

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

ROCK HILL DIVISION

Kevin Faile, Louis C. Roman, Alan R.)	Civil Action No. <u>0:10-2809-CMC</u>
DePalma, and Brian Scott Craton, all)	
individually and on behalf of all)	
other similarly situated individuals,)	
)	COMPLAINT
Plaintiffs,)	
)	(Jury Trial Demanded)
vs.)	
)	
Lancaster County, South Carolina,)	
)	
Defendant.)	
_____)	

Plaintiffs, Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton, all individually and on behalf of all other similarly situated individuals, by way of their Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

I. Nature of Claims

1. This action is brought individually and as a collective action for unpaid overtime compensation, for liquidated damages, and for other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. (“FLSA”). The collective action provisions under the FLSA provide for opt-in class participation.

2. Plaintiffs also include other causes of action under South Carolina law on an individual and class-wide basis. Those claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

II. Parties, Jurisdiction, and Venue

3. Plaintiff Kevin Faile is a citizen and resident of Lancaster County, South Carolina.

4. Plaintiff Louis C. Roman is a citizen and resident of York County, South Carolina.

5. Plaintiff Alan R. DePalma is a citizen and resident of York County, South Carolina.

6. Plaintiff Brian Scott Craton is a citizen and resident of Lancaster County, South Carolina.

7. Defendant, Lancaster County, is political subdivision of the State of South Carolina, with the power to sue and be sued in its own name. Defendant operates an EMS Department to provide emergency medical services to the citizens and residents of Lancaster County, as well as to other persons within the County in need of emergency medical attention or care.

8. Plaintiffs bring this action individually and as an opt-in, collective action pursuant to 29 U.S.C. § 216(b), on behalf of a class of all individuals employed by Defendant in its EMS Department at any time within the three years prior to joining this lawsuit, who were non-exempt employees and who worked in excess of forty (40) hours in any given work week, but who did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours, who were improperly denied pay for compensable rest or meal times, and who were required to work more time than was actually included in their compensable time.

9. Plaintiffs also bring this action individually and as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all individuals employed by Defendant's EMS Department as ambulance drivers, emergency medical technicians ("EMTs"), or paramedics at any time within the three years prior to the commencement of this lawsuit who were not paid all of their lawful wages for hours worked as required by state and federal law.

10. Upon information and belief, this action satisfies the requirements of Rule 23(a), Fed. R. Civ. P., as alleged in the following particulars:

- A. The proposed Plaintiff class is so numerous that joinder of all individual members in this action is impracticable;
- B. There are questions of law and/or fact common to the members of the proposed Plaintiff class;
- C. The claims of Plaintiffs, the representatives of the proposed Plaintiff class, are typical of the claims of the proposed Plaintiff class; and
- D. Plaintiffs, the representatives of the proposed Plaintiff class, will fairly and adequately protect the interests of the class.

11. In addition, upon information and belief, this action satisfies one or more of the requirements of Rule 23(b), Fed. R. Civ. P., because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), because this action is based, in part, on the FLSA.

13. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiffs' pendent claims, which are brought pursuant to the statutory and common law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant is located within in this judicial district and division, and the unlawful labor practices giving rise to Plaintiffs' claims were committed in the Rock Hill Division of this Court.

III. Facts

15. Plaintiff Faile has been employed by Defendant's EMS Department since 1990. He started on a part-time basis, and became employed on a full-time basis on October 29, 2001. Plaintiff Faile has been a certified paramedic since 2004.

16. Plaintiff Roman has been employed by Defendant's EMS Department since 2008 as a paramedic.

17. Plaintiff DePalma has been employed by Defendant's EMS Department since August 31, 2006, as a paramedic.

18. Plaintiff Craton has been employed by Defendant's EMS Department since October 2009.

19. At all times relevant to this Complaint, Plaintiffs were non-exempt employees for purposes of the Fair Labor Standards Act.

20. During the relevant limitations period, Plaintiffs regularly worked in excess of forty (40) hours per week, generally working one full twenty-four (24) hour shift every third day, totaling 48-hours or 72-hours per work week, depending on whether the week was considered a "short week" or a "long week." Plaintiffs did not receive the correct over-time pay as required by the FLSA, because Defendant promulgated an unlawful policy that EMS workers were not eligible for overtime compensation unless they worked in excess of 106 hours during a two-week pay period.

21. At all times relevant to this Complaint, Plaintiffs and the members of the proposed Plaintiff class were not regularly engaged in fire protection or law enforcement activities during their employment with Defendant, nor were they regularly or routinely dispatched to fire suppression or law enforcement situations.

22. In addition, Plaintiffs were routinely required to work “off the clock” because they were only paid for 16-hours of each 24-hour shift, even though they were required to be on-site or in the ambulance during the entire 24-hour shift. Defendant did not meet the strict requirements of 29 C.F.R. § 785.22 for rest and meal periods, because there was no express or implied agreement between the employer and the employees to exclude bona fide meal periods and regularly scheduled sleeping periods; the employees usually could not enjoy an uninterrupted night’s sleep; the employees usually did not enjoy at least 5 hours of uninterrupted sleep during the sleeping periods; and Defendant improperly excluded the rest periods from compensable time when the sleeping period was interrupted by a call to duty. Plaintiffs and the members of the Plaintiff class were also routinely required to perform work for Defendant during their alleged “rest periods,” including required paperwork, re-stocking their ambulances after a run, and cleaning their rigs, all of which should have been included as compensable time.

