

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

2018 MAY 14 PM 2:41
CLERK, US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DISTRICT

TRAVIS ROBERTS, on behalf of)
himself and others similarly situated,)
)
Plaintiff,)
)
v.)
)
GREAT SOUTH TIMBER AND)
LUMBER, LLC)
)
Defendant.)
_____)

Civil Action No.: 3:18-cv-644-J-3MCR

COMPLAINT

COMES NOW the Plaintiff, TRAVIS ROBERTS (“PLAINTIFF”), on behalf of himself and others similarly situated, and files this Complaint against DEFENDANT, GREAT SOUTH TIMBER AND LUMBER, LLC (“DEFENDANT”) respectfully stating unto the Court the following:

GENERAL ALLEGATIONS

1. This is a cause of action to recover compensatory and liquidated damages, attorney fees, and other relief from DEFENDANT for violations of the Fair Labor Standards Act (“FLSA”) and for wrongful termination in violation of the Family and Medical Leave Act.
2. At all material times, PLAINTIFF was a citizen and resident of Florida.
3. At all material times, DEFENDANT was a Florida corporation with a facility in Columbia County, Florida, which is where PLAINTIFF was employed at all relevant times.

BACKGROUND

4. PLAINTIFF brings this action to require DEFENDANT to pay back wages owed to PLAINTIFF, which DEFENDANT failed to pay in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201. *et seq.*
5. At all relevant times, DEFENDANT acted through its officers, agents, servants and employees.
6. Upon information and belief, at all relevant times, DEFENDANT had annual gross sales in excess of \$500,000.00 and two or more employees who regularly handled goods that moved in or were produced for interstate commerce.
7. At all relevant times, DEFENDANT was an enterprise engaged in commerce as defined at 29 U.S.C. § 203.
8. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331, 1337 and by 29 U.S.C. § 216.
9. In or around September 2014, DEFENDANT hired PLAINTIFF to work as a machine operator. The proposed collective class of individuals consists of employees of DEFENDANT, who like PLAINTIFF were hourly workers, who performed overtime work for which they were not properly compensated.
10. Throughout his employment, PLAINTIFF routinely worked more than 40 hours per week in a non-exempt job but was not paid at a rate of one and one-half times his hourly rate when he worked overtime. The similarly situated employees are also believed to have performed overtime work for which they were compensated at a straight time rate of pay.
11. The FLSA requires an employer to pay its employees at a rate of at least minimum

wage for all hours worked and also requires an employer to pay its employees time and one-half when they work more than 40 hours per week.

12. Despite working at the direction and knowledge of DEFENDANT, PLAINTIFF and those similarly situated were not paid time and one-half when they worked more than 40 hours in a week.
13. Upon information and belief, DEFENDANT has, since the beginning of PLAINTIFF'S employment, willingly, deliberately and intentionally refused to pay PLAINTIFF and those similarly situated for time actually worked and time and one-half for overtime hours he worked.
14. PLAINTIFF and those similarly situated are therefore, owed compensation for time actually worked but not paid, and overtime pay by DEFENDANT, who willingly and knowingly withheld those wages.

COUNT I
VIOLATION OF THE FAIR LABOR STANDARDS ACT

15. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
16. DEFENDANT regularly engages in commerce and its employees, including PLAINTIFF and those similarly situated, handled and used materials, which have moved in interstate commerce.
17. At all relevant times, DEFENDANT was an employer within the meaning of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* and is subject to the provisions of the Act.
18. PLAINTIFF and those similarly situated, at all relevant times were non-exempt employees of DEFENDANT, as defined by the Fair Labor Standards Act of 1938, as

amended, 29 U.S.C. §§ 201, *et seq.* who performed work off the clock for which they received no compensation.

19. During their employment with DEFENDANT, PLAINTIFF and those similarly situated performed work for which they were not properly compensated in violation of the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* More specifically, DEFENDANT violated the minimum wage provision of the FLSA by failing to pay PLAINTIFF and those similarly situated for all the time they worked. DEFENDANT also violated the overtime provisions of the FLSA by failing to pay PLAINTIFF and those similarly situated time and one-half when they worked more than 40 hours per week.
20. Upon information and belief, DEFENDANT'S pay system was unilaterally imposed upon PLAINTIFF and those similarly situated by DEFENDANT.
21. DEFENDANT'S failure to compensate PLAINTIFF and those similarly situated for all compensable hours violates the minimum wage and overtime provisions of the FLSA and the regulations thereunder.
22. DEFENDANT'S failures to compensate PLAINTIFF and those similarly situated for all compensable hours and to pay them time and one-half for their overtime were willful and knowing violations of the Acts.
23. As a result of DEFENDANT'S willful and knowing failure to properly compensate PLAINTIFF and those similarly situated, they have suffered substantial delay in receipt of wages owed and damages.
24. Pursuant to 29 U.S.C. §§206, 207 and 216, DEFENDANT owes PLAINTIFF and those similarly situated compensation for unpaid work, time and one-half pay for their unpaid

overtime, and an additional equal amount as liquidated damages, together with an additional sum for attorney's fees and costs.

25. All conditions precedent to maintaining this action have occurred or otherwise been waived.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANT and respectfully prays the Court that PLAINTIFF and those similarly situated will recover unpaid wages, unpaid overtime, liquidated damages, pre- and post-judgment interest, attorney fees, and other relief by reason of DEFENDANT'S violations of the FLSA: for a trial by jury on all issues so triable; for an Order enjoining DEFENDANT from continuing its practice of having employees perform work "off the clock" and/or failing to pay employees for time actually worked, and, for such other and further relief as the Court may deem just and proper.

