

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

MATTHEW R. BLOM, ET AL.,

Plaintiffs,

v.

CITY OF GADSDEN, ALABAMA,

and KERRY PAYNE.

Defendants.

Civil Action No. 4:22-cv-00582-SGC

JURY TRIAL DEMANDED

[CORRECTED] FIRST AMENDED COMPLAINT

INTRODUCTION

Plaintiffs, by and through their counsel, respectfully submit this Complaint for violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and 42 U.S.C. § 1983, against the City of Gadsden, Alabama, and Kerry Payne, the City’s Personnel Director, and state as follows:

PARTIES

1. The Plaintiffs are current and former employees of the Defendant, City of Gadsden, Alabama (“Defendant” or “City”), who bring this action under the FLSA against Defendant, because of Defendant’s unlawful deprivation of Plaintiffs’ rights to overtime compensation, as well as retaliation by the City and Defendant

Payne against Plaintiffs in violation of the FLSA's anti-retaliation provisions and under 42 U.S.C. § 1983, for Plaintiffs exercise of their rights under the First and Fourteenth Amendments of the United States Constitution. *See* 29 U.S.C. §§ 207(a), 207(k), 215(a)(3), 216(b), 8 U.S.C. § 1331, and 42 U.S.C. § 1983.

2. Plaintiffs are identified in the caption of the Original Complaint and have given their written consent to be party Plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents were appended to the Original Complaint as Exhibit. ECF No. 1.1. These written consent forms set forth each plaintiff's name and address. Plaintiffs bring this action as a collective action on behalf of themselves and all others similarly situated.

3. Defendant City of Gadsden ("Defendant City") operates the City of Gadsden Fire Department (the "Department"), which is the department responsible for providing emergency services to the City, including fire prevention, fire suppression, and emergency medical services.

4. Defendant Kerry Payne ("Defendant Payne"), is the City's Personnel Director, working in the City's offices at 90 Broad Street, Room #201, Gadsden, AL 35901, and, upon information and belief, residing at 2429 Scenic Dr. Gadsden, AL 35904-3263.

5. At all times material herein, Defendant City has employed Plaintiffs in various positions within the Department, including as Fire Fighters, Drivers, and

Fire Commanders, among others. The exact titles, job descriptions, and dates of the Plaintiffs' employment are in the custody and control of the Defendant.

6. Plaintiffs bring this action for a declaratory judgment under 28 U.S.C. § 2201, back pay, liquidated damages, compensatory damages, attorneys' fees and costs, and other relief pursuant to 29 U.S.C. § 207, 29 U.S.C. § 215(a)(3), 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 42 U.S.C. § 1983, to remedy the Defendants willful and unlawful violations of federal law and of the U.S. Constitution complained of herein.

7. At all times material herein, all Plaintiffs have been "employees" within the meaning of the FLSA, 29 U.S.C. § 203(e)(1) and have been engaged in "fire protection activities" within the meaning of the FLSA, 29 U.S.C. § 203(y), and are similarly situated to one another.

8. At all times material herein, all Plaintiffs have been "citizens of the United States" within the meaning of 42 U.S.C. § 1983.

9. Defendant City is a municipal corporation under the laws of the State of Alabama, with the power to sue and be sued in its own name, and, at all times material herein, Defendant has been a "public agency" and "employer" within the meaning of the FLSA, 29 U.S.C. §§ 203(d), 203(x).

10. Defendant Payne is a “person” within the meaning of the FLSA’s anti-retaliation provision. 29 U.S.C. § 215(a)(3). Defendant Payne is also a “person” within the meaning of section 1983. 42 U.S.C. § 1983.

JURISDICTION AND VENUE

11. This Court has original federal question jurisdiction over the FLSA claims and retaliation claims brought in this Complaint through 29 U.S.C. § 216(b), 28 U.S.C. § 1331, 42 U.S.C. § 1983, and 28 U.S.C. § 1337(a).

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as a substantial part of the events giving rise to Plaintiffs’ claims occurred in Etowah County, Alabama.

FACTS

13. From April 12, 2019, through the present (the “Claims Period”), the Plaintiffs have worked for the Department in various firefighting and emergency services roles, including in jobs entitled Fire Fighters, Drivers, and Fire Commanders.

