

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

GREENVILLE DIVISION

Wesley S. Mullinax, Billy Wesley Owen)	Civil Action No. <u>6:12-1405-JMC</u>
Addis, William D. Smith, Jr., and John T.)	
Cox, all individually and on behalf of all)	
other similarly situated individuals,)	
)	
Plaintiffs,)	COMPLAINT
)	(Jury Trial Demanded)
vs.)	
)	
Parker Sewer & Fire Subdistrict,)	
)	
Defendant.)	
_____)	

Plaintiffs, Wesley S. Mullinax, Billy Wesley Owen Addis, William D. Smith, Jr., and John T. Cox, 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 Wesley S. Mullinax is a citizen and resident of Greenville County, South Carolina.

4. Plaintiff Billy Wesley Owen Addis is a citizen and resident of Greenville County, South Carolina.

5. Plaintiff William D. Smith, Jr. is a citizen and resident of Anderson County, South Carolina.

6. Plaintiff John T. Cox is a citizen and resident of Pickens County, South Carolina.

7. Defendant, Parker Sewer & Fire Subdistrict, is a political subdivision of the State of South Carolina and is a special purpose district within Greenville County, South Carolina, with the power to sue and be sued in its own name. Defendant operates a Fire Department to provide emergency fire suppression services and emergency medical treatment to the citizens and residents of the Parker District, which includes certain portions of Greenville County, South Carolina.

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 Fire Department at any time within the three years prior to joining this lawsuit, who were non-exempt employees and who worked in excess of one hundred and six (106) hours in any given two-week pay period, 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, including required training time, public education and fire prevention and safety work, and dispatch coverage.

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 Fire Department as fire suppression officers and employees 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 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 this judicial district and division, and the unlawful labor practices giving rise to Plaintiffs' claims were committed within the Greenville Division of this Court.

III. Facts

15. Plaintiff Mullinax has been employed by Defendant's Fire Department from May 1989 to October 2002, and again from March 2006 to the present. He currently holds the position of Engineer/Driver.

16. Plaintiff Addis has been employed by Defendant's Fire Department since May 5, 1995. He currently holds the position of Firefighter/Relief Driver.

17. Plaintiff Smith has been employed by Defendant's Fire Department since March 26, 2001. He currently holds the position of Firefighter/Relief Driver.

18. Plaintiff Cox has been employed by Defendant's Fire Department since January 13, 1985. He currently holds the position of Engineer.

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

20. Defendant has elected to pay its non-exempt employees in the Fire Department under Section 7(k) of the FLSA, 29 U.S.C. § 207(k), with a work period of 14 days.

21. During the relevant limitations period, Plaintiffs generally worked what is known as

a “24:15/48” schedule, meaning that they were regularly scheduled to work a tour of duty of twenty-four-and-a-quarter (24.25) hours (from 7:45 a.m until 8:00 a.m. the next day), followed by two days off duty. In other words, Plaintiffs worked one regular shift every third day, which produced a pattern of work of 48.5 hours or 72.75 hours per week, depending on whether a particular week included two or three shifts of duty.

22. Prior to May 1, 2012, Plaintiffs were only paid for 14.25 hours of every 24.25-hour shift, because Defendant automatically deducted 8 hours for sleep time and 2 hours for meal times from every shift. Prior to May 1, 2012, Plaintiffs always received the exact same pay for each two-week pay period, regardless of whether or not the sleep times and meal times were interrupted by a call to duty. In other words, Plaintiffs did not receive compensation for work performed during the regularly scheduled sleep period of 11:00 p.m. to 7:00 a.m., or during designated meal times. Plaintiffs were not relieved of duty during meal times, and Defendant did not monitor whether Plaintiffs actually received two, full one-hour meal breaks per shift.

23. With regard to sleep time, Defendant did not meet the strict requirements of 29 C.F.R. §§ 553.222 and 785.22 for sleep periods, because the employees of the Fire Department usually could not enjoy an uninterrupted night’s sleep; the employees usually did not enjoy a reasonable night’s sleep of at least 5 hours of actual sleep during the sleeping periods; Defendant improperly excluded the sleep periods from compensable time even when the sleeping period was interrupted by a call to duty; Defendant did not monitor whether Plaintiffs actually received at least 5 hours of sleep during the sleep periods; and Plaintiffs were routinely required to perform work for Defendant during their alleged sleeping periods, including required paperwork, re-racking fire hoses, and cleaning and re-stocking their fire trucks after a run, all of which should have been included as

compensable time.

