

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
OKLAHOMA CITY DIVISION**

**KENNETH McMAHAN, individually and
on behalf of all others similarly situated**

Plaintiff,

vs.

DIGITAL NETWORKS, LLC.,

Defendant.

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Docket No. CIV-16-1290-D

JURY TRIAL DEMANDED

COLLECTIVE ACTION

COLLECTIVE ACTION COMPLAINT

I. SUMMARY

1. Kenneth McMahan (“Plaintiff”) brings this lawsuit to recover unpaid overtime wages and other damages from Digital Networks, LLC (“Digital Networks” or “Defendant”) under the collective action provision of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b)..

2. Plaintiff, and others workers like him, worked for Defendant performing largely manual labor type job duties, typically worked in excess of 40 hours a week, and worked as Field Service Technicians. In violation of the FLSA, Digital Networks denied overtime to all of its Field Service Technicians. This collective action seeks to recover the unpaid overtime wages and other damages owed to these workers.

II. JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because this action involves over 100 persons with an aggregate amount in controversy in excess of \$5 million with the parties being citizens of different states.

4. The Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. § 1367.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

6. Defendant is headquartered and conducts substantial business operations within the Western District of Oklahoma, Oklahoma City Division.

III. THE PARTIES

7. Kenneth McMahan worked for Defendant performing manual labor surrounding the installation and operation of communications equipment in the oilfield. He never received overtime compensation despite working over 40 hours in a single workweek. Instead, Plaintiff was paid a salary and job bonuses, regardless of the number of hours worked. His consent to be a party plaintiff is attached hereto as Exhibit 1.

8. Plaintiff seeks to represent a nationwide class under the Fair Labor Standards Act collective action provision, 29 U.S.C. § 216(b). The FLSA 216(b) Class is defined as:

ALL FIELD SERVICE TECHNICIANS WHO WORKED FOR DIGITAL NETWORKS, LLC WITHIN THE PAST THREE YEARS.

9. **Digital Networks, LLC** may be served through its registered agent Johnny Craig Blankenship at **11109 S. Rose Ave., Oklahoma City, Oklahoma 73170.**

IV. FACTS

10. Digital Networks provides wireless technology to support oilfield communications. *See* <http://digitalnetworksusa.com/#>

11. Digital Networks operates nationwide, with operations in Pennsylvania, Ohio, Texas, Colorado, California, and elsewhere. *Id.*

12. Digital Networks offers a wide variety of equipment and services, but specializes in satellite systems, cell boosters, intercoms, and E-911 service. *See*

<http://digitalnetworksusa.com/#solutions/>

13. To install and operate these types of equipment, Digital Networks employed hundreds of Field Service Technicians.

14. Field Service Technicians' job duties involve traveling to various job sites each day, installing communication equipment, performing maintenance and troubleshooting on the equipment, and operating the equipment with the customer.

15. Field Service Technicians work long and hard hours in the field. The majority of their work is manual in nature, using hand tools and carrying heavy equipment.

16. Working in the oilfield, Field Service Technicians are required to wear various types of PPE, including hard hats and work boots.

17. Beyond being manual in nature, every aspect of a Field Service Technicians' job is predetermined for them.

18. Digital Networks trains its employees how to install and operate the communication equipment. Further, Field Service Technicians are instructed to contact their home office for additional help, if needed.

19. Because Digital Networks provides a sophisticated communications system, Field Service Technicians are not allowed to act on his or her own in the installation, operation, or maintenance/troubleshooting of issues. Field Service Technicians must comply with Digital Networks strict policies and procedures governing each issue that arises throughout the job.

20. No specific degree or background is required to be a Field Service Technician; Digital Networks provides all the training necessary to perform the job the Digital Networks way.

21. Indeed, Field Service Technicians perform non-exempt job duties under the FLSA and related state laws.

22. Field Service Technicians work well over 40 hours a week; however, Digital Networks does not pay its Field Service Technicians overtime.

23. Digital Networks pays all of its Field Service Technicians under a uniform compensation policy.

24. Field Service Technicians receive a salary and job bonus, regardless of the number of hours worked.

25. Other Field Service Technicians were paid under the same or similar pay practice for similar work.

26. Regardless of location, all Field Service Technicians were treated the same by Digital Networks and denied overtime pay.

27. As the controlling law makes clear, the manual labor duties performed by Plaintiff and the other Field Service Technicians is *non*-exempt work. Therefore, Digital Networks owes back overtime wages to all of their Field Service Technicians in the United States.

V. COLLECTIVE ACTION ALLEGATIONS

28. Plaintiff incorporates all previous paragraphs and alleges that the illegal pay practices Digital Networks imposed on Plaintiff were similarly imposed on the Field Service Technicians employed in the United States.

29. Over one hundred employees have been victimized by this pattern, practice, and policy which are in willful violation of the FLSA.

30. Numerous other employees who worked with Plaintiff have indicated they were paid in the same manner, performed similar work, and were not properly compensated for all hours worked as required by federal and state wage laws.

31. Based on his experiences and tenure with Digital Networks, Plaintiff is aware that Defendant's pay practices or policies have been imposed on all members of the class.

32. The members of the class all were not afforded overtime compensation when they worked in excess of forty hours per week.

33. Defendant's failure to pay wages and overtime compensation as required by the FLSA, result from generally applicable, systematic policies and practices which are not dependent on the personal circumstances of the Field Service Technicians.

34. Plaintiff's experiences are therefore typical of the experiences of all members of the Class.

35. The specific job titles or precise job locations of the various members of the Class do not prevent class or collective treatment.

