

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

Kirk Nelson and John Evans, Individually and)	
On Behalf of All Other Persons Similarly)	Civil Action No.:
Situated,)	1:15-CV-0314-BKS-TWD
Plaintiffs,)	
)	AMENDED CLASS AND
v.)	COLLECTIVE ACTION
)	COMPLAINT
Sabre Companies LLC and)	
Sabre Energy Services LLC,)	JURY TRIAL DEMANDED
)	
Defendants.)	
)	

INTRODUCTION

Plaintiffs Kirk Nelson and John Evans (“Plaintiffs”), individually and on behalf of all others similarly situated, by their attorneys, file this Collective and Class Action Complaint (the “Complaint”) against Defendants Sabre Companies LLC and Sabre Energy LLC (collectively “Sabre” or “Defendants”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§201 *et seq.*, and the Arkansas Minimum Wage Act, Ark. Code § 11-4-218 (“AMWA” or “Arkansas wage and hour laws”). The following allegations are based on personal knowledge as to Plaintiffs’ own conduct and are made upon information and belief as to the acts of others.

NATURE OF THE ACTION

1. Plaintiffs allege, on behalf of themselves and other current and former employees as well as those similarly situated current and former employees holding comparable positions but different titles, including Operators, Fluid Technicians, and Supervisors (collectively

“Operators”) employed by Sabre in the United States, who elect to opt into this action pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b) (hereinafter the “Collective” or “Collective Action Members”), that they are entitled to, *inter alia*: (i) unpaid overtime wages for hours worked above 40 in a workweek, as required by law, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.*

2. Plaintiff Evans brings this action under the Arkansas wage and hour laws pursuant to FED. R. CIV. P. 23 on behalf of all Operators and other individuals paid by the same compensation method holding comparable positions but different titles employed by Sabre at its offices within the State of Arkansas (the “Arkansas Class”). Plaintiff Evans and the Arkansas Class are entitled to unpaid wages from Sabre for all hours worked by them as well as unpaid overtime wages for hours worked above 40 in a workweek, and are entitled to all other damages authorized for willful violations of the Arkansas wage and hour laws.

JURISDICTION AND VENUE

3. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 29 U.S.C. §216(b) and this Court’s Federal Question Jurisdiction, 28 U.S.C. § 1331.

4. This Court has jurisdiction over Plaintiff Evans’ Arkansas wage and hour law claims pursuant to 28 U.S.C. § 1367 because those claims are so related to their FLSA claims that they form part of the same case or controversy.

5. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

6. Upon information and belief, Sabre is headquartered in, and regularly conducts business in, this district.

7. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

THE PARTIES

8. Plaintiff Nelson is an individual residing in Vail, Arizona.

9. During all relevant times, Plaintiff was employed by Sabre, including, specifically, from April 2014 to February 2015, as an Operator in and around Odessa, Texas.

10. Plaintiff Nelson worked in excess of 40 hours per workweek, without receiving overtime compensation as required by federal law.

11. Plaintiff Evans is an individual residing in Beebe, Arkansas.

12. During all relevant times, Plaintiff Evans was employed by Sabre, including, specifically, from in or around June 2013 to in or around June 2014, as an Operator in and around Beebe, Arkansas.

13. Plaintiff Evans worked in excess of 40 hours per workweek, without receiving overtime compensation as required by federal law.

14. Defendant Sabre Companies LLC is a Delaware Corporation, with its corporate headquarters at 1891 New Scotland Road, Slingerlands, New York, 12159.

15. Defendant Sabre Energy Services LLC is a New York Corporation, with its corporate headquarters at 1891 New Scotland Road, Slingerlands, New York, 12159.

16. At all times relevant herein, Sabre has been an employer within the meaning of Section 3(d) of the FLSA. 29 U.S.C. § 203(d), and the Arkansas Minimum Wage Act.

