

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JORY MERRITT, on behalf of himself and all similarly situated employees,	)	<b>Case No. 3:19-cv-01695-YY</b>
	)	
Plaintiff,	)	<b>CLASS ACTION ALLEGATION</b>
	)	
v.	)	<b>FIRST AMENDED COMPLAINT</b>
	)	
CASCADE CORPORATION, an Oregon corporation,	)	Liquidated Damages (29 U.S.C. §216(b))
	)	Statutory Penalty (ORS 652.150)
	)	
Defendant.	)	
	)	
_____	)	

Plaintiff Jory Merritt, on behalf of himself and all other similarly situated employees, alleges as follows:

**GENERAL ALLEGATIONS**

1.

At all material times herein, Defendant Cascade Corporation (hereinafter “Defendant”) was and is a corporation, incorporated within the State of Oregon, and conducting regular and sustained business activity in Multnomah County, Oregon. Defendant also conducts regular and sustained business activity in the States of Ohio, Georgia, and elsewhere in the United States.

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2.

At all material times herein, Defendant was an employer subject to the requirement of the Fair Labor Standards Act (FLSA), 29 U.S.C. §§201 et seq., to pay overtime premium pay to its non-exempt employees, for all overtime hours worked over 40 in any given workweek, at 1.5 times the employee's regular rate of pay, on or before the next regular payday for the pay period in which the overtime work was performed.

3.

At all material times herein, Plaintiff Jory Merritt (hereinafter "Plaintiff") was employed by Defendant as a non-exempt machinery operator, from February 25, 2019 until voluntary resignation from employment, effective July 16, 2019.

\* \* \* \* \*

**COLLECTIVE ACTION ALLEGATIONS**

4.

Plaintiff brings his First Claim for Relief, for liquidated damages, as a collective action pursuant to the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of himself and all similarly situated employees of Defendant.

5.

While employed by Defendant, Plaintiff and all similarly situated employees of Defendant were at all times systematically paid overtime premium wages late (after the next regular payday for the pay period in which the overtime hours were worked), in

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violation of the FLSA. This was standard practice for Defendant as explained in its USA Employee Handbook. As set forth in the Handbook, employees are paid on a bimonthly basis, with the paycheck issued on the 15<sup>th</sup> of the month including all workdays through the 15<sup>th</sup>; and the paycheck issued on the last day of the month including all workdays from the 16<sup>th</sup> through the last day of the month. With respect to overtime pay, however, the Handbook states, “The paycheck received on the 15<sup>th</sup> of the month will include any overtime pay you accumulated for the period from the 16<sup>th</sup> through the end of the previous month. Pay for overtime worked from the 1<sup>st</sup> through the 15<sup>th</sup> will be included in your last regular paycheck for that month.” A representative example is that Plaintiff’s overtime premium pay earned during the workweek of March 3-9, 2019, with a next regular paydate of March 15, 2019 -- was not paid to Plaintiff until two weeks later on March 29, 2019, despite the fact that Defendant was able to correctly compute the amount of overtime wages owed to Plaintiff for that workweek, and arrange for payment of that amount due, prior to the next regular paydate of March 15, 2019.

6.

For purposes of Plaintiff’s First Claim for Relief, similarly situated employees includes all non-exempt employees, employed by Defendant in the United States during the three years preceding filing of this action and thereafter, who were not paid overtime premium pay for overtime work hours until the paydate after the next regular paydate for

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the weeks in which the overtime premium pay was earned (hereinafter referred to as the “FLSA Collective”). Plaintiff reserves the right to amend this definition as necessary.

7.

With respect to Plaintiff’s First Claim for Relief, a collective action under the FLSA, 29 U.S.C. §216(b), is appropriate because the members of the FLSA Collective are similarly situated, in that: (a) they were or are subject to the same or similar unlawful practices, policy, or plan (namely, Defendant’s practice and policy of failing to pay overtime premium wages until the pay date after the next regular pay date for the workweek in which overtime was earned); (b) their claims are based upon the same legal theories; and (c) the employment relationship between Defendant and every putative FLSA Collective member is exactly the same, and differs only by name, location, and rate of pay.

