

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

<b>TIMOTHY SLONE, individually and on behalf of all others similarly situated</b>	§	<b>Docket No. <u>CIV-16-1296-HE</u></b>
<b>Plaintiff,</b>	§	<b>JURY TRIAL DEMANDED</b>
<b>v.</b>	§	<b>CLASS/COLLECTIVE ACTION</b>
<b>GULFPORT ENERGY CORPORATION</b>	§	
<b>Defendant.</b>	§	

**ORIGINAL CLASS AND COLLECTIVE ACTION COMPLAINT**

**I. SUMMARY**

1. Timothy Slone (“Slone” or “Plaintiff”) brings this lawsuit to recover unpaid overtime wages and other damages from Gulfport Energy Corporation (“Gulfport” or “Defendant”) under the Fair Labor Standards Act (“FLSA”), Ohio Minimum Fair Wage Standards Act, O.R.C. §§4111 *et seq.*, (“the Ohio Wage Act”), the Ohio Prompt Pay Act (“OPPA”), Ohio Rev. Code §4113.15 (the Ohio Wage Act and the OPPA will be referred to collectively as “the Ohio Acts”), and the Ohio Constitution, Oh. Const. Art. II § 34a.

2. Plaintiff and the other workers like him regularly worked for Defendant in excess of 40 hours each week. But these workers never received overtime for hours worked in excess of 40 hours in a single workweek. Instead of paying overtime as required by the FLSA and the Ohio Acts, Defendant improperly classified Plaintiff and those similarly situated as independent contractors and paid them a daily rate with no overtime compensation. 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. 29 U.S.C. § 216(b).

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

5. Defendant is headquartered and conducts business in this District and Division.

## III. THE PARTIES

6. Plaintiff worked for Defendant as a Safety Consultant from approximately July 2014 until September 2015. Throughout his employment with Defendant, he was paid a day-rate with no overtime compensation and was classified as an independent contractor. His consent to be a party plaintiff is attached as Exhibit 1.

7. Plaintiff brings this action on behalf of himself and all other similarly situated workers who were classified as independent contractors and paid by Defendant's day-rate system. Defendant paid each of these workers a flat amount for each day worked and failed to pay them overtime for all hours that they worked in excess of 40 hours in a workweek in accordance with the FLSA and the Ohio Acts. The class of similarly situated employees or potential class members sought to be certified is defined as follows:

**ALL CURRENT AND FORMER OILFIELD WORKERS  
EMPLOYED BY GULFPORT ENERGY CORPORATION  
WHO WERE CLASSIFIED AS INDEPENDENT  
CONTRACTORS AND PAID A DAY-RATE INSTEAD OF  
TIME AND ONE-HALF FOR HOURS WORKED IN  
EXCESS OF FORTY (40) HOURS IN A WORKWEEK  
DURING THE LAST THREE (3) YEARS.**

8. Defendant, **Gulfport Energy Corporation**, may be served by serving its registered agent for service of process, **The Corporation Company, 1833 Morgan Rd., Oklahoma City, OK 73128**.

**IV. COVERAGE UNDER THE FLSA**

9. 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).

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

11. At all times hereinafter mentioned, Defendant has been part of 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 has and has 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 has 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).

12. At all times hereinafter mentioned, Plaintiff and the Putative Class Members were engaged in commerce or in the production of goods for commerce.

13. As will be shown through this litigation, Defendant treated Plaintiff (and indeed all of its workers that it classified as independent contractors and paid a daily rate to without overtime compensation) as employees and uniformly dictated the pay practices Plaintiff and its other workers were subjected to.

14. Defendant's misclassification of Plaintiff and the Putative Class Members as independent contractors does not alter their status as employers for purposes of this FLSA collective action or Rule 23 class action under the Ohio Acts.

**V. FACTS**

15. Gulfport is an Oklahoma City-based oil and natural gas exploration and production

company operating worldwide and throughout the United States, including Ohio. In order to provide services to many of its customers, Gulfport contracts with certain companies to provide it with personnel to perform the necessary work.

