

SEP 14 2018

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION
JAMES W. MCCORMACK, CLERK
By: [Signature]
DEP CLERK

**ROBERT GIPSON, Individually and on
Behalf of All Those Similarly Situated**

PLAINTIFF

vs.

No. 4:18-cv-672 - BRW

DASSAULT FALCON JET CORP.

DEFENDANT

ORIGINAL COMPLAINT – CLASS AND COLLECTIVE ACTION

COMES NOW Robert Gipson, by and through his attorneys Daniel Ford, Chris Burks and Josh Sanford of Sanford Law Firm, PLLC, and for his Original Complaint – Class and Collective Action (“Complaint”), he does hereby state and allege as follows:

I. PRELIMINARY STATEMENTS

1. This is an action brought by Plaintiff Robert Gipson, individually and on behalf of all those similarly situated, against Defendant Dassault Falcon Jet Corp (“Defendant”) for violations of the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), and the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* (the “AMWA”).

*This case assigned to District Judge Wilson
and to Magistrate Judge Harris*

2. Plaintiff seeks declaratory judgment; monetary damages; liquidated damages; prejudgment interest; costs; and a reasonable attorney’s fee, as a result of Defendant’s policy and practice of failing to pay Plaintiff proper overtime compensation under the FLSA and under the AMWA within the applicable statutory limitations period.

II. JURISDICTION AND VENUE

3. The United States District Court for the Eastern District of Arkansas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

4. This Complaint also alleges AMWA violations, which arise out of the same set of operative facts as the federal cause of action herein alleged; accordingly, this state cause of action would be expected to be tried with the federal claim in a single judicial proceeding. This Court has supplemental jurisdiction over Plaintiff's AMWA claims pursuant to 28 U.S.C. § 1367(a).

5. A substantial part of the acts complained of herein were committed and had their principal effect against Plaintiff within the Western Division of the Eastern District of Arkansas; therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

6. Plaintiff is a citizen and resident of Pulaski County.

7. Defendant Dassault Falcon Jet Corp. is a foreign for-profit corporation registered to do business in the State of Arkansas.

8. Defendant Dassault Falcon Jet Corp.'s principal place of business is 200 Riser Road, Little Ferry, New Jersey 07643.

9. Defendant Dassault Falcon Jet Corp. maintains a website at: <http://www.dassaultfalcon.com>.

10. Defendant Dassault Falcon Jet Corp. manufactures airplanes and airplane components related to the air transportation business.

11. Defendant Dassault Falcon Jet Corp.'s services include installation, finishing, placement and assembly of airplane components at 3801 East 10th Street, Little Rock, Arkansas 72202.

12. The registered agent of Defendant Dassault Falcon Jet Corp is Corporate Creations Network, Inc., at 609 SW 8th Street #600, Bentonville, Arkansas 72712.

IV. FACTUAL ALLEGATIONS

13. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

14. To support its services related to installation, replacement, repair or maintenance of airplane components, Defendant hires individuals including Plaintiff Gipson as hourly paid manufacturing engineers.

15. The duties of manufacturing engineers for Defendant are to perform engineering tasks related to the design and construction of aircrafts and general operations of Defendant's business.

16. At all relevant times, Plaintiff worked on projects or with materials that had been moved or included in interstate commerce.

17. For each of the three calendar years preceding the filing of the Original Complaint in this case, Defendant's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated).

18. At all times relevant to this Complaint, Defendant employed more than four employees.

19. At all relevant times, Defendant was Plaintiff's employer and is and has been engaged in interstate commerce as that term is defined under the FLSA.

20. At all relevant times, Defendant was Plaintiff's employer under the AMWA.

21. Defendant directly hired Plaintiff, paid him wages and benefits, controlled his work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding their employment.

22. Plaintiff performed the duties of a manufacturing engineer for Defendant during the last three years.

23. Defendant paid Plaintiff an hourly rate in exchange for services as a manufacturing engineer.

24. As a manufacturing engineer for Defendant, Plaintiff was required to clock-in and clock-out each day, and to work on accounts.

25. Plaintiff and other manufacturing engineers regularly worked more than forty hours per week.

26. Despite working more than forty hours per week on a regular basis, Plaintiff and other manufacturing engineers was only paid his regular rate for any hours worked over forty, and not the proper overtime premium.

