

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

CHRIS GILLAND, PAUL W. FERRELL,
ANTHONY BUSE, BUCK FRANKS and
TARVIS D. DAVIS,

Plaintiffs,

v.

Case No. **3:18-CV-135-MPM-RP**

CITY OF BALDWIN, MISSISSIPPI,

Defendant.

COMPLAINT UNDER THE FLSA

Plaintiffs Chris Gilland, Paul W. Ferrell, Anthony Buse, Buck Franks and Tarvis D. Davis bring this action against Defendant City of Baldwin, Mississippi under the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”) for failure to pay overtime compensation and state law claims for unjust enrichment.

I. JURISDICTION

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

2. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs’ state law claims.

II. FACTS

A. Parties

3. Plaintiff Chris Gilland is an adult resident of Belden, Mississippi. During the applicable statutory period, Plaintiff Gilland worked for Defendant as a K9 handler, narcotic

investigator and patrol officer.

4. Plaintiff Paul W. Ferrell is an adult resident of Baldwin, Mississippi. During the applicable statutory period, Plaintiff Ferrell worked for Defendant as a patrol officer.

5. Plaintiff Anthony Buse is an adult resident of Baldwin, Mississippi. During the applicable statutory period, Plaintiff Buse worked for Defendant as a patrol officer.

6. Plaintiff Buck Franks is an adult resident of Baldwin, Mississippi. During the applicable statutory period, Plaintiff Franks worked for Defendant as a patrol officer.

7. Plaintiff Tarvis D. Davis is an adult resident of Houston, Mississippi. During the applicable statutory period, Plaintiff Davis worked for Defendant as a patrol officer, corporal and sergeant.

8. Defendant City of Baldwin, Mississippi is a municipality formed and organized under Mississippi law within Lee County, Mississippi and with parts of the municipality in Prentiss County, Mississippi. Mr. Michael James serves as the mayor of the City of Baldwin, Mississippi.

9. Defendant City of Baldwin, Mississippi is a public entity covered by the FLSA, 29 U.S.C. § 203(d), (x).

10. At all relevant times herein, Defendant City of Baldwin, Mississippi was an “employer” of the Plaintiffs within the meaning of the FLSA, 29 U.S.C. § 203(d).

B. Factual Allegations

11. Defendant City of Baldwin, Mississippi operates the Baldwin Police Department, located at 920 N. 4th Street, Baldwin, Mississippi 38824.

12. Plaintiff Gilland has been employed by Defendant since approximately April 23, 2015. He initially worked as a patrol officer. On or around 2016, he worked as a K9 handler and narcotic investigator. In 2017, Plaintiff Gilland began working as a K9 handler.

13. Plaintiff Gilland generally works, over the course of two (2) weeks, five (5) days during the first week and two (2) days during the second week. Throughout his employment, he has worked in excess of eighty-four (84) hours over a two (2) week period without receiving all of the straight time and overtime compensation for all hours worked. Throughout his employment, he was paid between \$14.01 and \$15.93 per hour.

14. Plaintiff Ferrell has been employed by Defendant since approximately September 2015. Plaintiff Ferrell worked from September 2015 to approximately April 2017 as a patrol officer. Plaintiff Ferrell began working for Defendant again in November 2017 as a patrol officer.

15. Plaintiff Ferrell generally works, over the course of two (2) weeks, five (5) days during the first week and two (2) days during the second week. Throughout his employment, he has worked in excess of eighty-four hours (84) over a two (2) week period without receiving all of the straight time and overtime compensation for all hours worked. Throughout his employment, he was paid \$14.01 per hour.

16. Plaintiff Buse has been employed by Defendant as a patrol officer since approximately 2011.

17. Plaintiff Buse generally works, over the course of two (2) weeks, five (5) days during the first week and two (2) days during the second week. Throughout his employment, he has worked in excess of eighty-four (84) hours over a two (2) week period without receiving all of the straight time and overtime compensation for all hours worked

18. Plaintiff Franks has been employed by Defendant since approximately August 2013. From approximately August 2013 to November 2016, he worked as a part time officer. Plaintiff Franks began working as a full-time officer on or around November 2016.

19. Plaintiff Franks generally works, over the course of two (2) weeks, five (5) days

during the first week and two (2) days during the second week. Throughout his employment, he has worked in excess of eighty-four (84) hours over a two (2) week period without receiving all of the straight time and overtime compensation for all hours worked. Throughout his employment, he was paid between \$10.00 and \$14.01 per hour.

20. Plaintiff Davis has been employed by Defendant since approximately October 14, 2014. Plaintiff Davis began working as a patrol officer and was promoted to corporal in approximately 2016. On or around December 6, 2017, he began working as sergeant.

21. Plaintiff Davis generally works, over the course of two (2) weeks, five (5) days during the first week and two (2) days during the second week. Throughout his employment, he has worked in excess of eighty-four (84) hours over a two (2) week period without receiving all of the straight time and overtime compensation for all hours worked. Throughout his employment, he was paid between \$14.01 and \$15.23 per hour.

22. Plaintiffs utilize a time clock and handwritten “yellow sheet” logs to track all time worked.

23. Despite utilizing a time clock and handwritten logs, Defendant has historically only compensated Plaintiffs for eighty (80) hours of work over the course of a two (2) week period, despite Plaintiffs being scheduled for eighty-four (84) or more hours per pay period.

24. Despite maintaining time records, Defendant deducted and manipulated actual time worked from Plaintiffs’ time cards and would not count time worked that was noted on the handwritten time logs in calculating Plaintiffs’ weekly pay.