14. During the Claims Period, Plaintiffs’ primary job duties have been to provide emergency fire and medical services to the citizens and individuals residing within the City of Gadsden. To that end, Plaintiffs have diligently executed their job duties on behalf of their employer and the citizens of Gadsden by mandatorily

responding to emergency calls and performing other fire protection activities critical to the public health and safety of the citizens of Gadsden, Alabama.

15. During the Claims Period, Plaintiffs have been assigned to work and did in fact work a regular, repeating schedule of 24-hour shifts followed by 48 hours off. This shift schedule is referred to as a “24/48.”

16. Defendant City has adopted a 28-day “work period” for the City’s fire protection employees, pursuant to 29 U.S.C. § 207(k) of the FLSA. As a result, the applicable overtime threshold for Plaintiffs under the FLSA is 212 hours in each 28-day work period. *See* 29 C.F.R. § 553.230.

17. As a result of the 24/48 work schedule, Plaintiffs are scheduled to work either 9 or 10 shifts in each work period. As such, Plaintiffs are either scheduled for 216 hours or 240 hours during each 28-day work cycle, resulting in either 4 or 28 scheduled FLSA overtime hours (the hours that exceed 212 in a 28-day period).

18. During the claims period, Plaintiffs regularly worked more than 212 hours in a 28-day work period because, in addition to the scheduled overtime described above, Plaintiffs also regularly worked substantial amounts of unscheduled overtime beyond their 24/48 shift schedule. The exact hours worked by Plaintiffs during each work period can be determined by looking at the Plaintiffs’ timekeeping and payroll records, which are in the possession, custody, and control of Defendant City.

19. Plaintiffs are paid weekly on a salaried basis. As such, they receive 1/52 of their annual salary each pay period as base pay each paycheck.

20. Plaintiffs also receive a variety of additional remuneration outside of their weekly salary. The precise amounts and types of pay vary depending on the individual Plaintiff's rank, certifications, and assignments. These premiums include, among others, longevity pay, EMT pay, and "Acting Pay," which is a premium paid for work performed at a higher rank. The exact premiums Plaintiffs receive during each work period can easily be determined by looking at the Plaintiffs' timekeeping and payroll records, which are in the possession, custody, and control of Defendant City.

21. The City fails to pay overtime at the correct regular rate of pay under the FLSA for all overtime hours worked in two primary ways. First, when Fire Commanders and Drivers work unscheduled overtime as a "Fire Fighter," the City will only pay them overtime at the rate of the highest paid "Fire Fighter." Second, when Fire Fighters and Drivers receive "Acting Pay" during their regularly scheduled or overtime hours, the City fails to include that premium in the regular rate of pay when calculating the amount of overtime owed. As such, the City's "overtime" rate is less than one and one-half times the "regular rate of pay" for each employee, as required by the FLSA. *See* 29 U.S.C. § 207(a).

22. In fact, at times, the City pays less than the base rate of pay for overtime work performed by certain Plaintiffs. For example, some Plaintiffs at the rank of “Fire Commander” make \$17.66 per hour for each non-overtime hour worked. They are therefore entitled to overtime compensation of at least \$26.94 per hour (more if they receive additional remuneration that is required to be included in calculating their regular rate of pay). These Fire Commanders, however, only receive \$17.62 per hour (the overtime rate of the highest paid Fire Fighter) when working unscheduled overtime in the job title of “Fire Fighter.”

23. Similarly, Plaintiffs at the rank of Driver make \$14.00 per hour for each non-overtime hour worked. Drivers are therefore entitled to overtime compensation of at least \$21.00 per hour (and possibly more if they receive additional remuneration that is required to be included in calculating their regular rate of pay). They too only receive \$17.62 per hour when working unscheduled overtime in the job title “Fire Fighters.”

24. Moreover, while the City is quick to underpay Plaintiffs that are working overtime “under rank,” it does not pay a higher rate of overtime for Plaintiffs that are working up a grade. In fact, not only does it fail to pay Plaintiffs working as a “Driver” or “Commander” the overtime rate applicable to that rank, it also fails to include the “Acting Pay” premium in the regular rate of pay when calculating overtime at the Plaintiffs’ normal ranks. *See* 29 C.F.R. § 778.109.

