

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

**PHILLIP BUSLER** )  
631 Valley Hill Drive )  
Knobnoster, Missouri 65336 )

**JURY TRIAL DEMANDED**

**LAURA OWEN** )  
411 8<sup>th</sup> Street )  
Warrensburg, Missouri 64093 )

**JUDY L. ROSE** )  
P.O. Box 89 )  
Big Hill, KY 40405 )

**RONALD C. NORMAN** )  
1186-2 Franklin Hill Rd. )  
Rocky Face, GA 30740 )

On Behalf of Themselves and )  
All Others Similarly Situated, )

Plaintiffs, )

vs. )

Case no.: 09-CV-0159-FGJ

**ENERSYS ENERGY PRODUCTS, INC.** )  
Registered Agent: )  
CSC – Lawyers Incorporating Service Co. )  
221 Bolivar Street )  
Jefferson City, Missouri 65101 )

**ENERSYS DELAWARE INC.** )  
Registered Agent: )  
CSC – Lawyers Incorporating Service Co. )  
221 Bolivar Street )  
Jefferson City, Missouri 65101 )

-and- )

**HAWKER POWERSOURCE, INC.** )  
Registered Agent: )  
Corporation Service Company )  
2908 Poston Ave. )  
Nashville, TN 37203 )

Defendants.

)  
)

**SECOND AMENDED COMPLAINT**  
**Collective Action Under the FLSA**

**COME NOW** the Plaintiffs Phillip Busler, Laura Owen, Judy Rose, and Ronald Norman on behalf of themselves, and all others similarly situated, by and through counsel, and hereby set forth this representative action for violation of the Fair Labor Standards Act under 29 U.S.C. §216(b) as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs bring this action against Defendants Enersys Energy Products Inc. (“Enersys Energy”), Enersys Delaware Inc. (“Enersys”), and Hawker Powersource, Inc. (“Hawker”) for unpaid overtime compensation and related penalties and damages. Defendants’ practice and policy is to willfully fail and refuse to properly pay overtime compensation due Plaintiffs, and all other similarly situated employees, who work in Defendants’ manufacturing facilities. In particular, Defendants fail to compensate these employees for the time required to don and doff safety equipment, gear, protective clothing the necessary time to wash and clean themselves, both before and after shifts. Doing so denies such persons overtime pay and is direct in violation of the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.* (FLSA).
2. Defendants’ practices are in direct violation of the FLSA, and Plaintiffs seek injunctive and declaratory relief; compensation for work performed, overtime premiums for all overtime work required, suffered, or permitted by Defendants; liquidated and/or other damages as permitted by applicable law; and attorney’s fees, costs, and expenses incurred in this action.

## PARTIES

3. Plaintiff Phillip Busler currently resides at 631 Valley Hill Drive, Knobnoster, Missouri. Plaintiff was employed by both Defendants at their facility located in Warrensburg, Missouri.
4. Plaintiff Laura Owen currently resides at 411 8<sup>th</sup> Street, Warrensburg, Missouri. Plaintiff was employed by both Defendants at their facility located in Warrensburg, Missouri.
5. Plaintiff Judy Rose currently resides at P.O. Box 89, Big Hill, Kentucky. Plaintiff was employed by the Defendant Enersys Delaware, Inc. at its facility located in Richmond, Kentucky.
6. Plaintiff Ronald Norman currently resides at 1186-2 Franklin Hill Rd., Rocky Face, Georgia. Plaintiff was employed by the Defendant Hawker Powersource, Inc. at its facility located in Ooltewah, Tennessee.
7. Defendant Enersys Energy Products Inc. (“Enersys Energy”) is Delaware corporation registered and in good standing to do business in the state of Missouri. Defendant Enersys Energy operates a facility at 617 N. Ridgeview Drive, Warrensburg, Missouri.
8. Defendant Enersys Delaware Inc. (“Enersys”) is Delaware corporation registered and in good standing to do business in the state of Missouri. Defendant Enersys operates a facility in each of the following locations: Hays, Kansas; Sumter, South Carolina; and Richmond, Kentucky.
9. Defendant Hawker Powersource, Inc. (“Hawker”) is a Delaware corporation and operates a facility at 9404 Ooltewah Industrial Drive, Ooltewah, Tennessee. Hawker has significant business contacts within the state of Missouri.

## JURISDICTION AND VENUE

10. This Court has original federal question jurisdiction under 28 U.S.C. § 1311 for the claims brought under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*
11. The United States District Court for the Western District of Missouri Central Division has personal jurisdiction because Defendants all conduct business within this District.
12. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), inasmuch as the Defendants have offices, conducts business and/or can be found in the Western District of Missouri, and the cause of action set forth herein has arisen and occurred in part in the Western District of Missouri. Venue is also proper under 29 U.S.C. §1132(e)(2) because Defendants have substantial business contacts within the Western District of Missouri.
13. At all relevant times, Defendant Enersys Energy has been, and continues to be an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant Enersys Energy has employed, and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs at its Warrensburg, Missouri facility. At all times relevant herein, Defendant Enersys Energy has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).
14. At all relevant times, Defendant Enersys has been, and continues to be an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant Enersys has employed, and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs at its following facilities: Hays, Kansas; Cleveland, Ohio; Sumter, South Carolina; and Richmond, Kentucky. At all