23. Furthermore, Plaintiffs were actually scheduled to work 24 hours and 15 minutes every shift they were assigned, although they were not paid for the additional 15 minutes beyond 24 hours.

24. In addition, if Plaintiffs requested to work a partial shift, for example a half shift of twelve (12) hours, they were only paid for eight (8) hours instead of the actual number of hours worked.

25. At all times relevant to this Complaint, Plaintiffs were good and faithful employees of Defendant and consistently performed all of the essential functions of their jobs in an acceptable and competent manner.

26. Plaintiffs and other members of the Plaintiff class repeatedly complained to officials

within Defendant's County Administration as well as within Defendant's EMS Department about the Department's policies and practices regarding the recording of compensable time and the calculation of overtime compensation; however, Plaintiffs' were intimidated and coerced to continue working under these unlawful conditions by their immediate supervisors, by the EMS Department Director, and by Defendant's Human Resources Department.

FOR A FIRST CAUSE OF ACTION
(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

27. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-26 as if restated herein verbatim.

28. Defendant is an "employer" for purposes of the Fair Labor Standards Act, 29 U.S.C. § 203(d), because it is a "public agency."

29. Plaintiffs and the members of the Plaintiff class were employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this Complaint.

30. Defendant failed to pay Plaintiffs and the members of the Plaintiff class at the rate of one-and-a-half times their normal rate of pay for all hours worked in excess of forty (40) hours per work week as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a).

31. Defendant also failed to pay Plaintiffs and the members of the Plaintiff class for all compensable time for which Plaintiffs provided work for the benefit of Defendant.

32. Plaintiffs and the members of the Plaintiff class are entitled to back wages at the rate of one-and-a-half times their regular rate of pay for all overtime hours worked in excess of forty (40) hours per week, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

33. Plaintiffs and the members of the Plaintiff class are also entitled to an award of back

pay at their regular hourly rate or their overtime rate, as appropriate, as appropriate compensation for all time spent in working for Defendant, which was wrongfully excluded by Defendant in calculating their compensable time.

34. The failure of Defendant to compensate Plaintiffs for overtime work and for “off the clock hours” as required by the FLSA was knowing, willful, intentional, and done in bad faith.

35. Plaintiffs and the members of the Plaintiff class are also entitled to liquidated damages equal to the amount of overtime compensation and unpaid compensation due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

36. The work and pay records of Plaintiffs and the members of the Plaintiff class are in the possession, custody, and/or control of Defendant, and Defendant is under a duty pursuant to section 11(c) of the FLSA, 29 U.S.C. § 211(c), and pursuant to the regulations of the United States Department of Labor to maintain and preserve such payroll and other employment records from which the amount of Defendant’s liability can be ascertained. Plaintiffs request an order of this Court requiring Defendant to preserve such records during the pendency of this action.

37. Plaintiffs are also entitled to an award of reasonable attorneys’ fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

FOR A SECOND CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action)

38. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-37 as if restated herein verbatim.

39. Defendant is an “employer” as defined by the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10(1).

40. Defendant employed Plaintiffs and the members of the Plaintiff class within the State of South Carolina.

41. Defendant owes Plaintiffs and the members of the Plaintiff class “wages” as defined in Section 41-10-10(2) of the Act, to compensate them for labor rendered to Defendant, as promised to Plaintiffs and the members of the Plaintiff class and as required by law, including overtime pay required by the FLSA.

42. Defendant required Plaintiffs and the members of the Plaintiff class to work “off the clock,” and did not pay them for all service rendered for the benefit of Defendant.

43. Defendant has failed to pay Plaintiffs and the members of the Plaintiff class all wages due, as required by Sections 41-10-40 and -50 of the Act.

44. In addition, Defendant’s EMS Department improperly deducted amounts from the paychecks of Plaintiffs and the members of the Plaintiff class for improper purposes, upon false pretenses, and without providing proper written notice as required by Section 41-10-30(A) of the Act.

45. Defendant’s failure to pay Plaintiffs and the members of the Plaintiff class all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

46. Pursuant to Section 41-10-80(C) of the Act, Plaintiffs and the members of the Plaintiff class are entitled to recover in this action an amount equal to three times the full amount of their unpaid wages, or their wrongfully deducted wages, plus costs and reasonable attorney’s fees.

WHEREFORE, having fully set forth their allegations against Defendant, Plaintiffs respectfully request that the Court enter judgment for the following relief:

- a. An order authorizing the sending of appropriate notice to current and former

employees of Defendant's EMS Department who are potential members of the collective action under the Fair Labor Standards Act;

- b. A declaratory judgment that Defendant has willfully and in bad faith violated the overtime compensation provisions of the FLSA, and have deprived Plaintiffs and the members of the Plaintiff class of their rights to such compensation;
- c. An order requiring Defendant to provide a complete and accurate accounting of all the overtime compensation and other compensation to which Plaintiff and the members of the Plaintiff class are entitled;
- d. An award of monetary damages to Plaintiffs and the members of the Plaintiff class in the form of back pay for overtime compensation and other compensation due, together with liquidated damages in an equal amount;
- e. Injunctive relief ordering Defendant to amend its wage and hour policies to comply with applicable laws;
- f. Pre-judgment interest;
- g. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act;
- h. Treble damages pursuant to the South Carolina Payment of Wages Act;
- i. Attorneys' fees and costs; and
- j. Such further relief as the Court deems just and proper.

Respectfully submitted,

s/ David E. Rothstein

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October 29, 2010

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