25. These overtime violations have led to other derivative regular rate violations. For example, the City fails to include EMT pay in the regular rate for overtime purposes, but instead includes it as a percentage of total income on each paycheck. In failing to pay the correct amount of overtime however, the City has miscalculated the percentage of EMT pay appropriate for each employee, resulting in further damages

26. As Defendant City pays the incorrect rate of overtime for all employees, regardless of each employee's base rate of pay or additional remuneration required to be considered as part of the employees' regular rates, Defendant City's FLSA violations were willful and in bad faith.

COUNT I (AGAINST DEFENDANT CITY OF GADSDEN):
VIOLATION OF SECTION 7(a) OF THE FLSA, 29 U.S.C. §§ 207(a), 207(a)

27. Plaintiffs re-allege, and incorporate by reference herein the foregoing paragraphs 1-26 of this Complaint.

28. Plaintiffs have worked in excess of the hourly standards set forth under 29 U.S.C. § 207(k) and 29 C.F.R. § 553.230, and as such, are entitled to overtime compensation at the rate of one and one-half times their regular rate of pay for each hour worked in excess of 212 hours in a 28-day work period. However, during the times that Plaintiffs have worked in excess of 212 hours in a 28-day work period, Defendant City has failed to provide Plaintiffs with overtime pay at the rate of one and one-half times their regular rates of pay for all overtime hours.

29. Specifically, Defendant City has failed to calculate the regular rate of pay consistent with the FLSA. “The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid.” 29 C.F.R. § 778.109. Defendant City here, however, pays overtime rates without regard to Plaintiffs’ base rates of pay and/or additional remuneration. For example:

- a. Defendant City pays Plaintiffs who work “under rank” the overtime rate of a lower-ranked employee despite requiring Plaintiffs to continue working fire suppression activities;
- b. Defendant City fails to include acting pay in the employees’ regular rate of pay when calculating overtime; and
- c. Defendant City fails to calculate the proper percentage of EMT pay during work periods where Plaintiffs have worked overtime while either acting a grade up or working a grade down, resulting in additional regular rate violations.

30. By failing to pay the Plaintiffs and other employees similarly situated the overtime pay required under the law, Defendant City has violated and is continuing to violate the provisions of the FLSA set forth at 29 U.S.C. § 207(k).

31. By failing to pay the Plaintiffs and other employees similarly situated the overtime pay required under the law, Defendant City has acted in a manner that is willful and in bad faith. As a result, at all times material herein, Defendant City has unlawfully deprived Plaintiffs of overtime compensation and other relief for the maximum period allowed under the law.

32. As a result of the Defendant City's willful and bad faith violations of the FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs (including time and attendance records) are in the exclusive possession, custody, and control of Defendant City, and Plaintiffs are unable to state at this time the exact amount owing to them. Defendant City is under a duty imposed under the FLSA, 29 U.S.C. § 211(c), and various other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to Plaintiffs and other employees similarly situated from which the amount of Defendant City's liability can be ascertained.

33. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their backpay for Defendant City's failure to pay overtime compensation.

34. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

**COUNT II (AGAINST ALL DEFENDANTS)
FOR VIOLATION OF SECTION 215(a)(3) OF THE FLSA**

35. Plaintiffs re-allege, and incorporate by reference herein the foregoing paragraphs 1-34 of this Complaint.

36. Plaintiffs filed the Original Complaint in this matter on May 5, 2022.

37. Soon after the Original Complaint in this matter was filed, Plaintiff Wolfe received a call from Tracci Cordell, who works in the City of Gadsden's personnel office. During that phone call, Cordell said to Plaintiff Wolfe words to the effect of that the City had been considering a pay increase for the Fire Fighters, but that because Plaintiffs in this lawsuit had filed the Original Complaint, not only was the City not going to institute that pay increase, but, the City was also going to eliminate the policy of paying double time overtime rate fire fighters received for working overtime on Sundays, and the City was also going to reduce the rate at which Fire Fighters accrued sick leave.

38. Cordell directly attributed the City's decision to withhold a pay increase and the elimination or reduction of other benefits to the Plaintiff fire fighters' filing of the instant lawsuit.