COUNT II
VIOLATION OF FLORIDA STATUTE 448.01 *et seq.*

27. The General Allegations and Background above are hereby incorporated by reference as though fully set forth herein.
28. DEFENDANT failed to pay to PLAINTIFF wages due and owing in violation of Florida Statute § 448.01, *et seq.* To wit, upon information and belief, DEFENDANT failed to fully pay PLAINTIFF his agreed hourly rate for the last two weeks of his employment.
29. Pursuant to Florida Statute § 448.08, PLAINTIFF is entitled to have his attorney's fees paid for by DEFENDANT if he is successful in this action.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANT and respectfully prays the Court that PLAINTIFF and those similarly situated will recover nominal relief, unpaid

wages, unpaid overtime, liquidated damages, pre- and post-judgment interest, attorney fees, and other relief by reason of DEFENDANT'S violations of the FLSA; for a trial by jury on all issues so triable; for an Order enjoining DEFENDANT from continuing its practice of having employees perform work "off the clock" and/or failing to pay employees for time actually worked, and, for such other and further relief as the Court may deem just and proper.

COUNT III
FMLA INTERFERENCE/RETALIATION

30. Upon information and belief, DEFENDANT employs and employed within a 75 miles radius, 50 or more employees for each working day, during each of 20 or more workweeks in the current or preceding calendar year.
31. In or around September 2017, PLAINTIFF advised DEFENDANT that he suffered from a serious health condition, namely an emergency situation with regard to his stomach that led to him receiving emergency medical care and for which he was required her to be out of work for three consecutive days and which required follow-up treatment. Rather than allowing PLAINTIFF to return to work following his leave, DEFENDANT terminated PLAINTIFF.
32. DEFENDANT interfered with PLAINTIFF'S right to take unpaid leave from work under the Family and Medical Leave Act.
33. PLAINTIFF had a "serious health condition," namely an injury, impairment or physical or mental condition that involved inpatient care in a hospital or other care facility, and/or continuing treatment by a health care provider.
34. PLAINTIFF gave appropriate notice of his need to be absent from work by notifying DEFENDANT as soon as practicable after he learned of the need for leave.

35. DEFENDANT interfered with the exercise of PLAINTIFF'S right to unpaid leave, *inter alia*, by: 1) terminating his employment; 2) refusing to allow PLAINTIFF to return to his job, or to an equivalent position, upon return from leave; 3) discouraging PLAINTIFF from taking leave; and 4) failing to provide PLAINTIFF with a written notice detailing the specific expectations and obligations of the employee with regard to a request for leave.
36. DEFENDANT'S violation of the FMLA was willful.
37. As the actual, proximate, and legal result of that violation, PLAINTIFF suffered significant economic harm, including the loss of his job resulting in lost wages and benefits.

WHEREFORE, PLAINTIFF demands judgment against DEFENDANT and respectfully prays the Court that PLAINTIFF will recover unpaid wages, benefits and other economic relief, injunctive relief in the form of reinstatement to his former position, liquidated damages, pre- and post-judgment interest, attorney fees and costs of litigation, and other relief by reason of DEFENDANT'S violations of the FMLA; for a trial by jury on all issues so triable; and, for such other and further relief as the Court may deem just and proper.

Dated: May 12, 2018

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Respectfully submitted,

THE LAW OFFICE OF MATTHEW BIRK

/s/ Matthew W. Birk

Matthew W. Birk

Florida Bar No.: 92265

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(352) 372-3464 FAX

mbirk@gainesvilleemploymentlaw.com

ATTORNEYS FOR PLAINTIFF

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JS 44 (Rev. 06/17)

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.)

<p>I. (a) PLAINTIFFS TRAVIS ROBERTS, on behalf of himself and others similarly situated,</p> <p>(b) County of Residence of First Listed Plaintiff <u>Columbia</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorneys (Firm Name, Address, and Telephone Number) The Law Office of Matthew Birk, LLC 309 NE 1st St., Gainesville, FL (352) 244-2069</p>	<p>DEFENDANTS GREAT SOUTH TIMBER & LUMBER, LLC</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) _____</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		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
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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) Click here for: Nature of Suit Code Descriptions.

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	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <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 <p>PERSONAL PROPERTY</p> <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 <p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <p>SOCIAL SECURITY</p> <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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 <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS	
<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 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	<p>Habeas Corpus:</p> <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 <p>Other:</p> <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 checked="" 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"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

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 - Transfer
 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Family and Medical Leave Act

Brief description of cause:
Wrongful termination

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMANDS
 CHECK YES only if demanded in complaint:
JURY DEMAND:
 Yes
 No

VIII. RELATED CASE(S) IF ANY (See instructions):
 JUDGE _____
 DOCKET NUMBER _____

DATE: 05/12/2018
 SIGNATURE OF ATTORNEY OF RECORD: s/Matthew W. Birk

FOR OFFICE USE ONLY

RECEIVED: _____ AMOUNT: _____ APPLYING IFP: JUDGE: 34 MAG. JUDGE: MCR

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Great South Timber and Lumber Axed with Former Employee's Wage and Hour Suit](#)
