

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SHAWN MCMINN, COREY JACKSON,
and JUSTIN YOUNG, individually and on
behalf of all other similarly situated persons,

Plaintiffs,

v.

ATP FLIGHT ACADEMY, LLC; ATP
USA, INC.; and ATP FLIGHT ACADEMY
OF ARIZONA, LLC,

Defendants.

Case No.: 8:24-cv-01498-
TPB-CPT

AMENDED
COLLECTIVE AND
CLASS ACTION
COMPLAINT

DEMAND FOR JURY
TRIAL

INTRODUCTION

1. Named Plaintiffs Shawn McMinn, Corey Jackson, and Justin Young (“Named Plaintiffs”) bring a nationwide Fair Labor Standards Act (“FLSA”) collective action and Federal Rule 23 class actions on behalf of themselves and all other flight instructors, including lead flight instructors, (together “Flight Instructors”) to remedy the unlawful misclassification of employees as independent contractors, and resultant failure to pay Plaintiffs all wages due, by Defendants ATP Flight Academy, LLC; ATP USA, Inc.; and ATP Flight Academy of Arizona, LLC (collectively “ATP”).

2. Named Plaintiffs seek unpaid overtime wages, liquidated and statutory damages, costs and attorneys' fees, service awards, as well as declaratory relief under the FLSA, 29 U.S.C. §§ 201, *et seq.*

3. Named Plaintiffs also seek all unpaid wages, including overtime wages, liquidated and statutory damages, costs and attorneys' fees, service awards, declaratory relief, and any other applicable monetary and equitable relief available under the laws of the following states and any other state where there are sufficient current and former ATP Flight Instructors to certify a class.

4. These states, the laws, and the applicable supporting regulations (together "State Statutes") include, but are not limited to:

STATE	WAGE PAYMENT LAWS
Arizona	Ariz. Rev. Stat. Ann. § 12-541; Ariz. Rev. Stat. Ann. § 23-351; Ariz. Rev. Stat § 23-355
Colorado	Colo. Rev. Stat. Ann. § 8-4-103 (West); Colo. Rev. Stat. Ann. § 8-4-105 (West); Colo. Rev. Stat. Ann. § 8-4-109 (West); Colo. Rev. Stat. Ann. § 13-80-102 (West)
Connecticut	Conn. Gen. Stat. Ann. § 31-71b-c (West); Conn. Gen. Stat. Ann. § 31-72 (West); Conn. Gen. Stat. Ann. § 52-596 (West)
Georgia	Ga. Code Ann. § 9-3-22 (West); Ga. Code Ann. § 9-15-1 (West); Ga. Code Ann. § 13-6-11 (West); Ga. Code Ann. § 34-7-2 (West); Ga. Code Ann. § 51-1-6 (West)
Idaho	Idaho Code Ann. § 45-606 (West); Idaho Code Ann. § 45-607 (West); Idaho Code Ann. § 45-608

	(West); Idaho Code Ann. § 45-614 (West); Idaho Code Ann. § 45-615 (West)
Illinois	735 Ill. Comp. Stat. Ann. 5/13-205; 820 Ill. Comp. Stat. Ann. 115/3; 820 Ill. Comp. Stat. Ann. 115/5; 820 Ill. Comp. Stat. Ann. 115/14
Indiana	Ind. Code Ann. § 22-2-5-1 (West); Ind. Code Ann. § 22-2-5-2 (West); Ind. Code Ann. § 22-2-9-2 (West); Ind. Code Ann. § 34-11-2-1 (West)
Iowa	Iowa Code Ann. § 91A.2 (West); Iowa Code Ann. § 91A.3 (West); Iowa Code Ann. § 91A.8 (West); Iowa Code Ann. § 91A.10 (West); Iowa Code Ann. § 91A.14 (West); Iowa Code Ann. § 614.1 (West)
Kansas	Kan. Stat. Ann. § 44-314 (West); Kan. Stat. Ann. § 44-315 (West); Kan. Stat. Ann. § 44-324 (West)
Kentucky	Ky. Rev. Stat. Ann. § 337.020 (West); Ky. Rev. Stat. Ann. § 337.055 (West); Ky. Rev. Stat. Ann. § 337.385 (West)
Louisiana	La. Stat. Ann. § 23:631; La. Stat. Ann. § 23:632
Maryland	Md. Code Ann., Lab. & Empl. § 3-502 (West); Md. Code Ann., Lab. & Empl. § 3-505 (West); Md. Code Ann., Lab. & Empl. § 3-507.2 (West); Md. Code Ann., Cts. & Jud. Proc. § 5-101 (West)
Minnesota	Minn. Stat. Ann. § 181; Minn. Stat. Ann. § 181.171 (West); Minn. Stat. Ann. § 541.07 (West)
Missouri	Mo. Ann. Stat. § 290.080 (West); Mo. Ann. Stat. § 290.110 (West)
Nebraska	Neb. Rev. Stat. Ann. § 25-206 (West); Neb. Rev. Stat. Ann. § 48-1230 (West); Neb. Rev. Stat. Ann. § 48-1231 (West)
Nevada	Nev. Rev. Stat. Ann. § 608.016 (West); Nev. Rev. Stat. Ann. § 608.020 (West); Nev. Rev. Stat. Ann. § 608.040 (West); Nev. Rev. Stat. Ann. § 608.135 (West)