16. Many of these individuals worked for Defendant on a day-rate basis, were misclassified as independent contractors, and make up the proposed Putative Class. While exact job titles and job duties may differ, these alleged “employees” are subjected to the same or similar illegal pay practices for similar work. Specifically, Defendant classified all of these workers as independent contractors and paid them a flat sum for each day worked, regardless of the number of hours that they worked that day (or in that workweek) and failed to provide them with overtime pay for hours that they worked in excess of 40 hours in a workweek.

17. For example, Plaintiff Timothy Slone worked for Defendant as a Safety Consultant from approximately July 2014 until September 2015. Throughout his employment with Defendant, he was classified as an independent contractor and paid on a day-rate basis.

18. In this capacity, Plaintiff’s primary job duties included implementing safety procedures, monitoring wellsite safety and testing, assisting in incident investigation and incident reporting, and completing daily safety reports. Plaintiff worked well in excess of 40 hours each week while employed by Defendant, often for weeks at time.

19. The work Plaintiff performed was an essential part of Defendant’s core business.

20. During Plaintiff’s employment with Defendant while he was classified as an independent contractor, Defendant exercised control over all aspects of his job. Defendant did not require any substantial investment by Plaintiff in order for him to perform the work required of him. Defendant determined Plaintiff’s opportunity for profit and loss. Plaintiff was not required to possess any unique or specialized skillset (other than that maintained by all other workers in his respective position) to perform his job duties. Plaintiff worked exclusively for Defendant as an

independent contractor from approximately July 2014 until September 2015.

21. Indeed, Defendant controlled all of the significant or meaningful aspects of the job duties performed by Plaintiff.

22. Defendant ordered the hours and locations Plaintiff worked, tools used, and rates of pay received.

23. Even though Plaintiff often worked away from Defendant's offices without the presence of a direct supervisor employed by Defendant, Defendant still controlled all aspects of Plaintiff's job activities by enforcing mandatory compliance with Defendant's and/or its client's policies and procedures.

24. No real investment was required of Plaintiff to perform his job. More often than not, Plaintiff utilized equipment provided by Defendant to perform his job duties. Plaintiff did not provide the equipment he worked with on a daily basis. Defendant and/or its clients made the large capital investments in buildings, machines, equipment, tools, and supplied in the business in which Plaintiff worked.

25. Plaintiff did not incur operating expenses like rent, payroll, marketing, and insurance.

26. Plaintiff was economically dependent on Defendant during his employment.

27. Defendant set Plaintiff's rates of pay, his work schedule, and prohibited him from working other jobs for other companies while he was working on jobs for Defendant.

28. Defendant directly determined Plaintiff's opportunity for profit and loss. Plaintiff's earning opportunity was based on the number of days Defendant scheduled him to work.

29. Very little skill, training, or initiative was required of Plaintiff to perform his job duties.

30. Indeed, the daily and weekly activities of the Putative Class Members were routine and largely governed by standardized plans, procedures, and checklists created by Defendant and/or

its clients. Virtually every job function was pre-determined by Defendant and/or its clients, including the tools to use at a job site, the data to compile, the schedule of work, and related work duties. The Putative Class Members were prohibited from varying their job duties outside of the pre-determined parameters. Moreover, the job functions of the Putative Class Members were primarily manual labor/technical in nature, requiring little to no official training, much less a college education or other advanced degree. The Putative Class Members did not have any supervisory or management duties. Finally, for the purposes of an FLSA overtime claim, the Putative Class Members performed substantially similar job duties related to servicing energy operations in the field.

31. Plaintiff performed routine manual and technical labor duties that were largely dictated by Defendant and/or its clients.

32. Plaintiff was not employed by Defendant on a project-by-project basis. In fact, while Plaintiff was classified as an independent contractor, he was regularly on call for Defendant and/or its clients and was expected to drop everything and work whenever needed.

33. All of the Putative Class Members perform the same or similar job duties and are subjected to the same or similar policies and procedures which dictate the day-to-day activities performed by each person.

34. The Putative Class Members also worked similar hours and were denied overtime as a result of the same illegal pay practice. The Putative Class Members all worked in excess of 40 hours each week and were often scheduled for 12 hour shifts for weeks at a time. Instead of paying them overtime, Defendant paid the Putative Class Members a day-rate and misclassified them as independent contractors. Defendant denied the Putative Class Members overtime for any and all hours worked in excess of 40 hours in a single workweek.