39. On June 9, 2022, Plaintiffs Calvert, Nabors, and Day, were each called in to meetings with the Fire Chief, Will Reed. During these meetings, Reed informed them that they were being disciplined with written warnings for comments they had made on social media. Fire Chief Reed indicated that he did not want to discipline

Plaintiffs Calvert, Nabors, and Day, but that he was being ordered to do it by Defendant City of Gadsden Personnel Director, Kerry Payne.

40. Fire Chief Reed indicated that Personnel Director Payne had a stack of other social media postings from Plaintiffs Calvert, Nabors, and Day that could serve as the basis for additional discipline.

41. Defendant City's basis for this discipline was alleged violation of the City's social media policy, citing various social media comments by Plaintiffs Calvert, Nabors, and Day on June 1, 2022.

42. The City has routinely failed to enforce the City's social media policy, as is evidenced by numerous similar social media posts made by City employees who received no discipline of any kind.

43. Plaintiff Nabors had never received any previous discipline before receiving the Written Warning on June 9, 2022.

44. Plaintiff Day had never received any previous discipline before receiving the Written Warning on June 9, 2022.

45. Upon information and belief, it was Defendants' intention that once word of the disciplinary proceedings against Plaintiffs Calvert, Nabors, and Day spread among the Plaintiffs it would have the effect of coercing them not to provide further support or evidence for their claims against Defendant City.

46. Section 215(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3), provides that it is unlawful to discharge or in any other manner discriminate against any employee because such employee has caused to be instituted any proceeding under the Fair Labor Standards Act, or has testified in any such proceeding.

47. Under section 215(a)(3), it is unlawful for “any person,” including individuals and employers, to institute a disciplinary proceeding against an FLSA plaintiff in retaliation for his participation and/or testimony in an FLSA lawsuit and/or for the purposes of intimidating him and/or coercing him to alter his testimony.

48. The disciplinary actions Defendants took against Plaintiffs Calvert, Nabors, and Day were instituted and conducted by Defendants in retaliation for their institution and participation in this proceeding under the Fair Labor Standards Act, and for the purposes of intimidation and coercion, in order to deter Plaintiffs Calvert, Nabors, Day, and other Plaintiffs in this matter from providing any further information or evidence in support of the claims against Defendant City and/or drop out as Plaintiffs in this lawsuit.

49. Defendants actions would have dissuaded any reasonable worker from making or supporting an FLSA claim.

50. Defendants' discipline of Plaintiffs Calvert, Nabors, and Day constitutes a willful and intentional violation of section 215(a)(3) of the FLSA, 29 U.S.C. § 215(a)(3).

51. Plaintiffs are entitled to such legal or equitable relief as may be appropriate to effectuate the purposes of section 215(a)(3), including injunctive relief barring Defendants from (a) engaging in any further discipline of Plaintiffs Calvert, Nabors, or Day relating to their testimony or participation in this matter; (b) investigating or disciplining any Plaintiff in this matter based on his or her testimony or participation in this lawsuit, as well as any and all such damages necessary to effectuate the purposes of section 215(a)(3) including but not limited to compensatory damages, injunctive relief prohibiting the Defendant City from changing its pay practices and policies with respect to Plaintiffs as retaliation for bringing overtime claims.

52. Plaintiffs are entitled to recover attorneys' fees and costs under 29 U.S.C. § 216(b).

**COUNT III (AGAINST ALL DEFENDANTS)
DEPRIVATION OF RIGHTS TO PETITION FOR REDRESS OF
GRIEVANCES, ASSOCIATION AND FREE SPEECH UNDER THE FIRST
AMENDMENT**

53. Plaintiffs re-allege, and incorporate by reference herein the foregoing paragraphs 1-52 of this Complaint.

54. The right of Plaintiffs Calvert, Nabors, Day, and the other Plaintiffs to file the Original Complaint alleging violations of the FLSA is protected by the First Amendment Petition Clause of the United States Constitution. U.S. CONST. amend I (providing that “Congress shall make no law . . . abridging the right of the people . . . to petition the Government for a redress of grievances.”). That Clause protects an employee from being retaliated against for exercising their right to petition for the redress of grievances by filing a lawsuit.

55. Here, Plaintiffs seek to correct the system-wide policy of a municipal agency that deprives its employees of their lawful compensation for overtime worked. Moreover, because the employees in question constitute an integral part of the Fire Department, failure to comply with the FLSA directly impacts the ability of Defendant City to maintain a fire department necessary for the public order. Consequently, Plaintiffs’ FLSA lawsuit touches upon a matter of public concern.