New Hampshire	N.H. Rev. Stat. Ann. § 275:43; N.H. Rev. Stat. Ann. § 275:44; N.H. Rev. Stat. Ann. § 275:53
New Jersey	N.J. Stat. Ann. § 34:11-4.2 (West); N.J. Stat. Ann. § 34:11-4.3 (West); N.J. Stat. Ann. § 34:11-4.10 (West); N.J. Stat. Ann. § 34:11-58 (West)
New York	N.Y. Lab. Law § 191 (McKinney); N.Y. Lab. Law § 198 (McKinney)
North Carolina	N.C. Gen. Stat. Ann. § 95-25.6; N.C. Gen. Stat. Ann. § 95-25.7; N.C. Gen. Stat. Ann. § 95-25.22
Oklahoma	Okla. Stat. Ann. tit. 12, § 95 (West); Okla. Stat. Ann. tit. 40, § 165.2 (West); Okla. Stat. Ann. tit. 40, § 165.3 (West); Okla. Stat. Ann. tit. 40, § 165.9 (West)
Pennsylvania	43 Pa. Stat. Ann. § 260.3 (West); 43 Pa. Stat. Ann. § 260.5 (West); 43 Pa. Stat. Ann. § 260.9a (West); 43 Pa. Stat. Ann. § 260.10 (West)
South Carolina	S.C. Code Ann. § 41-10-40; S.C. Code Ann. § 41-10-80(C)
Utah	Utah Code Ann. § 34-27-1 (West); Utah Code Ann. § 34-28-3 (West); Utah Code Ann. § 34-28-5 (West); Utah Code Ann. § 34-28-9.5 (West)
Virginia	Va. Code Ann. § 40.1-29 (West)
Wisconsin	Wis. Stat. Ann. § 109.03 (West); Wis. Stat. Ann. § 109.11 (West)

STATE	OVERTIME LAWS
California	Cal. CCP 338 (1)(a); Cal. Lab. Code § 510 (West); Cal. Lab. Code § 1194 (West)
Colorado	7 CCR 1103-1. Colorado Overtime and Minimum Pay Standards Order (COMPS order) #37, 38 and 39, 16A Colo. Prac., Emp. L. & Prac. Handbook 7 CCR § 1103-1 (2023-2024 ed.)

Connecticut	Conn. Gen. Stat. Ann. § 31-68 (West); Conn. Gen. Stat. Ann. § 31-76c (West); Conn. Gen. Stat. Ann. § 52-596 (West)
Illinois	820 Ill. Comp. Stat. Ann. 105/4a; IL LEGIS 103-182 (2023), 2023 Ill. Legis. Serv. P.A. 103-182 (H.B. 3227) (WEST)
Kentucky	Ky. Rev. Stat. Ann. § 337.285 (West); Ky. Rev. Stat. Ann. § 337.385 (West)
Maryland	Md. Code Ann., Lab. & Empl. § 3-415 (West); Md. Code Ann., Lab. & Empl. § 3-420 (West); Md. Code Ann., Lab. & Empl. § 3-427 (West); Md. Code Ann., Cts. & Jud. Proc. § 5-101 (West)
Massachusetts	Mass. Gen. Laws Ann. ch. 151, § 1A (West); Mass. Gen. Laws Ann. ch. 151, § 1B (West); Mass. Gen. Laws Ann. ch. 151, § 20A (West)
Missouri	Mo. Ann. Stat. § 290.505 (West); Mo. Ann. Stat. § 290.527 (West)
Nevada	Nev. Rev. Stat. Ann. § 17.130; Nev. Rev. Stat. Ann. § 608.018 (West); Nev. Rev. Stat. Ann. § 608.040 (West); NRS §§ 11.190 11.220
New Jersey	N.J. Stat. Ann. § 34:11-4.10 (West); N.J. Stat. Ann. § 34:11-56a4 (West); N.J. Stat. Ann. § 34:11-56a25 (West); N.J. Stat. Ann. § 34:11-58 (West); N.J. Admin. Code § 12:56-6.1
New York	N.Y. Comp. Codes R. & Regs. tit. 12, § 142-2.2; N.Y. Lab. Law § 198 (McKinney); N.Y. Lab. Law § 655 (McKinney)
Pennsylvania	34 Pa. Code § 231.41; 43 Pa. Stat. Ann. § 260.9a (West); 43 Pa. Stat. Ann. § 333.104 (West); 43 Pa. Stat. Ann. § 333.113 (West)
Virginia	Va. Code Ann. § 40.1-29.2 (West)
Washington	Wash. Rev. Code Ann. § 4.16.080 (West); Wash. Rev. Code Ann. § 49.46.130 (West); Wash. Rev. Code Ann. § 49.48.030 (West); Wash. Rev. Code

Ann. § 49.52.050 (West); Wash. Rev. Code Ann. § 49.52.070 (West)
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JURISDICTION & VENUE

5. Jurisdiction is conferred upon this Court by 29 U.S.C. § 216(b) of the FLSA, by 28 U.S.C. § 1331 because this action arises under laws of the United States and by 28 U.S.C. § 1337, under Acts of Congress regulating commerce. Jurisdiction over Plaintiffs' claims for declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202.

6. The Court has supplemental jurisdiction over any state claim raised by virtue of 28 U.S.C. §§ 1332, 1367(a).

7. Named Plaintiffs represent a class of employees engaged in foreign or interstate commerce.

8. Members of the proposed Class Actions are citizens of States different from the Defendants.

9. Named Plaintiff McMinn is a citizen of California and had worked for ATP in Indiana.

10. Named Plaintiff Jackson is a citizen of Florida and had worked for ATP in California.

11. Named Plaintiff Young is a citizen of California and had worked for ATP in California.

12. Defendants are citizens of Florida, Georgia, and Arizona.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) - (d) because a substantial part of the events, acts, or omissions giving rise to the claims occurred in this District and Defendants are subject to personal jurisdiction here because Defendants reside in this District.

14. Venue is also proper in the Tampa Division because the action is most directly connected and conveniently advanced in this Division as ATP has a major training facility in the Tampa and Clearwater area.