35. Defendant's policy of failing to pay its independent contractors, including Plaintiff, overtime violates the FLSA because these workers are, for all purposes, employees performing non-exempt job duties.

36. It is undisputed that the contractors are operating and monitoring oilfield machinery, performing manual labor, and working long hours out in the field.

37. Because Plaintiff (and Defendant's other independent contractors) was misclassified as an independent contractor by Defendant, he should receive overtime for all hours that he worked in excess of 40 hours in each workweek.

38. Defendant's day-rate system violates the FLSA and the Ohio Acts because Plaintiff and those similarly situated did not receive any overtime pay for hours worked over 40 hours each week.

## **VI. FLSA VIOLATIONS**

39. As set forth herein, Defendant has violated, and is violating, Section 7 of the FLSA, 29 U.S.C. § 207, by employing employees 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 1 and ½ times the regular rates for which they were employed.

40. Defendant knowingly, willfully, or in reckless disregard carried out this illegal pattern or practice of failing to pay the Putative Class Members overtime compensation. Defendant's failure to pay overtime compensation to these employees was neither reasonable, nor was the decision not to pay overtime made in good faith.

41. Accordingly, Plaintiff and all those who are similarly situated are entitled to overtime wages under the FLSA in an amount equal to 1 and ½ times their rate of pay, plus liquidated damages, attorney's fees and costs.

**VII. RULE 23 ALLEGATIONS - VIOLATIONS OF THE OHIO ACTS**

42. Plaintiff incorporates all preceding paragraphs. The duties, pay, and working conditions applicable to the Putative Class Members described above also applies to all workers in Ohio.

43. The conduct alleged violates the Ohio Wage Acts and the OPPO.

44. At all relevant times, Gulfport was subject to the requirements of the Ohio Wage Acts.

45. At all relevant times, Gulfport employed Plaintiff and each Ohio Class Member with Ohio state law claims, as an “employee” within the meaning of the Ohio Acts.

46. Putative Class Members who possess Ohio state law claims are members of the Ohio Class.

47. The Ohio Class is defined as:

**ALL CURRENT AND FORMER OILFIELD WORKERS EMPLOYED BY GULFPORT ENERGY CORPORATION IN OHIO WHO WERE CLASSIFIED AS INDEPENDENT CONTRACTORS AND PAID A DAY-RATE INSTEAD OF TIME AND ONE-HALF FOR HOURS WORKED IN EXCESS OF FORTY (40) HOURS IN A WORKWEEK DURING THE LAST THREE (3) YEARS.**

48. The Ohio Wage Act requires that employees receive overtime compensation “not less than one and one-half times” (1.5) the employee’s regular rate of pay for all hours worked over forty (40) in one workweek, “in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the Fair Labor Standards Act of 1937.” See O.R.C. § 4111.03(A); see also 29 U.S.C. § 207(a)(1).

49. As an employee for Defendant, Plaintiff and the Ohio Class worked in excess of the maximum weekly hours permitted under O.R.C. §4111.03, but were not paid overtime wages at one and one half times their regular rate of pay. Defendant failed to include the job bonuses in the



regular rate calculation for purposes of determining the overtime rate.

50. Plaintiff and the Ohio class seek back wages, attorney fees, and costs from Defendant for violating the Ohio Wage Act.

51. The OPWA requires that the Defendant pay Plaintiff and the Ohio Class all wages, including unpaid overtime, on or before the first day of each month, for wages earned by them during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages earned by them during the last half of the preceding calendar month. See O.R.C. § 4113.15(A).

52. During all times material to this complaint, Plaintiff and the Ohio Class were not paid wages, either their regular rates, a minimum wage or overtime wages at one and one-half times their regular rate within thirty (30) days of performing the work. See O.R.C. §4113.15(B).

53. Plaintiff and the Ohio Class's unpaid wages remain unpaid for more than thirty (30) days beyond their regularly scheduled payday. In violating the OPWA, Defendant acted willfully, without a good faith basis and with reckless disregard of clearly applicable Ohio law.