17. At all times relevant herein, Sabre has been an enterprise within the meaning of Section 3(r) of the FLSA. 29 U.S.C. § 203(r).

18. At all times relevant herein, Sabre has been an enterprise engaged in commerce or the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA because it 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 moved in or were produced for commerce by any person, 29 U.S.C. § 203(s)(1). Further, Sabre has had, and has a gross volume of sales made or business done of at least \$500,000.

19. At all times relevant herein, Plaintiffs and all similarly situated Operators were engaged in commerce or in production of goods for commerce as required by 29 U.S.C. §§ 206-207.

20. Sabre issued paychecks to Plaintiffs and all similarly situated employees during their employment.

21. Sabre directed the work of Plaintiffs and similarly situated employees, and benefited from work performed that Sabre suffered or permitted from them.

22. Plaintiffs and similarly situated employees worked in excess of 40 hours per workweek, without receiving overtime compensation as required by the FLSA.

23. Pursuant to Sabre's policy, pattern and/or practice, Sabre didn't pay Plaintiffs and other similarly situated employees proper overtime wages for hours they worked for Sabre's benefit in excess of 40 hours in a workweek.

FACTUAL ALLEGATIONS

24. Sabre employed Plaintiffs, and the Collective Action Members, as Operators.

25. Sabre maintains control, oversight, and discretion over the operations of worksites, including employment practices with respect to Plaintiffs, and the Collective Action Members.

26. Plaintiffs and the Collective Action Members' work as Operators was performed in the normal course of Sabre's business and was integrated into it.

27. Consistent with Sabre's policy, pattern, and/or practice, Plaintiffs and the Collective Action Members regularly worked in excess of 40 hours per workweek without being paid overtime wages, in violation of the FLSA.

28. Plaintiffs and the Collective Action Members regularly worked in excess of 40 hours per workweek without receiving from Sabre the legally required amount of overtime compensation as required by the FLSA. Specifically, Plaintiffs worked over 100 hours per week during their on weeks, and was not paid overtime.

29. Plaintiffs believe that discovery will enable them to estimate their unpaid overtime hours with more precision. In the absence of discovery and based entirely on Plaintiffs' recollection, Sabre generally scheduled Plaintiff and the Collective Action Members to work two weeks on, and then one or two weeks off, and often over 12 hours per daily shift. The precise number of weeks and hours worked by Plaintiffs and the Class and Collective Action Members may be able to be ascertained from Sabre's records.

30. Sabre is aware of the totality of work that Plaintiffs and the Collective Action Members have performed.

31. This work did not require managerial responsibilities, or the exercise of meaningful decision-making on matters of significance that impact the business.

32. Throughout the Collective Action periods, the primary job duties of Plaintiffs and the Collective Action Members did not include: hiring, firing, disciplining, or directing the work of other employees, nor exercising meaningful independent judgment and discretion. Indeed, Plaintiffs and the Collective Action Members did not even supervise any employees.

33. Throughout the Collective Action period, Plaintiffs and the Collective Action Members drove and loaded vehicles weighing less than 10,000 lbs, such as pick-up trucks that did not require hazardous materials placarding.

34. Sabre's failure to comply with the FLSA and AMWA has caused Plaintiffs and the Collective Action Members to suffer lost wages and interest therein.

35. All acts or omissions described in this Complaint were made by Sabre directly or through its supervisory employees and agents.

FLSA COLLECTIVE ACTION ALLEGATIONS

36. Plaintiffs bring this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the Collective Action Members, as defined above.

37. Plaintiffs desire to pursue their FLSA claims on behalf of any individuals who opt in to this action pursuant to 29 U.S.C. § 216(b).

38. Plaintiffs and the Collective Action Members are "similarly situated" as that term is used in 29 U.S.C. § 216(b), because, *inter alia*, all such individuals worked pursuant to Sabre's previously described common business policies and practices and, as a result of such policies and practices, were not paid the full and legally mandated overtime premium for hours worked over

40 during the workweek. Resolution of this action requires inquiry into common facts, including, *inter alia*, Sabre's common compensation, timekeeping and payroll practices.