PARTIES

Plaintiffs

15. Named Plaintiff Shawn McMinn is a resident of California. His FLSA consent-to-sue form was previously filed with the Court.

16. Named Plaintiff Jackson is a resident of Florida. His FLSA consent-to-sue form was previously filed with the Court .

17. Named Plaintiff Young is a resident of California. His FLSA consent-to-sue form is attached hereto.

18. Named Plaintiffs bring claims under FLSA, 29 U.S.C. § 201, *et seq.*, individually and on behalf of a collective action class as further described herein.

19. Named Plaintiffs, and the FLSA collective members whom they seek to represent (“FLSA Collective”), were misclassified as independent contractors,

and worked in ATP's training locations as Flight Instructors. They worked more than 40 hours in a week and were not paid overtime premium pay at the rate of time and one-half for all hours worked over 40 in a workweek.

20. Named Plaintiffs also provided flight training to students on the ground and attended mandatory meetings without pay. Thus, they also bring claims under the State Statutes for unpaid wages due, including minimum and overtime wages, individually and on behalf of a nationwide class pursuant to various State Statutes, under Fed. R. Civ. P. Rule 23, as further described herein.

21. Plaintiffs are employees of ATP engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

22. The term "Plaintiffs" as used in this complaint refers to Named Plaintiffs, opt-in Plaintiffs, and any additional represented parties pursuant to the class and collective action provision of 29 U.S.C. § 216(b) and Fed. R. Civ. P 23(b) individually, collectively, or in any combination thereof.

23. Excluded from any Collective or Class Action are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class periods has had, a controlling interest in any Defendants.

Defendants

24. Defendant ATP Flight Academy, LLC operates nationwide and is registered as a for-profit Florida corporation.

25. Defendant ATP Flight Academy, LLC lists its business address as 1555 The Greens Way, Jacksonville Beach, FL, 32250, USA.

26. Defendant ATP USA, Inc. operates nationwide and is registered as a for-profit Georgia corporation.

27. Defendant ATP USA, Inc. lists its business address as 2 Sun Court, Suite 400, Peachtree Corners, GA, 30092, USA.

28. Defendant ATP Flight Academy of Arizona, LLC, is registered as a for-profit Arizona corporation.

29. Defendant ATP Flight Academy of Arizona, LLC lists its business address as 8825 N 23rd Avenue, Suite 100, Phoenix, AZ 85021, USA.

30. Collectively, “ATP” refers to Defendants ATP Flight Academy, LLC; ATP USA, Inc.; and ATP Flight Academy of Arizona, LLC.

31. ATP acted as an employer of Named Plaintiffs and acted as and continues to act as an employer of the FLSA putative collective within the meaning of 29 U.S.C. § 203(d).

32. ATP acted as an employer of Named Plaintiffs and acted as and continues to act as an employer as defined under various State Statutes.

33. At all times relevant herein, ATP has been an enterprise within the meaning of 29 U.S.C. § 203(r).

34. At all times relevant herein, ATP has been an enterprise engaged in commerce or in the production of goods or services for commerce within the meaning of 29 U.S.C. § 203(s)(1) in that said enterprise 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 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).

35. Upon information and belief, ATP operates in concert and together in a common enterprise and through related activities so that the actions of one may be imputed to the other and/or so that they operate as joint employers within the meaning of the FLSA.

36. Upon information and belief, ATP is a single employer.

37. Upon information and belief, the Defendants share the same management.

38. ATP's labor decisions and personnel are controlled and operated by the same management personnel. Philip R. Cooper, who is the Vice President for all

three entities of ATP, signed the Independent Contractor Agreement (“Agreement”) with Named Plaintiffs McMinn, Jackson, and Young on behalf of all three entities.

FACTS

39. ATP is a for-profit pilot training institution.

40. ATP operates or has operated in many states, including the following states: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, and Wisconsin.

41. ATP provides immersive flight training to tuition-paying students through its Airline Career Pilot Program or “ACPP.” The purpose of ATP’s ACPP is to prepare students to become professional airline pilots. According to ATP’s Student & Instructor Handbook (“ATP Handbook”), the ACPP is a “fixed-cost” program whereby students pay upfront for a fixed amount of flight training and experience. If additional training is required, however, ATP will charge the students for the additional time.

42. ATP employs Flight Instructors to provide this immersive flight training. According to its website, ATP employs Flight Instructors in 78 training locations across the country.

43. Named and opt-in Plaintiffs are Flight Instructors who work or had worked for ATP.

44. Named Plaintiff McMinn was employed at the ATP training facility in Indiana (also known as the Louisville Training Center) from approximately July 2023 through January 2024.

45. Named Plaintiff Jackson was employed at the ATP training facility in Sacramento, California from approximately January 2020 through May 2022.

46. Named Plaintiff Young was employed at the ATP training facility in Sacramento, California from approximately February 2022 through March 2024.

47. There are at least two types of ATP Flight Instructors: an instructor and a lead instructor. A flight instructor becomes a lead instructor based on experience level. Their responsibilities are similar.

Plaintiffs Are Employees of ATP Engaged in Interstate Commerce

48. At all times relevant herein, Plaintiffs' responsibilities necessarily require them to regularly cross state lines because the routes for the in-flight training program regularly cross state lines, thereby requiring them to engage in interstate commerce.

49. ATP Flight Instructors and students must often refuel across state lines, which also requires them to engage in interstate commerce.

50. ATP Flight Instructors also regularly accompany students who are required to fly round trips of 150, 250, or 300 nautical miles across different states. Named Plaintiff McMinn accompanied students during trainings from Indiana to Georgia and Ohio.

51. On occasion, Plaintiffs were instructed to fly to other states for “aircraft swaps.” Named Plaintiff Young flew from Utah to California to conduct one such “aircraft swap.”