25. Defendant intentionally altered and manipulated time sheets and work records to reduce the total number of hours worked by the Plaintiffs during a two (2) week pay period.

26. Defendant intentionally made deductions from Plaintiffs’ pay and reduced

Plaintiffs' hourly rate if Plaintiffs worked less than eighty-four (84) hours over the course of two (2) weeks.

27. Plaintiffs frequently made complaints about not receiving straight time and overtime compensation to Defendant, yet Defendant continued its illegal pay and time-shaving practices.

28. To the extent Defendant claims its pay practices are valid, Defendant has failed to adopt and comply with a valid 207(k) overtime payment system pursuant to 29 U.S.C. § 207(k) and its implementing regulations.

29. The exact amount of damages sustained by the Plaintiffs is unknown and not capable of being ascertained with any certainty at this time. Plaintiffs will amend their complaint as necessary as discovery proceeds in this case.

III. CAUSES OF ACTION

Count 1: Unpaid Overtime Under the Fair Labor Standards Act, 29 U.S.C. § 201, et seq.

30. Plaintiffs hereby incorporate paragraphs 1-29, as if fully set forth herein.

31. The FLSA requires that covered employees, such as Plaintiffs, receive overtime compensation "not less than one and one-half times" their regular rate of pay for all hours worked over 40 in a workweek. See 29 U.S.C. § 207(a)(1).

32. During the applicable statutory period, Defendant suffered and permitted Plaintiffs to routinely work more than forty (40) hours per week without overtime compensation.

33. At all times during the applicable statutory period, Defendant was aware that Plaintiffs continued to work in excess of forty (40) hours per week on a regular basis because they were scheduled to work more than forty (40) hours per week and maintained records noting overtime worked.

34. As a result of its actions and the conduct described above, Defendant has violated the provisions of the FLSA, 29 U.S.C. §§ 201 *et seq.*, with respect to Plaintiffs. Thus, Plaintiffs suffered a loss of wages.

35. Additionally, Defendant was well aware that it was required to pay Plaintiffs overtime, evidenced by the fact that Defendant regularly scheduled Plaintiffs to work in excess of forty (40) hours per week.

36. The foregoing conduct on the part of Defendant constitute a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) as Defendant knew or showed reckless disregard for the fact that its compensation practices were in violation of federal law.

Count 2: Breach of Contract Under Mississippi State Law

37. Plaintiffs hereby incorporate paragraphs 1-29, as if fully set forth herein.

38. Defendant contractually agreed to pay, and was required to pay, Plaintiffs for all hours worked. Plaintiffs worked hours for which they were not properly compensated, and Defendant has withheld wages, which in equity and good conscience belong to Plaintiffs.

39. Failing to pay all straight time and non-overtime hours to Plaintiffs has caused Plaintiffs to suffer financial harm. As a result, Plaintiffs have suffered a loss in pay.

40. Thus, Plaintiffs are entitled to “gap time” wages owed for all non-overtime hours worked.

Count 3: Quantum Meruit / Unjust Enrichment Under Mississippi State Law

41. Plaintiffs hereby incorporate paragraphs 1-29, as if fully set forth herein.

42. Under the doctrine of quantum meruit / unjust enrichment, Defendant contractually agreed to pay, and was required to pay, Plaintiffs for all hours worked. Plaintiffs rendered valuable services to Defendant by working hours for which they were not properly compensated, and

Defendant has withheld wages, which in equity and good conscience belong to Plaintiffs.

43. Failing to pay all straight time and non-overtime hours to Plaintiffs unjustly enriched Defendant at the expense of Plaintiffs and in violation of Mississippi law.

44. As a result, Plaintiffs have suffered a loss in pay.

45. Plaintiffs are entitled to “gap time” wages for non-overtime hours.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs in this action demands:

1. Judgment against Defendant for an amount equal to unpaid back wages at the applicable overtime rates;
2. Judgment against Defendant that its violations of the FLSA were willful;
3. An equal amount to the overtime damages as liquidated damages as required by the FLSA;
4. Judgment against Defendant for an amount equal to Plaintiffs’ unpaid straight time wages;
5. All recoverable costs, expenses, and attorney’s fees incurred in prosecuting these claims;
5. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
7. An order requiring Defendant to preserve all electronically stored information relevant to this lawsuit; and,
8. For all such further relief as the Court deems just and equitable.

Respectfully submitted,

/s/ William B. Ryan
William B. Ryan – MS Bar #99667
DONATI LAW, PLLC
1545 Union Avenue
Memphis, TN 38104
Telephone: 901-278-1004
Fax: 901-278-3111
Email: billy@donatilaw.com

ATTORNEY FOR PLAINTIFFS

Dated: 6.13.2018

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
 CHRIS GILLAND, PAUL W. FERRELL,
 ANTHONY BUSE, BUCK FRANKS and
 TARVIS D. DAVIS

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
 William B. Ryan, Donati Law, PLLC, 1545 Union Ave., Memphis, TN
 38104, 901-278-1004

DEFENDANTS
 CITY OF BALDWIN, MISSISSIPPI

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

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

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		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

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	PERSONAL INJURY <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	<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	<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
REAL PROPERTY <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	CIVIL RIGHTS <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	LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<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
	PRISONER PETITIONS Habeas Corpus: <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 Other: <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	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <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
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<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

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):
29 USC 201

Brief description of cause:
complaint for failure to pay overtime and MS state law claims

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: 06/13/2018 SIGNATURE OF ATTORNEY OF RECORD: /s/William B. Ryan

FOR OFFICE USE ONLY

RECEIPT # **1563984** AMOUNT **\$400** APPLYING IFP _____ JUDGE **MDM** MAG. JUDGE **DD**