8.

Upon information and belief, Plaintiff estimates that the FLSA Collective, including both current and former employees over the relevant period, will include several hundred members who would benefit from the issuance of a court-supervised notice of this action and the opportunity to join it. The precise number of FLSA Collective members should be readily available from a review of Defendant’s personnel, scheduling, time and payroll records, and from input received from the FLSA Collective members as part of the notice and “opt-in” process provided by 29 U.S.C. §216(b).

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9.

Plaintiff shares the same interests as the FLSA Collective in that the outcome of this action will determine whether they are entitled to unpaid overtime compensation, exemplary damages, interest, and attorneys' fees and costs owed under the FLSA. Because the facts in this case are similar, if not altogether identical, the factual assessment and legal standards lend themselves to a collective action.

\* \* \* \* \*

**FIRST CLAIM FOR RELIEF**  
**[FLSA Collective Action Claim – Plaintiff and All Similarly Situated Employees]**  
**(Liquidated Damages – 29 U.S.C. §216(b))**

10.

Plaintiff hereby realleges the allegations contained in paragraphs 1-9 above.

11.

Defendant's systematic failure to pay overtime wages due until the pay date after the next regular pay date for the weeks in which overtime was earned violates the FLSA, 29 U.S.C. §210 et seq. Defendant's violation of the FLSA in this regard was willful within the meaning of 29 U.S.C. §§216(b) and 255(a). As a result of this violation, Plaintiff and all similarly situated employees of Defendant in the United States are owed liquidated damages in an amount equal to all late-paid overtime wages owed during the three years prior to the filing of this action and thereafter, pursuant to 29 U.S.C. §216(b).

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12.

Plaintiff and all similarly situated employees are entitled to an award of reasonable attorney fees, pursuant to 29 U.S.C. §216(b).

13.

The Court has original jurisdiction over this claim, pursuant to 28 U.S.C. §1331.

\* \* \* \* \*

**SECOND CLAIM FOR RELIEF**  
**[Individual Claim – Plaintiff Only]**  
**(Statutory Penalty – Late Payment of Final Non-Overtime Wages - ORS 652.150)**

14.

Plaintiff hereby realleges the allegations contained in paragraphs 1-13 above.

15.

Pursuant to ORS 652.140(2)(a), all earned wages were due to Plaintiff on July 16, 2019. Despite receipt of written notice of unpaid wages from Plaintiff on August 1, 2019, Defendant willfully failed to pay Plaintiff's final wages, in the amount of \$48.54, until August 30, 2019.

16.

Plaintiff is entitled to statutory penalty wages in the amount of 30-days' pay, which is \$10,605, together with prejudgment interest thereon at the legal rate of 9% per annum, from August 15, 2019 until final judgment is entered, pursuant to ORS 652.150.

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17.

Plaintiff is entitled to an award of reasonable attorney fees pursuant to ORS 652.200(2).

18.

The Court has supplemental jurisdiction over this claim, pursuant to 28 U.S.C. §1367(a).

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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Jory Merritt hereby prays for relief against Defendant Cascade Corporation, on behalf of himself and all similarly situated employees, as follows:

1. For certification of the First Claim for Relief as a collective action pursuant to 29 U.S.C. §216(b).
2. For an award of liquidated damages owed, pursuant to 29 U.S.C. §216(b), in an amount equal to all late-paid overtime wages during the three years prior to the filing of this action and thereafter, to Plaintiff and all similarly situated employees;
3. For an award of statutory penalty wages to Plaintiff only, in the amount of \$10,605, pursuant to ORS 652.150, together with prejudgment interest thereon at the legal rate of 9% per annum, from August 15, 2019 until final judgment is entered herein;
4. For attorneys' fees and costs pursuant to 29 U.S.C. §216(b), and ORS 652.200(2);
5. For costs and disbursements incurred herein; and
6. For such other relief as this Court shall deem just and proper.

DATED this 8th day of January, 2020.

*Brian A. Buchanan*  
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Of Attorneys for Plaintiff and Putative Class

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