52. ATP required Named Plaintiffs and other ATP Flight Instructors to sign an Independent Contractor Agreement (“the Agreement”) in order to become Flight Instructors.

53. In the Agreement, ATP acknowledges that ATP Flight Instructors perform services “involving interstate commerce.”

54. The Agreement states that “performance of the Services discussed herein constitute transactions involving interstate commerce.”

Plaintiffs Are Misclassified as Independent Contractors

55. ATP exercised a high degree of control over Named Plaintiffs’ and other ATP Flight Instructors’ role in its operations.

56. The ATP Handbook details ATP Flight Instructors’ role and responsibilities. It states that ATP Flight Instructors in ACPP, including Named Plaintiffs, “must deliver quality flight, simulator, and grounds lessons.” Among other

duties and responsibilities, ATP's Flight Instructors must deliver a ground training program that includes Plans of Action, flight lessons, solo flights, ground school, private pilot checkrides (akin to student evaluations), instrument checkrides, cross-country flights scheduled by ATP's Flight Operations, initial commercial checkrides, and commercial multi-engine training and checkrides.

57. The duties of an ATP flight instructor and a lead flight instructor overlap. According to the ATP Handbook, some of the additional duties and responsibilities of lead flight instructors include:

- a. Meeting with assigned instructors weekly to foster open communication, review challenges, and coordinate schedules;
- b. Reviewing student training records and progress regularly;
- c. Assisting with remedial training and Training Improvement Plans;
- d. Conducting stage evals and mock checkrides;
- e. Reviewing logbooks and audits during the mock checkride;
- f. Participating in the standards portion of the training center's weekly instructor meeting;
- g. Participating in the weekly nationwide call;
- h. Notifying the Regional Flight Standards Instructors (RFSTIs) of issues needing additional attention;

- i. Performing Training Center “Indoc” and local familiarization flights for new instructors;
- j. Assisting new instructors with using ATP resources to ensure standardization across all instructors and training centers; and
- k. Conducting “Intro Flights.”

58. To accomplish their duties and responsibilities, ATP Flight Instructors, including Named Plaintiffs, must follow a pre-set lesson plan and other guidelines, which outline every stage of the training, with latitude for very minor adjustments due to the particular needs of a student. According to the ATP Handbook, “ATP strives to deliver a standardized program through standardized materials, processes, and procedures.” Thus, the ATP Flight Instructors were required to follow ATP’s approach to teaching and evaluation of students.

59. ATP required all ATP Flight Instructors, including Named Plaintiffs, to attend “Indoc” training. The purpose of “Indoc” training was to ensure that all ATP Flight Instructors adhere to the ATP policies and procedures before they could continue to work as ATP Flight Instructors. During this training, ATP instructs ATP Flight Instructors on every aspect of ATP’s policies and procedures, including dress and hygiene. ATP Flight Instructors were required to conduct flights during which flight maneuvers are monitored and corrected until they are consistent with the way that ATP wanted them to operate in ACPP and teach in the program.

60. ATP Flight Instructors, including Named Plaintiffs, must also provide mentoring to students. The ATP Handbook states that ACPD advises students to “[a]sk questions, be at the training center, and soak in the wisdom of professionals with more experience.”

61. To ensure that its students perform adequately, ATP requires ATP Flight Instructors, including Named Plaintiffs, to “spot check” students' knowledge and perform routine quizzes of the students.

62. ATP enforces strict uniform, appearance, and hygiene policies outlined in its Handbook. Named Plaintiffs adhered to these strict requirements. According to the ATP Handbook, the uniform policy requires the following:

- a. Appearance and hygiene standards for instructors are the same as for students;
- b. All clothing must be professional, clean, and free of wrinkles;
- c. Blue ATP button-up shirt, which is provided by ATP, worn tucked in;
- d. Only approved hats with ATP logo, worn facing forward;
- e. ATP identification badge on a lanyard issued by ATP or an ATP-affiliated airline;
- f. Adherence to ATP's uniform policy or dressing in business attire when attending off-site visits to partner airlines;

g. Formal business attire, namely a full, dark-colored suit, when interviewing with an airline for a job or partnership program.

63. According to the ATP Handbook, ATP also imposes strict guidelines on the hygiene and hair of the ATP Flight Instructors, stating that they “must maintain good personal hygiene” and “be aware of body odor [and] oral hygiene.” Their hair “must be clean [and] well-groomed.” They “must be clean-shaven” or wear “a neatly trimmed mustache.” Jewelry must “represent a conservative business appearance” and tattoos must be “covered by the uniform.”

64. ATP also limits the Named Plaintiffs’ and other ATP Flight Instructors’ opportunity for business growth and profit.

65. ATP Flight Instructors, including the Named Plaintiffs, are dependent upon ATP in securing students.

66. ATP Flight Instructors, including the Named Plaintiffs, cannot bring their own students unaffiliated with ATP; students must be enrolled through ATP.

67. ATP Flight instructors, including the Named Plaintiffs, may not cultivate their own students.

68. ATP assigns students to ATP Flight Instructors, including the Named Plaintiffs, as they see fit, for example, based on the ATP Flight Instructor’s seniority.

69. ATP controlled Named Plaintiffs and ATP Flight Instructors' work by scheduling their work hours or limiting them to scheduling their students to certain blocks of time.

70. ATP Flight Instructors, including the Named Plaintiffs, must enter their schedules through an online scheduling program, which is frequently monitored by ATP.

71. According to its Handbook, ATP also requires ATP Flight Instructors to be "available to work with full-time students" and that they "must notify ATP via the Instructor Fees page when they are unavailable to work with students." Named Plaintiff Jackson's requests for time off had to be approved by the Regional Manager.