39. Specifically, Sabre failed to pay the Collective Action Members the legally required amount of overtime compensation for hours worked in excess of 40 hours per workweek, in violation of the FLSA and the regulations promulgated thereunder, including 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104.

40. Sabre violated the FLSA and the regulations promulgated thereunder, including 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104, because it failed to pay Plaintiff and the Collective Action Members at a rate of 1.5 times its regular hourly rate for hours worked in excess of 40 hours per week.

41. The similarly situated employees are known to Sabre, are readily identifiable, and can be located through Sabre's records. Sabre employs many Operators and other employees holding comparable positions but different titles throughout the United States who are compensated pursuant to Sabre's common policy regarding overtime compensation. These similarly situated employees may be readily notified of this action through direct U.S. mail and/or other means including email, and allowed to opt into it pursuant to U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

42. There are many similarly situated current and former Operators who have not been paid proper overtime wages in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent to the Collective pursuant to 29 U.S.C. § 216(b).

ARKANSAS CLASS ACTION ALLEGATIONS

43. Plaintiff Evans sues on his own behalf and on behalf of the Arkansas Class as defined above, pursuant to Fed. R. Civ. P. 23(a), (b)(2) and (b)(3).

44. Sabre violated the Arkansas wage and hour laws because it failed to pay Plaintiff Evans and the Arkansas Class at a rate of 1.5 times its regular hourly rate for hours worked in excess of forty hours per week.

45. The Arkansas Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, these similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records. Upon information and belief, there are at least 45 members of the Arkansas Class.

46. There are questions of law and fact common to the members of the Arkansas Class that predominate over any questions solely affecting the individual members of the Arkansas Class.

47. The critical question of law and fact common to Plaintiff Evans and the Arkansas Class that will materially advance the litigation is whether Sabre is required by the Arkansas wage and hour laws to pay Plaintiff Evans and the Arkansas Class at a rate of 1.5 times its regular hourly rate for hours worked overtime.

48. Other common questions of law and fact common to the Arkansas Class that will materially advance the litigation include, without limitation:

(a) Whether Sabre employed Plaintiff Evans and the Arkansas Class members within the meaning of the Arkansas wage and hour laws;

(b) What proof of hours worked is sufficient when the employer fails in its duty to maintain time records;

(c) Whether Sabre failed to pay Plaintiff Evans and the Arkansas Class members for all of the hours they worked;

(d) Whether Sabre failed to pay Plaintiff Evans and the Arkansas Class the legally required amount of overtime compensation for hours worked in excess of forty hours per workweek, in violation of the Arkansas wage and hour laws;

(e) Whether Sabre is liable for all damages claimed by Plaintiff Evans and the Arkansas Class, including, without limitation, compensatory, punitive and statutory damages, interest, costs and disbursements, and attorneys' fees; and

(f) Whether Sabre should be enjoined from continuing to violate the Arkansas wage and hour laws in the future.

49. Plaintiff Evans' claims are typical of the claims of the members of the Arkansas Class.

50. Plaintiff Evans has the same interests in this matter as all other members of the Arkansas Class.

51. Plaintiff Evans is an adequate class representative, is committed to pursuing this action and has retained competent counsel experienced in wage and hour law and class action litigation.

52. Class certification of Plaintiff Evans' Arkansas wage and hour law claim is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Sabre has acted or refused to act on grounds generally applicable to the class, making appropriate both declaratory and injunctive relief with respect to the Class as a whole. The members of the Arkansas Class are entitled to injunctive relief to end Sabre's common and uniform policy and practice of denying the Arkansas Class the wages to which they are entitled.