27. Defendant did not pay Plaintiff and other manufacturing engineers an overtime premium of one and-one-half times his regular rate of pay for all hours that worked over forty per week.

V. INDIVIDUAL CLAIM UNDER THE FLSA

28. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

29. 29 U.S.C. § 207 requires employers to pay employees one and one-half times the employee's regular rate for all hours that the employee works in excess of forty (40) per week. 29 U.S.C.S. § 207 (LEXIS 2013).

30. Defendant violated the FLSA by not paying Plaintiff one and one-half times his regular rate when calculating his overtime pay for all hours worked over forty in a given workweek.

31. Defendant's conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

32. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for, and Plaintiff seeks, unpaid overtime wages, liquidated damages, pre-judgment interest, civil penalties and costs, including reasonable attorney's fees as provided by the FLSA.

VI. INDIVIDUAL CLAIM UNDER THE AMWA

33. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

34. Plaintiff asserts this claim for damages and declaratory relief pursuant to the AMWA.

35. At all relevant times, Defendant was Plaintiff's "employer" within the meaning of the AMWA.

36. Arkansas Code Annotated § 211 requires employers to pay all employees one and one-half times regular wages for all hours worked over forty hours in a week, unless an employee meet the exemption requirements of 29 U.S.C. § 213 and accompanying Department of Labor regulations.

37. Defendant failed to pay Plaintiff all overtime wages owed, as required under the AMWA.

38. Defendant's failure to pay Plaintiff overtime of one and one-half his regular rate of pay for all hours worked resulted in a failure to pay Plaintiff full and complete overtime during weeks in which Plaintiff worked more than forty hours.

39. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

40. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages, costs, and a reasonable attorney's fee provided by the AMWA for all violations which occurred beginning at least three (3) years preceding the filing of Plaintiff's Original Complaint.

41. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the AMWA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

VII. FLSA § 216(b) REPRESENTATIVE ACTION ALLEGATIONS

42. Plaintiff repeats and re-alleges all the preceding paragraphs of this Original Complaint as if fully set forth in this section.

43. Plaintiff brings this collective action on behalf of all Manufacturing Engineers, or similar positions, employed by Defendant to recover monetary damages owed by Defendant to Plaintiff and members of the putative Classes for all the overtime compensation for all the hours he and they worked in excess of forty (40) each week.

44. Plaintiff brings this action on behalf of himself individually *and* all other similarly situated employees, former and present, who were and/or are affected by Defendant's willful and intentional violation of the FLSA.

45. In the past three years, Defendant has employed over fifty Manufacturing Engineers.

46. Like Plaintiff, these Manufacturing Engineers, or similar positions, regularly worked more than 40 hours in a week.

47. Defendant failed to pay these workers at the proper overtime rate. Because these employees are similarly situated to Plaintiff, and are owed overtime for the same reasons, the first 216(b) opt-in class is properly defined as:

All Senior Manufacturing Engineers, Manufacturing Engineers and Associate Manufacturing Engineers Within the Past Three Years

VIII. RULE 23 REPRESENTATIVE ACTION ALLEGATIONS

48. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

49. Plaintiff, individually and on behalf of all others similarly situated who were employed by Defendant within the State of Arkansas, brings this claim for relief for violation of the AMWA as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

50. Plaintiff proposes to represent an AMWA liability class of individuals defined as follows:

All Senior Manufacturing Engineers, Manufacturing Engineers and Associate Manufacturing Engineers in Arkansas Within the Last Three Years.

51. Upon information and belief, there are approximately 100 persons in the proposed class. Therefore, the proposed class is so numerous that joinder of all members is impracticable.

52. Common questions of law and fact relate to all of the proposed liability class members, such as these:

i. Whether Defendant's policy of failing to properly pay overtime-rate wages to members of the proposed class who worked in excess of forty (40) hours per week was unlawful under the AMWA; and

ii. Whether, as a result of Defendant's failure to lawfully calculate Plaintiff's overtime pay, Defendant paid members of the proposed class one and one-half times their regular wages for hours worked over forty (40) in each week in accordance with the AMWA.

53. The above common questions of law and fact predominate over any questions affecting only Plaintiff, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

54. The class members have no interest in individually controlling the prosecution of separate actions because the policy of the AMWA provides a bright-line rule for protecting all non-exempt employees as a class. To wit: "It is declared to be the public policy of the State of Arkansas to establish minimum wages for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being." Ark. Code Ann. § 11-4-202. To that end, all non-exempted employees must be paid for time worked over

forty (40) hours per week at a rate of one and one-half times their regular rate. Ark. Code Ann. § 11-4-211.