72. For flight lessons, ATP Flight Instructors are told to follow a specific schedule protocol on a "block" system. For example, an A block would be approximately 6 a.m. to 9 a.m. Named Plaintiff McMinn was told to schedule flight lessons during the A block because there were not enough flight lessons during that block. Named Plaintiff Young was also instructed to schedule the lessons during specific "blocks" of time such that they may not start more than one hour before sunrise or one hour after sunset.

73. ATP Flight Instructors must make scheduling change requests to their supervisors. For example, Named Plaintiff McMinn attended weekly meetings with

his supervisors when he and other ATP Flight Instructors could make requests for changes to their schedules.

74. ATP closely monitored Named Plaintiffs' and other ATP Flight Instructors' work throughout the day through ATP's own supervisors, the student performance tracking dashboard, and via GPS systems tracking the flight paths. ATP required Named Plaintiffs and ATP Flight Instructors to instruct at ATP's training locations.

75. Upon information and belief, ATP prohibits ATP Flight Instructors from having other jobs. For example, Named Plaintiff Young learned from a lead flight instructor who attended a meeting during which upper management wanted to know the name of an instructor who needed a second job to support his family, ostensibly to terminate his employment with ATP.

76. Named Plaintiffs and other ATP Flight Instructors were economically dependent on ATP.

77. ATP determines pricing of the flight lessons and training. Named Plaintiffs and other ATP Flight Instructors cannot determine how much to charge each student.

78. Named Plaintiffs and other ATP Flight Instructors cannot and do not run their own businesses to train students to become airline pilots.

79. The work that Named Plaintiffs and other ATP Flight Instructors perform is one of the core business functions that ATP offers for its customers, the students participating in the ACPD program.

80. ATP does not require ATP Flight Instructors, including the Named Plaintiffs, to invest any sum of money into its operations.

81. ATP Flight Instructors, including the Named Plaintiffs, use ATP equipment, such as aircrafts, or training materials to instruct ATP's students. The only equipment that Named Plaintiffs and ATP Flight Instructors acquire is small and personal in nature, such as a headset.

82. ATP provides all of the necessary tools for Named Plaintiffs and other ATP Flight Instructors to instruct students, including lesson plans, scheduling programs, performance tracking, flight simulator equipment, and flight equipment, such as the insured planes they flew.

83. ATP Flight Instructors, including Named Plaintiffs, are required to personally perform the work that ATP assigned to them, and they cannot hire others to do it. Named Plaintiff Jackson could not find substitute ATP Flight Instructors to provide his lessons if he became unavailable. Named Plaintiff Young could only very occasionally rely on a substitute Flight Instructor if he became unavailable without incurring repercussions.

Plaintiffs Are Not Exempt from FLSA's Protection and Are Entitled to Overtime

84. Section 13(b)(3) of the FLSA provides that the overtime provisions of the Act do not apply to “any employee of a carrier by air subject to the provisions of title II of the Railway Labor Act [45 U.S.C. §§ 181-88 (“RLA”)]”.

85. ATP however is not an exempt common carrier by air subject to the provisions of Title II of RLA, 45 U.S.C. § 152. Specifically, the aircraft that ATP Flight Instructors use to teach students are not common carriers by air. Instead, these aircraft are covered under Part 91 of the Federal Aviation Regulations (“FAR”), which applies to private or non-commercial carriers. Thus, the ATP Flight Instructors are entitled to be paid overtime wages at the rate of time and one-half the regular rate for all hours worked over 40 in a workweek.

86. ATP regularly required Named Plaintiffs and other ATP Flight Instructors to work for more than 40 hours a week.

87. ATP did not track or record Named Plaintiffs’ or ATP Flight Instructors’ actual work hours within a work week.

88. ATP paid Named Plaintiffs and other ATP Flight Instructors on an hourly basis.

89. Named Plaintiffs McMinn, Jackson, and Young regularly worked more than 40 hours a week.

90. Named Plaintiff McMinn routinely worked 45 hours a week.

91. Named Plaintiff Jackson routinely worked up to 60 hours a week.

92. Named Plaintiff Young routinely worked up to 50 hours a week and sometimes more hours in a week.

93. ATP failed to pay Named Plaintiffs McMinn, Jackson, and Young any premium overtime wages at the rate of time and one-half for all hours that they worked over 40 in a workweek.

94. ATP does not pay ATP Instructors overtime wages at the rate of time and one-half for all hours that they worked over 40 in a work week.

95. Upon information and belief, other ATP Flight Instructors work the same or a similar schedule as Named Plaintiffs.

96. Upon information and belief, other ATP Flight Instructors also work more than 40 hours a week.

97. ATP Flight Instructors are paid a set amount of pay for the mandatory “Indoc” training, *see supra*, including a per diem. Upon information and belief, during “Indoc,” ATP failed to pay the ATP Flight Instructors any premium overtime wages at the rate of time and one-half for all hours that they worked over 40 in a workweek.

Plaintiffs Were Not Paid All Wages Due

98. ATP did not compensate ATP Flight Instructors for various time periods spent working. For example, ATP did not compensate Named Plaintiff McMinn for monthly group ground training that was not adjacent to in-flight

instruction, being present for checkrides, time scheduling lessons, or weekly scheduled meetings. For example, Named Plaintiff McMinn was once present for two checkrides in Illinois for 5 to 6 hours that were entirely unpaid. Named Plaintiffs Jackson and Young similarly were not paid for mandatory meetings.

99. ATP paid Named Plaintiffs and other ATP Flight Instructors a different set hourly rate for different types of instruction pursuant to an “Independent Contractor Instructor Fee Schedule.” The rates were nonnegotiable.