56. The right of Plaintiffs to provide support to this lawsuit alleging violations of the FLSA is also protected by the guarantee of freedom of speech in the First Amendment of the United States Constitution. Their participation in this judicial proceeding is inherently of public concern.

57. The First Amendment also protects the rights of public employees to speak as private citizens on matters of public concern, as well as to associate with unions, such as Local 454.

58. Less than one month after the Plaintiffs filed the instant lawsuit, Plaintiff Calvert posted a comment on social media in response to a post by the City of Gadsden Facebook account referencing “development of unfinished space at The Venue, along with offices for the Gadsden-Etowah IDA and East Central Alabama Area Health Education Council.” Plaintiff Calvert’s post read “It reads more accurately . . . city of Gadsden has approved another coverup at the venue!!” He also replied to another commenter on the post stating “Britton Stephens Morgan this council has proven they don’t make decisions... they only approve them The city is being run by non elected officials right now. And I’m willing to bet that is illegal?? Maybe Mr. Wildman would be able to answer that??” These were the only posts that the City relied upon in issuing Plaintiff Calvert discipline on June 9, 2022.

59. When the City issued Plaintiff Calvert a Written Warning on June 9, 2022, the City claimed that these posts had offended unspecified city personnel, thus allegedly causing “potential disharmony and negatively affecting the public perception of the department.”

60. When the City issued Plaintiff Nabors a Written Warning on June 9, 2022, it did not identify any specific post other than that it was “in reference to” the City’s June 1, 2022, post. The City claimed that this had offended unspecified city personnel, thus allegedly causing “potential disharmony and negatively affecting the public perception of the department.”

61. Plaintiff Nabors had posted a comment on social media on June 1, 2022 expressing concerns about “unelected people” running the City and a “good ol boy system,” and expressing his opinion that the actions of the administration in Gadsden could expose them to federal criminal liability. Upon information and belief, these were the only posts that the City relied upon in issuing discipline.

62. When Defendant City issued Plaintiff Day a Written Warning on June 9, 2022, it did not identify any specific post other than that it was “in reference to” the City’s June 1, 2022, post. The City claimed that this had offended unspecified city personnel, thus allegedly causing “potential disharmony and negatively affecting the public perception of the department.”

63. Plaintiff Day had posted a comment on social media on in response to Nabors’ June 1 post referenced in paragraph 59, stating “totally agree Josh, lock them up.” The City did not reference any specific comment other than to allege that it was based on a post to the City of Gadsden’s Facebook page on June 1, 2022. Upon information and belief, this was the only post that the City relied upon in issuing Plaintiff Calvert discipline.

64. The City claimed that Plaintiffs Calvert, Nabors, and Day’s social media posts had violated the department’s social media policy.

65. The City’s social media policy prohibits a wide range of speech, including any speech by Plaintiffs as private citizens deemed to “negatively affect

the public perception of the department,” and that Fire Department personnel should “assume” that their speech on social media sites “will reflect on their position within the department and of this department.”

66. Violation of the social media policy may subject employees to disciplinary action, as was the case for Plaintiffs Calvert, Nabors, and Day.

67. In issuing the written warnings to Plaintiffs Calvert, Nabors, and Day, Chief Reed told them that the Personnel Director, Defendant Payne, claimed to have “a stack of posts” from the three of them, and that he had their personnel files ready to take to the civil service board. This was tantamount to a threat of termination if they did not cease their social media activity.

68. Defendant Payne was the primary City official responsible for the discipline Defendant City issued to Plaintiffs Calvert, Nabors, and Day on June 9, 2022.

69. Although Defendant City failed to identify specific social media posts for Plaintiffs Nabors and Day that allegedly violated the City’s social media policy, upon information and belief, the posts made by Plaintiffs Calvert, Nabors, and Day for which they were disciplined all commented on a matter of public concern, specifically, the City’s management of its budget and whether the governance of the City complied with the law.

70. Defendant City's application of its social media policy violated Plaintiffs Calvert, Nabors, and Day's rights under the First and Fourteenth Amendments to speak as private citizens on matters of public concern.