15. At all relevant times, Defendant Hawker has been, and continues to be an “employer” engaged in the interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendant Hawker has employed, and/or continues to employ, “employee[s],” including each of the putative representative action plaintiffs at its Ooltewah, Tennessee facility. At all times relevant herein, Defendant Hawker has had gross operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

**COUNT I – FLSA CLAIM**

16. Plaintiff Phillip Busler was employed by Defendant Enersys Energy from on or about January 9, 2006 through on or about July 16, 2008 at the Defendant’s Warrensburg, Missouri facility. At this facility, Plaintiff Busler was required to don and doff protective gear and clothing both before and after his work shift as an integral and indispensable part of the principle activities of performing his job.
17. Plaintiff Laura Owen was employed by Defendant Enersys Energy from on or about September 10, 2007 through the Present at the Defendant’s Warrensburg, Missouri facility. At this facility, Plaintiff Owen was required to don and doff protective gear and clothing both before and after her work shift as an integral and indispensable part of the principle activities of performing her job.
18. Plaintiff Judy L. Rose was employed by the Defendant Enersys from on or about January 20, 1999 through on or about April 20, 2007 at the Defendant’s Richmond, Kentucky facility. At this facility, Plaintiff Rose was required to don and doff protective gear and

19. Plaintiff Norman was employed by the Defendant Hawker from on or about April 11, 2006 through on or about January 5, 2009 at the Defendant's Ooltewah, Tennessee facility. At this facility, Plaintiff Norman was required to don and doff protective gear and clothing both before and after his work shift as an integral and indispensable part of the principle activities of performing her job.
20. Plaintiffs were treated as non-exempt employees by all the Defendants under the FLSA.
21. Like the Plaintiffs, all three Defendants employ other employees at all of their facilities who are required to don and doff protective gear and clothing both before and after his work shift as an integral and indispensable part of the principle activities of performing his job, and were treated as non-exempt employees under the FLSA. All such employees are hereby referred to as the "similarly situated facility employees," "facility employees," or the "putative representative action plaintiffs."
22. The FLSA requires each covered employer, such as all the Defendants, to compensate all non-exempt employees for services performed and to compensate them at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
23. All similarly situated facility employees working for all the Defendants are similarly situated in that they all perform essentially the same job functions that requires the donning and doffing of protective gear and clothing, and in some instances personal cleaning and showering, both before and after work shifts as an integral and indispensable part of the principle activities their jobs.

24. All facility employees are similarly situated in that they are all subject to all the Defendants' same compensation policy and plan that denies compensation for any and all time spent donning and doffing of protective gear and clothing by hourly non-exempt employees, and in some instances cleaning and showering, both before and after work shifts as an integral and indispensable part of the principle activities the job. In turn, this denies these similarly situated facility employees their overtime compensation. The Defendants' conduct is in violation of the FLSA.
25. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by all the Defendants as similarly situated facility employees within three years from the commencement of this action who have not been compensated for at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.
26. This Complaint is being brought and maintained as an "opt-in" collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by the Plaintiffs because their claims are similar to the claims of the putative representative action plaintiffs.
27. The names and addresses of the putative representative action plaintiffs are available from all the Defendants. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.
28. The Defendants failed to compensate Plaintiffs and the putative representative action plaintiffs at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, and therefore, Defendants have

29. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a).
30. The Plaintiffs, on behalf of themselves and all similarly situated facility employees of all the Defendants who compose the putative representative action plaintiffs, seek damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
31. The Plaintiffs, on behalf of themselves and all similarly situated facility employees of Defendants who compose putative representative action plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendants, as provided by the FLSA, 29 U.S.C. §216(b).

**WHEREFORE**, Plaintiffs, on behalf of themselves and all proposed putative representative action plaintiffs, pray for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiffs Phillip Busler, Laura Owen as class representatives for the claims against Defendant Enersys Energy, Inc.; Designation of Judy L. Rose as class

- c. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. §201, *et seq.*;
- d. An injunction against all the Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;
- e. An award of damages for overtime compensation due for the Plaintiffs and the putative representative action plaintiffs, including liquidated damages, to be paid by Defendants;
- f. Costs and expenses of this action incurred herein, including reasonable attorneys' fees and expert fees;
- g. Pre-Judgment and Post-Judgment interest, as provided by law; and
- h. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

**Demand for Jury Trial**

Plaintiff hereby demands a jury trial on all causes of action and claims with respect to which they and all members of the proposed representative action have a right to jury trial.

**Designated Place of Trial**

COMES NOW the Plaintiff by and through their counsel of record and hereby designate the place of trial as follows: **Kansas City, Kansas.**

Respectfully submitted,



*/s/ Brendan J. Donelon*  
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**ATTORNEYS FOR PLAINTIFFS**

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing was sent on June 26, 2009 via the requirements of the ECF/CM system for the District of Kansas and all related standing orders to the counsel for Defendants at their email registered on file with the Court, to the following:

Robert M. Thompson  
Beth Bower  
Brian J. Christensen  
**Byran Cave, LLP**  
3500 One Kansas City Place  
1200 Main Street  
Kansas City, MO 64105

**ATTORNEYS FOR DEFENDANTS**