100. For example, ATP promised to pay ATP Flight Instructors hourly rates for “Flight Hours”, “Pre- & Post-Flight Briefing”, “Ground Hour”, and other types of work.

101. For example, ATP paid Named Plaintiff McMinn at a rate of \$23 per hour and Named Plaintiff Jackson at a rate of \$18 per hour for in-flight instruction.

102. For example, ATP paid Named Plaintiff McMinn \$17 per hour for ground instruction, if it was before or after the flight instruction, and for simulator instruction. On the other hand, Named Plaintiff Jackson was paid \$7 per 30 minutes of ground instruction, if it was before or after the flight instruction.

103. ATP compensated Named Plaintiff McMinn for checking the plane during pre-flight and debriefing a student post-flight at the ground instruction rate.

104. ATP regularly paid ATP Flight Instructors for simulator instruction (at a rate lower than for in-flight instruction), but only if that instruction was given

within the students' allotted hours. Named Plaintiff McMinn, for example, was paid only for the number of hours of simulator training that his student was allotted. However, if his student needed more simulator training than he was allotted, Named Plaintiff McMinn was not compensated for the additional simulator training that he provided to that student.

105. ATP failed to pay Named Plaintiffs McMinn, Jackson, and Young all of their wages due and owing for all of the hours that they worked.

106. ATP did not pay ATP Flight Instructors all of their wages due and owing for all hours worked in a workweek.

107. ATP occasionally pays Named Plaintiffs and ATP Flight Instructors non-discretionary bonuses. For example, the ATP Flight Instructors may receive bonuses if their students pass flight checks on their first attempt or be given annual holiday bonuses.

108. ATP pays Named Plaintiffs and ATP Flight Instructors on a bi-weekly basis. This wage payment schedule is nonnegotiable.

109. In California, by 2024, ATP paid its ATP Flight Instructors, including Named Plaintiff Young, on both a W-2 and a Form 1099, instead of only on a Form 1099, for essentially the same work that they performed prior to this change in practice. Named Plaintiff Young, for example, was compensated with a set stipend on a W-2 for ground instruction unrelated to in-flight instruction and for regularly

scheduled meetings, work that was previously uncompensated. At the same time, Named Plaintiff Young continued to be compensated on a Form 1099 for in-flight instruction.

110. ATP's failure to pay Named Plaintiffs and other ATP Flight Instructors all wages due for each hour worked, including premium wages for each hour worked over 40 per week, was willful.

111. ATP did not have a good faith basis to pay Named Plaintiffs and other ATP Flight Instructors their wages using the calculation methods that they used.

112. Named Plaintiff McMinn complained to ATP about its failure to pay him wages for work performed for the benefit of ATP, such as ground training.

113. Upon information and belief, other ATP Flight Instructors have made similar complaints and about its failure to pay them lawful wages.

114. As a result of these complaints, ATP was on notice and aware of its obligations to classify ATP Flight Instructors as employees and pay them all wages due for all hours worked, including premium pay at the proper rate of time and one-half for all hours worked over 40 in a workweek.

COLLECTIVE ACTION ALLEGATIONS

115. Named Plaintiffs bring this case as a collective action consisting of:

All current or former flight instructors, including lead flight instructors, whom ATP misclassified as independent contractors and worked over 40 hours in any workweek within the 3 years preceding the filing of this Complaint. ("FLSA Collective").

116. ATP is liable under the FLSA for failing to pay all the overtime wages due to Named Plaintiffs and the FLSA Collective. Named Plaintiffs and members of the FLSA Collective work or have worked for ATP as Flight Instructors, including lead flight instructors, gave students flight training across state lines, were classified as independent contractors, and were subjected to the same ATP policy and pattern or practice of failing to pay premium overtime wages for all hours worked in excess of 40 hours per week.

117. Named Plaintiffs' claims for overtime pay are similar to the claims of other members of the FLSA Collective, and their claims depend on similar factual and legal questions including, but not limited to, whether ATP misclassified ATP Flight Instructors as independent contractors as opposed to employees; whether ATP knew or should have known that ATP Flight Instructors worked overtime hours; whether ATP failed and/or refused to pay members of the FLSA Collective premium overtime wages; and whether ATP's violations were willful.

118. There are many similarly situated ATP Flight Instructors who have been underpaid in violation of the FLSA and would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join it. Those similarly situated employees are known to ATP, are readily identifiable, and can be located through ATP's records. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

119. The Named Plaintiffs seek to certify a nationwide Class of similarly situated employees under Fed. R. Civ. P. 23. defined as:

All current or former flight instructors, including lead flight instructors, whom ATP misclassified as independent contractors and to whom ATP failed to pay all wages due and owing for all hours worked in any workweek within the states' applicable statute of limitation preceding the filing of this Complaint. ("State Wage Payment Class").

120. The Named Plaintiffs also seek to certify a nationwide Class of similarly situated employees under Fed. R. Civ. P. 23. defined as:

All current or former flight instructors, including lead flight instructors, whom ATP misclassified as independent contractors and who worked over 40 hours in any workweek within the states' applicable statute of limitation preceding the filing of this Complaint. ("State Overtime Class").

121. Named Plaintiff McMinn seeks to certify a Class of similarly situated employees in Indiana under Fed. R. Civ. P. 23. The Class is defined as:

All current or former flight instructors, including lead flight instructors, whom ATP misclassified as independent contractors, and who voluntarily left ATP's employ and to whom ATP failed to pay wages due and owing for all hours worked in any workweek within 6 years preceding the filing of this Complaint. ("Indiana Wage Payment Class").

122. Named Plaintiffs Jackson and Young seek to certify a Class of similarly situated employees in California under Fed. R. Civ. P. 23. The Class is defined as:

All current or former flight instructors, including lead flight instructors, whom ATP misclassified as independent contractors, and who worked over 40 hours in any workweek within 3 years preceding the filing of this Complaint. (“California Overtime Class”).