55. At the time of the filing of this Complaint, neither Plaintiff nor his counsel know of any litigation already begun by any members of the proposed class concerning the allegations in this complaint.

56. No undue or extraordinary difficulties are likely to be encountered in the management of this class action.

57. The claims of Plaintiff are typical of the claims of the proposed liability class in that Plaintiff and all others in the proposed liability class will claim that they were not paid one and one-half times their regular rate of pay for hours worked in excess of forty per week.

58. Plaintiff and his counsel will fairly and adequately protect the interest of the class.

59. Plaintiff is competent to litigate Rule 23 class actions and other complex litigation matters, including wage and hour cases like this one.

IX. EQUITABLE TOLLING

60. Plaintiff repeats and re-allege all the preceding paragraphs of this Complaint as if fully set forth in this section.

61. The applicable statute of limitations for Plaintiff's FLSA causes of action should be tolled because strict application of the statute of limitations would be inequitable.

62. Defendant, as an employer with a duty to comply with the FLSA and the means to do so, was and has at all relevant times been in a far superior position than

Plaintiff to understand the FLSA and apply it appropriately, and Defendant should not be permitted to benefit from this imbalance of power by the passage of time.

63. Further, FLSA regulations require that all employers display posters advising employees of their overtime pay rights. 29 C.F.R. § 516.4.

64. An employer's failure to post required FLSA notices regarding minimum wage and overtime provisions can toll the statute of limitations. *United States v. Sabhnani*, 566 F. Supp. 2d 139 (E.D.N.Y. 2008); *Henchy v. City of Absecon*, 148 F. Supp. 2d 435, 439 (D.N.J. 2001); *Kamens v. Summit Stainless, Inc.*, 586 F. Supp. 324, 328 (E.D. Penn. 1984).

65. Defendant failed to post all appropriate notices regarding the FLSA.

X. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Robert Gipson, individually and on behalf of all those similarly situated, respectfully prays that Defendant be summoned to appear and to answer herein and for declaratory relief and damages as follows:

A. Certification of a class pursuant to the Arkansas Rules of Civil Procedure, with all attendant notices to class members, and proper procedures, all as set forth above and as to be explained more fully by motion practice;

B. Certification of a collective action pursuant to § 216(b) of the FLSA, with all attendant notices to collective members, and proper procedures, all as set forth above and as to be explained more fully by motion practice;

C. A declaratory judgment that Defendant's practices alleged herein violate the FLSA, the AMWA, and their relating regulations;

D. Judgment for damages for all unpaid overtime compensation under the FLSA, the AMWA, and their relating regulations;

E. Judgment for liquidated damages pursuant to the FLSA, the AMWA, and their relating regulations;

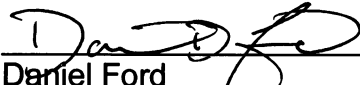
F. An order directing Defendant to pay Plaintiff and all other similarly situated employees prejudgment interest, a reasonable attorney's fee and all costs connected with this action; and

G. Such other and further relief as this Court may deem necessary, just and proper.

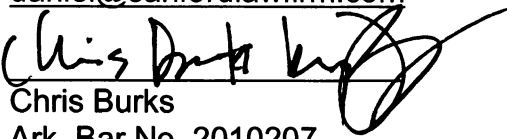
Respectfully submitted,

**PLAINTIFF ROBERT GIPSON,
Individually and On Behalf of
All Those Similarly Situated**


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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

ROBERT GIPSON, Individually and On Behalf of Those Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Josh Sanford and Chris Burks, SANFORD LAW FIRM, PLLC, One Financial Center, 650 South Shackleford, Suite 411, Little Rock, Arkansas 72211; 501-221-0088; josh@sanfordlawfirm.com

DEFENDANTS

DASSAULT FALCON JET CORP.

County of Residence of First Listed Defendant (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, 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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, and Labor Standards.

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): 29 USC 201 et seq. Brief description of cause: Unpaid Overtime

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 09/14/2018

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: [Aircraft Manufacturer Dassault Falcon Jet Corp. Facing Engineer's Wage and Hour Suit](#)