24. With regard to meal times, Defendant did not meet the strict requirements of 29 C.F.R. §§ 553.223, 785.19 and 785.22 to automatically deduct two hours of each shift as non-compensable times for “bona fide meal periods.” Plaintiffs were not completely relieved from duty for the purpose of eating regular meals, but instead were required to perform their regular duties while eating. In addition, Defendant did not monitor any shift to ensure that each employee actually received the full one-hour allotted time for each meal period as reflected in the deductions from their compensable time, nor were employees compensated for actual, emergency calls to duty that occurred while they were eating their meals.

25. Prior to May 1, 2012, Plaintiffs were also routinely required to work “off the clock” by performing work as part of their regular duties to Defendant’s Fire Department, outside of their regularly scheduled shifts, for which they received no additional compensation. For example, each firefighter in Defendant’s Fire Department is required to receive 280 hours of training per year, which is generally received during duty hours. Plaintiffs were regularly called in on their scheduled days off to provide coverage for on-duty employees who were receiving mandatory training, but such hours were not counted as compensable time. Plaintiffs were also required to attend other mandatory training outside of regular duty hours for which they were not paid, and they were routinely called back in on their days off duty to provide assistance with major fires or to provide coverage when units were responding to fires, which time was also not included in compensable time.

26. In addition, Plaintiffs provided services to Defendant by participating in educational programs for the public, including presentations and demonstrations on fire prevention and safety to school children during National Fire Prevention Week in October of each year. Plaintiffs were

not compensated for all time spent in such activities outside their regular duty hours.

27. Plaintiffs were also required to cover for dispatchers who were on vacations, on sick leave, or otherwise unavailable for work. Plaintiffs generally were assigned to provide coverage for dispatchers on a rotating basis, requiring each Plaintiff to take a dispatch shift at least once every couple of months. When Plaintiffs were required to serve as dispatchers, they generally worked a 12-hour shift, from 7:45 p.m. until 7:45 a.m., on their scheduled days off, without receiving any additional pay.

28. Plaintiffs were also forced to accept “comp” time on an hour-for-hour basis in lieu of being paid for actual regular hours worked. Defendant did not meet the requirements of 29 C.F.R. §§ 553.20 to 553.28 and 553.231 regarding permissible accrual of compensatory time in lieu of cash payments for overtime hours. Comp time hours for overtime work were accrued at the rate of one hour of comp time for one hour of overtime work, instead of at the rate of time-and-a-half as required by the regulations. In addition, when Plaintiffs redeemed a full day of comp time, they were charged 24.25 hours against their comp time balance, rather than the 14.25 hours they would have actually been paid for a full shift of work.

29. 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.

30. Plaintiffs and other members of the Plaintiff class repeatedly complained to their supervisors and managers and to officials within Defendant’s administration 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 supervisors and by Defendant's administration. Plaintiffs were routinely threatened with their jobs or invited to leave if they questioned the wage and hour practices of the Fire Department.

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

31. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-30 as if restated herein verbatim.

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

33. 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.

34. Defendant 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. In addition, Defendant improperly deducted meal periods and sleeping periods from compensable hours worked each shift, paying Plaintiffs for 14.25 hours of every 24.25 hour shift regardless of the actual interruptions to the sleep and meal periods by emergency calls to duty or by other work performed during those periods.

35. Plaintiffs and the members of the Plaintiff class are entitled to an award of back pay at their regular hourly rate or their overtime rate, as appropriate, as lawful compensation for all time spent in working for Defendant, which was wrongfully excluded by Defendant in calculating their compensable time.

36. Defendant also 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 one hundred and six (106) hours per two-week work period as required by section 7(k) of the FLSA, 29 U.S.C. § 207(k).

37. 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 one hundred and six (106) hours per two-week work period, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

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

39. 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).

40. 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.

41. 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)

42. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-41 as if restated herein verbatim.

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

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

45. During Plaintiffs’ employment in Defendant’s Fire Department, Defendant promulgated and distributed various Policies and Procedures. Among other things, Defendant’s Policies and Procedures manual contains the following provisions regarding Defendant’s wage and hour practices for Fire Department employees:

- A. that “Federal law on overtime shall be followed”;
- B. that “if [an] employee’s sleeping period or meal time is interrupted by a call to duty, the interruption is counted as hours worked”;
- C. that “Employees working overtime shall be compensated by either overtime pay or the use of compensatory time. Overtime pay and compensatory time shall be given at a rate of time and one-half for all hours of overtime worked”; and
- D. that “The Employee may determine whether to accept overtime pay or compensatory time.”

46. 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.

47. 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.

48. 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.

49. 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.

50. 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 Fire 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 has 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.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY IN THIS MATTER.

Respectfully submitted,

s/ David E. Rothstein
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Greenville, South Carolina.