36. Plaintiff has no interests contrary to, or in conflict with members of the Class. Like each member of the proposed class, Plaintiff has an interest in obtaining the unpaid overtime wages owed under federal law.

37. A collective action, such as the instant one, is superior to other available means for fair and efficient adjudication of the lawsuit.

38. Absent this action, many members of the Class likely will not obtain redress of their injuries and Digital Networks will reap the unjust benefits of violating the FLSA.

39. Furthermore, even if some of the members of the Class could afford individual litigation against Digital Networks, it would be unduly burdensome to the judicial system.

40. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of individual members of the classes and provide for judicial consistency.

41. The questions of law and fact common to each of the members of the Class predominate over any questions affecting solely the individual members. Among the common questions of law and fact are:

- (a) Whether Digital Networks employed Field Service Technicians within the meaning of the FLSA;
- (b) Whether the Field Service Technicians were improperly classified by Digital Networks as exempt from overtime compensation;
- (c) Whether Digital Networks decision to classify Field Service Technicians as exempt was made in good faith;
- (d) Whether Defendant's violation of the FLSA was willful; and
- (e) Whether Defendant's failure to pay Plaintiff and the Field Service Technicians overtime pay due to them was by virtue of their uniform designation as exempt.

42. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and the members of the Class sustained damages arising out of Digital Networks illegal and uniform employment policies.

43. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its ability to go forward as a collective action.

44. Although the issue of damages may be somewhat individual in character, there is no detraction from the common nucleus of liability facts. Therefore, this issue does not preclude collective and class action treatment.

VI. COVERAGE UNDER THE FLSA

45. At all times hereinafter mentioned, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

46. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

47. At all times hereinafter mentioned, Defendant has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise have and have had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise have had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

48. At all times hereinafter mentioned, Plaintiff was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

VII. FLSA VIOLATIONS

49. During the relevant time period, Defendant has violated, and is violating, the provisions of Sections 6 and/or 7 of the FLSA, 29 U.S.C. §§ 206, 207, and 215(a)(2), by employing persons in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA for workweeks longer than 40 hours without compensating such employees for their employment in excess of 40 hours per week at rates no less than one and one-half the regular rates for which they were employed.

50. Defendant knowingly, willfully, or in reckless disregard carried out this illegal pattern or practice of failing to pay Plaintiff and all Field Service Technicians overtime compensation. The decision by Defendant not to properly pay overtime compensation to their employees was neither reasonable, nor in good faith. Accordingly, Plaintiff and all Field Service Technicians are entitled to overtime wages under the FLSA in an amount equal to one and one-half times their rate of pay, plus liquidated damages, attorney's fees and costs.

VIII. JURY DEMAND

51. Plaintiff hereby demands a jury.

IX. RELIEF SOUGHT

52. WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- a. An Order designating this case as a collective action and permitting the issuance of a notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);
- b. For an Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid back wages due to Plaintiff and the Putative FLSA Class for liquidated damages equal in amount to their unpaid compensation;
- c. For an Order awarding attorneys' fees, costs and pre- and post-judgment interest; and
- d. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

By: /s/ Michael A. Josephson

Michael A. Josephson

Fed. Id. 27157

State Bar No. 24014780

Lindsay R. Itkin

Fed Id. 1458866

State Bar No. 24068647

Andrew W. Dunlap

Fed Id. 1093163

State Bar No. 24078444

Jessica M. Bresler

Fed Id. 2459648

State Bar No. 24090008

**FIBICH, LEEBRON, COPELAND,
BRIGGS & JOSEPHSON**

1150 Bissonnet

Houston, Texas 77005

713-751-0025 – Telephone

713-751-0030 – Facsimile

mjosephson@fibichlaw.com

litkin@fibichlaw.com

adunlap@fibichlaw.com

jbresler@fibichlaw.com

AND

Richard J. (Rex) Burch

Fed. Id. 21615

State Bar No. 24001807

James Jones

Fed. Id. 0090

State Bar No. 10908300

BRUCKNER BURCH, P.L.L.C.

8 Greenway Plaza, Suite 1500

Houston, Texas 77046

713-877-8788 – Telephone

713-877-8065 – Facsimile

rburch@brucknerburch.com

ATTORNEYS IN CHARGE FOR PLAINTIFF

EXHIBIT 1

CONSENT TO JOIN WAGE CLAIM

Print Name: Kenneth Ryan mcmahan

1. I hereby consent to participate in a collective action lawsuit against Digital Networks to pursue my claims of unpaid overtime during the time that I worked with the company.
2. I understand that this lawsuit is brought under the Fair Labor Standards Act, and consent to be bound by the Court's decision.
3. I designate the law firm and attorneys at FIBICH, LEEBRON, COPELAND, BRIGGS & JOSEPHSON as my attorneys to prosecute my wage claims.
4. I authorize the law firm and attorneys at FIBICH, LEEBRON, COPELAND, BRIGGS & JOSEPHSON to use this consent to file my claim in a separate lawsuit, class/collective action, or arbitration against the company.

Signature: 
Kenneth Ryan mcmahan (May 9, 2016)

Date Signed: May 9, 2016

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

KENNETH McMAHAN, individually and on behalf of all others similarly situated;

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael A. Josephson, Fibich, Leebron, Copeland, Briggs & Josephson, LLP, 1150 Bissonnet, Houston, TX 77005; Tel 713-751-0025

DEFENDANTS

DIGITAL NETWORKS, LLC

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER 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, 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 U.S.C. § 216(b)
Brief description of cause: Unpaid overtime compensation

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 11/10/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael A. Josephson

FOR OFFICE USE ONLY

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Digital Networks, LLC Facing Unpaid Overtime Class Action](#)
