADSIDE, LLC, and CAROLE ANNE HICE, individually

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF DeKalb County
 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Barrow County
 (IN U.S. PLAINTIFF CASES ONLY)

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

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Carlos V. Leach, Esq., MORGAN & MORGAN, P.A.,
 191 Peachtree Street, N.E., Suite 4200, P.O. Box 57007
 Atlanta, GA 30343-1007; Tel: (404) 965-8811; Fax:
 (404) 965-8812; Email: CLeach@forthepeople.com

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)
 (FOR DIVERSITY CASES ONLY)

- | | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|---|
| PLF | DEF | | PLF | DEF | |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION |

IV. 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 District)
 6 MULTIDISTRICT LITIGATION - TRANSFER
 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. § 216(b), unpaid wages

(IF COMPLEX, CHECK REASON BELOW)

- | | |
|---|---|
| <input type="checkbox"/> 1. Unusually large number of parties. | <input type="checkbox"/> 6. Problems locating or preserving evidence |
| <input type="checkbox"/> 2. Unusually large number of claims or defenses. | <input type="checkbox"/> 7. Pending parallel investigations or actions by government. |
| <input type="checkbox"/> 3. Factual issues are exceptionally complex | <input type="checkbox"/> 8. Multiple use of experts. |
| <input type="checkbox"/> 4. Greater than normal volume of evidence. | <input type="checkbox"/> 9. Need for discovery outside United States boundaries. |
| <input type="checkbox"/> 5. Extended discovery period is needed. | <input type="checkbox"/> 10. Existence of highly technical issues and proof. |

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$ _____ APPLYING IFP _____ MAG. JUDGE (IFP) _____
 JUDGE _____ MAG. JUDGE _____ (Referral) NATURE OF SUIT _____ CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro sc
- 555 PRISON CONDITION(S) - Filed Pro sc
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSDI TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ Unknown

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

March 6, 2017

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Technician Sues Deerfield Roadside over Unpaid Overtime Wages](#)