123. Upon information and belief, the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class are each composed of more than forty individuals.

124. Excluded from the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class are ATP’s legal representatives, officers, directors, assigns, and successors or any individual who has, or who at any time during the class period has had, a controlling interest in ATP; the Judge(s) to whom this case is assigned and any member of the Judges’ immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from each class.

125. The members of the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class identified above are so numerous that joinder of all members is impracticable.

126. There are questions of law and fact common to each class that predominate over any questions that solely affecting individual members of each class, including but not limited to:

a. whether ATP misclassified Named Plaintiffs and other members of the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class as independent contractors;

b. whether Named Plaintiffs and other members of the State Wage Payment Class and Indiana Wage Payment Class are employees under the applicable State Statutes;

c. whether the applicable State Statutes require ATP to pay Named Plaintiffs and other members of the State Wage Payment Class and Indiana Wage Payment Class all wages due and owing for all hours worked;

d. whether Named Plaintiffs and other members of the State Wage Payment Class and Indiana Wage Payment Class performed work that was unpaid;

e. whether ATP failed and/or refused to pay the Named Plaintiffs and other members of the State Wage Payment Class and Indiana Wage Payment Class all wages due and owing;

f. whether Named Plaintiffs and other members of the State Overtime Class, and California Overtime Class performed work in excess of forty hours per workweek;

g. whether ATP failed and/or refused to pay Named Plaintiffs and other members of the State Overtime Class and California Overtime Class overtime pay for all hours worked in excess of forty hours per workweek;

h. whether ATP correctly calculated and compensated the Named Plaintiffs and other members of the State Overtime Class and California Overtime Class for hours worked in excess of forty per workweek;

i. whether ATP failed to keep true and accurate time records for all hours worked by the Named Plaintiffs and other members of the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class;

j. the nature and extent of Class-wide injury and the appropriate measure of damages for the Named Plaintiffs and other members of the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class;

k. whether ATP knew or should have known that the Named Plaintiffs and other members of State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class were not paid for all hours worked; and

l. whether ATP is liable for liquidated or other statutory damages.

127. The claims of the Named Plaintiffs are typical of the claims of the Classes they seek to represent.

128. The Named Plaintiffs and State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class members work

or have worked for ATP as Flight Instructors and have been subjected to ATP's policies and patterns or practices of failing to pay all wages due and owing all hours worked.

129. ATP acted and refused to act on grounds generally applicable to the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class members, thereby making appropriate compensatory and other equitable relief with respect to each Class as a whole.

130. The Named Plaintiffs will fairly and adequately represent and protect the interests of the State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California Overtime Class:

a. The Named Plaintiffs understand that, as class representatives, they assume a fiduciary responsibility to the class members to represent their interests fairly and adequately.

b. The Named Plaintiffs recognize that, as class representatives, they must represent and consider the interests of the class members just as they would represent and consider their own interests.

c. The Named Plaintiffs understand that in decisions regarding the conduct of the litigation and its possible settlement, they must not favor their own interests over those of the class members.

d. The Named Plaintiffs recognize that any resolution of a class action lawsuit, including any settlement or dismissal thereof, must be in the best interests of the class members.

e. The Named Plaintiffs understand that in order to provide adequate representation, they must remain informed of developments in the litigation, cooperate with class counsel by providing them with information and any relevant documentary material in their possession, and testify, if required, in a deposition and at trial.

131. The Named Plaintiffs have retained counsel competent and experienced in complex class action employment litigation.

132. A class action is superior to other available methods for the fair and efficient adjudication of this litigation - particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a lawsuit in federal court against a corporate defendant. The State Wage Payment Class, State Overtime Class, Indiana Wage Payment Class, and California State Overtime Class members have been damaged and are entitled to recovery as a result of ATP's common and uniform policies, practices, and procedures. Although the relative damages suffered by individual members of each class are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class treatment is

superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about ATP's practices.

FIRST CAUSE OF ACTION

(Overtime Violations under Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*:
on Behalf of Named Plaintiffs and the FLSA Collective)

133. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

134. At all relevant times, Plaintiffs were employees of ATP under the FLSA.

135. At all relevant times, ATP misclassified Plaintiffs as independent contractors.

136. Named Plaintiffs and other members of the FLSA Collective worked in excess of 40 hours a week but did not receive premium overtime pay for all of their overtime hours.

137. ATP's failure to pay premium overtime wages to Named Plaintiffs and the FLSA Collective for all of their hours of work in excess of 40 hours per week violated FLSA, 29 U.S.C. § 207 and its implementing regulations and caused Named Plaintiffs and the FLSA Collective injury.

138. Named Plaintiffs and other members of the FLSA Collective are entitled to relief for ATP's FLSA violation, including unpaid wages, liquidated damages, costs, and attorneys' fees pursuant to 29 U.S.C. § 216(b).

139. ATP's failure to pay proper premium overtime wages for each hour worked over 40 per week was willful within the meaning of 29 U.S.C. § 255.

SECOND CAUSE OF ACTION

(Wage Payment Claims under State Statutes on Behalf of Named Plaintiffs, Opt-in Plaintiffs, and the State Wage Payment Class)

140. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

141. ATP failed to pay full and timely wages to the Named Plaintiffs, opt-in plaintiffs and State Wage Payment Class members in violation of applicable state wage payment laws. *See, e.g.*, supra ¶ 4, State Wage Payment Chart.

142. ATP's failure to pay full and timely wages was willful within the meaning of applicable state laws. *See, e.g.*, supra ¶ 4, State Wage Payment Chart.