#### **VIII. CLASS AND COLLECTIVE ACTION ALLEGATIONS**

54. Plaintiff incorporates all previous paragraphs and alleges that the illegal pay practices Defendant imposed on Plaintiff were likewise imposed on the members of the Classes.

55. Numerous individuals were victimized by this pattern, practice, and policy which is in willful violation of the FLSA and the Ohio Acts.

56. Numerous other individuals who worked with Plaintiff indicated they were improperly classified as independent contractors, paid in the same manner, performed similar work, and were not properly compensated for all hours worked as required by state and federal wage laws.

57. Based on his experiences and tenure with Defendant, Plaintiff is aware that Defendant's illegal practices were imposed on the members of the Classes.

58. The members of the Classes were all improperly classified as independent contractors and not afforded the overtime compensation when they worked in excess of forty 40 per week.

59. Defendant's failure to pay wages and overtime compensation at the rates required by state and/or federal law result from generally applicable, systematic policies, and practices which are not dependent on the personal circumstances of the members of the Classes.

60. Plaintiff's experiences are therefore typical of the experiences of the members of the Classes.

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

62. Plaintiff has no interests contrary to, or in conflict with, the members of the FLSA Class or Ohio Class as defined below. Like each member of the Classes, Plaintiff has an interest in obtaining the unpaid overtime wages owed under state and/or federal law.

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

64. Absent this action, many members of the Classes likely will not obtain redress of their injuries and Defendant will reap the unjust benefits of violating the FLSA and applicable state labor laws.

65. Furthermore, even if some of the members of the Classes could afford individual litigation against Defendant, it would be unduly burdensome to the judicial system.

66. 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.

67. The questions of law and fact common to each of the members of the Classes predominate over any questions affecting solely the individual members. Among the common

questions of law and fact are:

- a. Whether Defendant employed the members of the Classes within the meaning of the FLSA and the Ohio Acts;
- b. Whether the members of the Classes were improperly misclassified as independent contractors;
- c. Whether Defendant's decision to classify the members of the Classes as independent contractors was made in good faith;
- d. Whether Defendant's decision to not pay time and a half for overtime to the members of the Classes was made in good faith;
- e. Whether Defendant's violation of the FLSA and the Ohio Acts was willful; and
- f. Whether Defendant's illegal pay practices were applied uniformly across the nation to all members of the Classes.

68. Plaintiff's claims are typical of the claims of the members of the Classes. Plaintiff and the members of the Classes sustained damages arising out of Defendant's illegal and uniform employment policy.

69. 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.

70. 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.

#### **IX. JURY DEMAND**

71. Plaintiff demands a trial by jury.

**X. RELIEF SOUGHT**

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- a. An Order designating the Potential Putative FLSA Class 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 Potential Putative FLSA Class for liquidated damages equal in amount to their unpaid compensation;
- c. For an Order pursuant to the Ohio Acts under Rule 23 finding Defendant liable for unpaid back wages due to Plaintiff and all members of the Ohio Class;
- d. For an Order awarding attorneys' fees, penalties, costs and pre- and post-judgment interest; and
- e. 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**

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State Bar No. 24014780

**Andrew W. Dunlap**

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**ATTORNEYS IN CHARGE FOR PLAINTIFF**

**EXHIBIT 1**

**CONSENT TO JOIN WAGE CLAIM**

Print Name: TIMOTHY LEE SLONE

1. I hereby consent to participate in a collective action lawsuit against Gulfport Energy Corporation 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: TIMOTHY LEE SLONE  
TIMOTHY LEE SLONE Nov 8, 2016

Date Signed: Nov 8, 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
TIMOTHY SLONE, individually and on behalf of all others similarly situated;
(b) County of Residence of First Listed Plaintiff Le Flore
(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
GULFPORT ENERGY CORPORATION
County of Residence of First Listed Defendant
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)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 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; PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 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):
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: X Yes [ ] No

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

DATE 11/14/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael A. Josephson

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE
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# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Gulfport Energy Corporation Misclassified Workers](#)

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