71. Plaintiff Calvert is Vice President of Local 454

72. Plaintiff Day serves on Local 454's grievance committee and has provided representational assistance to another Gadsden Fire Fighter within the past year in a grievance related to pay issues. The employee had transferred in from another department with a fire certification, but he was being paid less than another Fire Fighter without this certification.

73. Plaintiff Matt Blom, who is President of Local 454, brought the grievance directly to Chief Reed.

74. Plaintiff Calvert sat in on the grievance hearing for this Fire Fighter as well.

75. Plaintiff Nabors has been a member of the Union during his nearly ten years with the Department. Plaintiff Nabors was promoted to Driver four years ago.

76. Plaintiff Nabors has attended Union meetings and events during his employment with the City of Gadsden.

77. Defendant City's discipline of Plaintiffs Calvert, Nabors, and Day violated their rights under the First and Fourteenth Amendments to associate with and provide support to Local 454.

78. Defendants engaged in actions and decisions aimed at denying Plaintiffs Calvert, Nabors, and Day's Constitutional right to petition for redress of grievances by bringing this lawsuit, right to speak on matters of public concern, and freedom to associate, including but not limited to disciplining Plaintiffs Calvert, Nabors, and Day, and threatening financial hardship on the Plaintiffs in order to coerce them into not providing information or evidence in support of the claims against defendant and/or drop out as Plaintiffs in this lawsuit.

79. Such actions and decisions on the part of Defendants have chilled and deterred Plaintiffs Calvert, Nabors, Day, and other Plaintiffs from exercising their Constitutional rights to petition the courts for redress of violations of their rights under the FLSA, to speak on matters of public concern, to associate with Local 454, and act in support of this lawsuit in violation of the First and Fourteenth Amendments to the U.S. Constitution. The grounds and reasons offered by Defendants for their adverse actions and decisions against Plaintiffs Calvert, Nabors, and Day were false and pretextual.

80. Such actions and decisions on the part of Defendants were taken under the color of law, and have deprived Plaintiffs Calvert, Nabors, Day, and the other Plaintiffs of their rights secured by the U.S. Constitution in violation of 42 U.S.C. § 1983, and for which liability and redress exist under 42 U.S.C. § 1983.

81. Such actions and decisions on the part of Defendants have caused, and will continue to cause, Plaintiffs Calvert, Nabors, and Day to suffer humiliation and harm to their reputation, emotional and mental injuries, pain and suffering, financial and other adverse consequences, for which Plaintiffs Calvert, Nabors, and Day seek full damages and make whole relief, including punitive damages against Defendant Payne.

82. Such unlawful actions and decisions make the Defendants fully liable to Plaintiffs Calvert, Nabors, Day, and Plaintiffs under 42 U.S.C. § 1983 based on the authority and actual decisions of Defendants, and because such unlawful actions and decisions were based on the policymaking and final decision-making authority of Defendant City of Gadsden, and pursuant to the policy, custom and practice of the City.

83. Such unlawful actions and decisions of Defendants were and are done in a knowing, willful, reckless, and bad faith manner, and violate clearly established constitutional and statutory provisions and rights of which a reasonable person would have known.

DEMAND FOR A JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and applicable law, all Plaintiffs hereby demand that their claims be tried before a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

(a) Enter judgment declaring that the Defendants have willfully and wrongfully violated its statutory obligations under federal law and deprived each of the Plaintiffs of his/her rights;

(b) Order a complete and accurate accounting of all the unpaid compensation to which the Plaintiffs are entitled;

(c) Award Plaintiffs compensatory relief in the form of unpaid compensation and liquidated damages equal to their unpaid compensation;

(d) Award Plaintiffs Calvert, Day, and Nabors punitive damages against Defendant Payne;

(e) Award Plaintiffs interest on their unpaid compensation;

(f) Award Plaintiffs their reasonable attorneys' fees to be paid by the Defendants, and the costs associated with bringing this action; and

(g) Grant such other relief as may be just and proper.

DATE: August 11, 2022

Respectfully submitted,

/s/ David Ricksecker

David Ricksecker (admitted pro hac vice)

Matthew D. Purushotham (admitted pro hac vice)

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of August 2022, a copy of the foregoing has been served upon all counsel of record via the CM/ECF electronic filing system which will send electronic notification or by U.S. Mail to same.

/s/David Ricksecker

David Ricksecker