53. Class certification of Plaintiff Evans' Arkansas wage and hour law claim is also appropriate pursuant to FED. R. CIV. P. 23(B)(3) because questions of law and fact common to the Class predominate over questions affecting only individual members of the Class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

54. Plaintiff Evans knows of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
FAIR LABOR STANDARDS ACT

55. Plaintiffs, on behalf of himself and all the Collective Action Members, re-alleges and incorporates by reference the preceding paragraphs.

56. At all relevant times, Defendants have been and continue to be, employers engaged in interstate commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

57. At all relevant times, Sabre employed, and/or continues to employ, Plaintiffs and each of the Collective Action Members within the meaning of the FLSA.

58. At all relevant times, Sabre had a policy and practice of willfully refusing to pay its Operators and all Collective Action Members the legally required amount of overtime compensation for all hours worked in excess of 40 hours per workweek, in violation of the FLSA.

59. As a result of Sabre's willful failure to compensate Plaintiffs and the Collective Action Members at a rate not less than 1.5 times the regular rate of pay for work performed in

excess of 40 hours in a workweek, Sabre has violated and continues to violate the FLSA, 29 U.S.C. §§ 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104.

60. Sabre's conduct as alleged herein constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

61. Due to Sabre's FLSA violations, Plaintiffs and the Collective Action Members are entitled to recover from Sabre their unpaid wages for the legally required amount of overtime compensation for all of the hours worked by them in excess of 40 in a workweek, actual and liquidated damages, including the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes, reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
ARKANSAS WAGE AND HOUR LAWS (ARKANSAS CLASS)

62. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

63. At all relevant times, Plaintiff Evans and the Arkansas Class members were employed by Defendants within the meaning of the Arkansas wage and hour laws.

64. Defendants willfully violated Plaintiff Johnson's rights and the rights of the Arkansas Class by failing to pay them the legally required amount of overtime compensation at rates not less than one and one-half times the regular rate of pay for all hours worked by them in excess of forty in a workweek in violation of the Arkansas wage and hour laws.

65. Defendants' violations of the Arkansas wage and hour laws have caused Plaintiff Evans and the Arkansas Class irreparable harm for which there is no adequate remedy at law.

66. Due to Defendants' violations of the Arkansas wage and hour laws, Plaintiff Johnson and the Arkansas Class are entitled to recover from Defendants their unpaid wages for

the legally required amount of overtime compensation for all hours worked by them in excess of forty in a workweek, actual and all other damages permitted by Arkansas law, including the employers' share of FICA, FUTA, state unemployment insurance, and any other required employment taxes, reasonable attorneys' fees and costs and disbursements of this action, pursuant to the Arkansas Wage and Hour laws.

DEMAND FOR TRIAL BY JURY

67. The Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Collective Action Members are entitled to and pray for the following relief:

- a. Designation of this action as an FLSA collective action on behalf of Plaintiff and the Collective Action Members and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all similarly situated members of the Collective Action Members, apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;
- b. Certification of the Arkansas Class as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), and the appointment of Plaintiff Evans and his counsel to represent the members of the Arkansas Class;
- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA and AMWA;

- d. An injunction requiring Sabre to cease its unlawful practices under, and comply with, the AMWA;
- e. An award of unpaid wages for all hours worked in excess of 40 in a workweek at a rate of time and one-half the regular rate of pay due under the FLSA and AMWA using the following common methodology for calculating damages: $((\text{Annual Salary} \div 52) \div 40) \times \text{Total Number of Overtime Hours Worked} \times 1.5$;
- f. An award of liquidated damages and/or punitive damages as a result of Sabre's willful failure to pay for all hours worked in excess of 40 in a workweek at a rate of time and one-half of the regular rate of pay pursuant to 29 U.S.C. § 216 and the AMWA;
- g. An award of damages representing the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;
- h. An award of prejudgment and post-judgment interest;
- i. An award of costs and expenses of this action together with reasonable attorneys' and expert fees; and
- j. Such other relief as this Court deems just and proper.

Respectfully submitted,

/s Elmer Robert Keach, III

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