143. ATP's failure to comply with the various wage-and-hour protections caused the Named Plaintiffs, opt-in Plaintiffs, and State Wage Payment Class members to suffer loss of wages and interest thereon, and they are entitled to relief, including recovery of back wages, liquidated damages, prejudgment interest, attorneys' fees, and costs within the meaning of applicable state laws. *See, e.g.*, supra ¶ 4, State Wage Payment Chart.

THIRD CAUSE OF ACTION

Overtime Violations under State Statutes on Behalf of Named Plaintiffs, Opt-in Plaintiffs, and the State Overtime Class)

144. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

145. ATP failed to pay premium overtime wages to the Named Plaintiffs, opt-in Plaintiffs, and State Overtime Class members in violation of applicable state overtime laws. *See, e.g.*, supra ¶ 4, State Overtime Chart.

146. ATP's failure to pay premium overtime wages for each hour worked over the applicable state overtime threshold per day or week was willful within the meaning of applicable state laws. *See, e.g.*, supra ¶ 4, State Overtime Chart.

147. ATP's failure to comply with applicable state overtime laws caused Named Plaintiffs, opt-in Plaintiffs, and State Overtime Class members to suffer loss of wages and interest thereon, and they are entitled to relief, including recovery of back wages, liquidated damages, prejudgment interest, attorneys' fees, and costs within the meaning of applicable state laws. *See, e.g.*, supra ¶ 4, State Overtime Chart.

FOURTH CAUSE OF ACTION

(Wage Payment Claims under Indiana State Laws on Behalf of Named Plaintiff McMinn, Opt-in Plaintiffs, and the Indiana Wage Payment Class)

148. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

149. ATP failed to pay full and timely wages to Named Plaintiff McMinn, opt-in Plaintiffs, and Indiana Wage Payment Class members in violation of Indiana wage payment laws, Ind. Code Ann. §§ 22-2-5-1, 22-2-9-2.

150. ATP's failure to pay full and timely wages due was willful within the meaning of Ind. Code Ann. § 22-2-5-2 (West).

151. ATP's failure to comply with Indiana wage payment laws caused Named Plaintiff McMinn, opt-in Plaintiffs, and Indiana Wage Payment Class members to suffer loss of wages and interest thereon, and they are entitled to relief, including recovery of back wages, liquidated damages, prejudgment interest, attorneys' fees, and costs within the meaning of Ind. Code Ann. § 22-2-5-2 (West).

FIFTH CAUSE OF ACTION

(Overtime Violations under California State Laws on Behalf of Named Plaintiffs Jackson and Young, Opt-in Plaintiffs, and the California Overtime Class)

152. Plaintiffs re-allege and incorporate by reference all allegations in all preceding paragraphs.

153. ATP failed to pay premium overtime wages to the Named Plaintiffs, Jackson and Young, opt-in Plaintiffs, and members of the California Overtime Class in violation of applicable California overtime laws, Cal. Lab. Code § 510 (West).

154. ATP's failure to pay premium overtime wages for each hour worked over the applicable state overtime threshold per day or week was willful within the meaning of Cal. Lab. Code § 1194.2 (West).

155. ATP's failure to comply with applicable California overtime laws caused Jackson and Young, opt-in Plaintiffs, and members of the California Overtime Class to suffer loss of wages and interest thereon, and they are entitled to relief, including recovery of back wages, liquidated damages, prejudgment interest, attorneys' fees, and costs within the meaning of Cal. Lab. Code § 1194 (West); Cal. Lab. Code § 1194.2 (West).

RELIEF SOUGHT

WHEREFORE, Named Plaintiffs pray for judgment against ATP with respect to the FLSA violations as follows:

155. Certifying this proceeding as a collective action under § 216(b) of the FLSA;

156. Ordering notice to the putative collective members at the earliest opportunity to ensure that their claims are not lost to the FLSA statute of limitations;

157. Finding ATP liable for unpaid overtime wages due to Plaintiffs under the FLSA;

158. Finding ATP liable for liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs under the FLSA;

159. Finding that ATP willfully violated the FLSA;

160. Awarding to Named Plaintiffs (and those other Plaintiffs who have joined in the suit) the costs of this action as provided under the FLSA;

161. Awarding to Named Plaintiffs (and those other Plaintiffs who have joined in the suit) their attorneys' fees as provided under the FLSA;

162. Awarding to Named Plaintiffs (and those other Plaintiffs who have joined in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law; and

163. Granting such other and further relief as may be necessary and appropriate.

WHEREFORE, Named Plaintiffs pray for judgment against ATP with respect to the Rule 23 Class violations as follows:

164. Certifying these actions as Class Actions;

165. Ordering notice to the putative class members at the earliest opportunity to ensure class members' claims are not lost to the State and Federal statute of limitations;

166. Designating the Named Plaintiffs as class representatives;

167. Appointing the undersigned as class counsel;

168. Entering a declaratory judgment that the practices complained of herein are unlawful;

169. Declaring that ATP violated the wage and hours laws of Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, and any other states where there are sufficient current and former ATP Flight Instructors to certify a class;

170. Declaring that ATP's violations were willful;

171. Ordering appropriate equitable and injunctive relief to remedy ATP's violations of state laws, including but not limited to an order enjoining ATP from continuing its unlawful practices;

172. Awarding damages, liquidated damages, appropriate statutory penalties, and restitution to be paid by ATP according to proof;

173. Awarding pre-judgment and post-judgment interest, as provided by law;

174. Ordering such other injunctive and equitable relief as the Court may deem just and proper;

175. Awarding the Named Plaintiffs and the Class members their attorneys' fees and costs, including expert fees and costs; and

176. Granting such other and further relief as may be necessary and appropriate.

Dated: September 4, 2024

Respectfully Submitted,

/s/Karen Kithan Yau

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