

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. 0:10-cv-2809-CMC
DePalma, and Brian Scott Craton, all)	
individually and on behalf of all)	
other similarly situated individuals,)	NOTICE OF CLASS ACTION
)	LAWSUIT
Plaintiffs,)	
)	
vs.)	
)	
Lancaster County, South Carolina,)	
)	
Defendant.)	
_____)	

TO: All individuals employed by Defendant (Lancaster County, South Carolina) in its EMS Department at any time within the three years prior to joining this lawsuit, who were non-exempt employees and who meet either or both of the following requirements:

(a) worked in excess of forty (40) hours in any given work week, but did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours; or

(b) were required to work more time than was actually included in their compensable time.

FROM: Rothstein Law Firm, PA of Greenville, South Carolina, Counsel for Plaintiffs, Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton

RE: Lawsuit filed under the Fair Labor Standards Act and the South Carolina Payment of Wages Act against Lancaster County, South Carolina

This Notice is provided in connection with a lawsuit filed in the United States District Court for the District of South Carolina, Rock Hill Division. The Court has not taken any position in this lawsuit regarding the merits of the Plaintiffs’ claims or the Defendant’s defenses. The purpose of this Notice is to inform you of the existence of a class action lawsuit where you may be a member of the Plaintiff Class, to advise you of how your rights may be affected by this suit, and to instruct you about the procedure for participating in this suit, if you so desire, or how to “opt out” if you do not want to participate in this suit.

1. Description of the Lawsuit

On October 29, 2010, Plaintiffs, Kevin Faile, Louis C. Roman, Alan R. DePalma, and Brian Scott Craton, filed this lawsuit against Lancaster County, South Carolina, in the United States District Court for the District of South Carolina. Plaintiffs allege in this suit that they were employed by Defendant's EMS Department as paramedics and emergency medical technicians, and that Defendant violated the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA") in the following regards: by routinely requiring them to work in excess of forty hours per week, but failing to pay them at the rate of one-and-a-half times their regular rate of pay for any overtime hours, as required by section 7(a) of the FLSA, 29 U.S.C. § 207(a); by improperly deducting sleep-time from hours worked by 24-hour shift employees; and by routinely requiring EMS Employees who worked 24-hour shifts to work 15 minutes beyond each scheduled shift without compensation. Plaintiffs have also alleged that Defendant's failure to compensate them for overtime work and other hours as required by the FLSA was knowing, wilful, intentional, or done in bad faith. Plaintiffs seek damages for unpaid overtime, plus liquidated damages in an amount equal to the unpaid overtime, as well as attorney's fees and costs. The claims under the FLSA will be referred to in this Notice as the "Federal Claims." Plaintiffs also seek damages, including treble damages and attorney's fees under the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 et seq. The claims under the South Carolina Payment of Wages Act will be referred to in this Notice as the "State Law Claims."

Defendant denies that it has violated the FLSA or the South Carolina Payment of Wages Act. In addition, Defendant asserts that it acted in good faith, based on advice from the United States Department of Labor, and that it had reasonable grounds to believe that it paid its EMS employees in accordance with the overtime pay requirements of the FLSA and in accordance with South Carolina law.

2. Composition of FLSA Class

Plaintiffs have sued on behalf of themselves and also on behalf of all other similarly situated employees of Defendant, specifically including the following class of persons:

All individuals employed by Defendant (Lancaster County, South Carolina) in its EMS Department at any time within the three years prior to joining this lawsuit, who were nonexempt employees and who meet either or both of the following requirements:

(a) worked in excess of forty (40) hours in any given work week, but did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours, or

(b) were required to work more time than was actually included in their compensable time.

You are receiving this Notice because Defendant's personnel records indicate that you may be among the class of potential Plaintiffs in this action.

3. Your Right to Participate in this Suit

The Court has allowed this case to proceed as both a collective action under the Federal Claims and as a class action under the State Law Claims. These two claims involve very different class action procedures. To clarify: there is one lawsuit with two different claims and two corresponding classes. You may choose to be a member of one class or both classes, or you may choose to exclude yourself entirely from both classes.

Under the Federal Claims, class members must "opt in" to the case to join the lawsuit by filing a consent form as provided on Attachment A. If you are within the group of persons defined above and believe that Defendant, Lancaster County, failed to pay you overtime compensation and other wages as required by the FLSA, you may join the Federal Claims in this suit (that is, you may "opt in" to this lawsuit). To do so, you must complete and cause to be filed with the Court a "Consent to Join Lawsuit" form (Attachment A). Further information regarding this procedure is contained in Section 7 below.

To determine whether you are indeed a proper member of the Class, the Court will engage in a fact-specific review of the circumstances of your employment with Lancaster County, taking into account such factors as job title and job responsibilities, salary or wages, any defenses asserted against you by Defendant, and other procedural issues.

With regard to the State Law Claims, if you are within the group of persons defined above you are automatically a member of the class unless you file a form to "opt out" of the case. An "Opt-out" Form is provided as Attachment B. You will be bound by the outcome of this case on any issues involving the State Law Claims unless you notify Plaintiff's counsel or the Court that you wish to exclude yourself from the class by filing an "Opt-out" Form (Attachment B).

It is entirely your decision whether or not to join this lawsuit. You are not required to join this lawsuit; however, as explained below, you **MUST** take action if you want to **JOIN** the Federal Class or to **EXCLUDE YOURSELF** from the State Law Class. Please read the remainder of this notice carefully to understand what action you should take.

4. Effect of Joining Lawsuit

If you decide to join the Federal Claims in this suit by filing a "Consent to Join Lawsuit" form, you will be bound by any settlement or judgment, whether it is favorable to you or not. If there is a favorable resolution, either by settlement or judgment, and you qualify, you may be entitled to some portion of the monetary recovery. While this suit is proceeding, you may be required to provide information, to sit for depositions, and/or to testify in court. If you opt in to this case, your interests will be represented by the named Plaintiffs through their attorneys, as counsel for the Class, unless you hire your own attorney.

If you do not opt out of the State Law Claims, you will be bound by any settlement or judgment, whether it is favorable to you or not. If there is a favorable resolution, either by settlement or judgment, and you qualify, you may be entitled to some portion of the monetary recovery.

5. Legal Effect of Not Joining in Lawsuit

If you decide not to join this suit under the Federal Claims or if you file an “Opt-out” Form under the State Law Claims, you will not be affected by the judgment, favorable or unfavorable, in this case. You will not receive any money, or other relief, granted in this action if the named Plaintiffs prevail on the Federal Claims or the State Law Claims. If you fall within the definition of the class defined in Section 2 above, you have the right not to join the class and to file your own lawsuit. You are free to consult with a lawyer regarding whether or not you may file your own lawsuit.

6. Your Options Regarding Legal Representation

The Court has approved the following attorney to serve as counsel to the Plaintiff class:

David E. Rothstein, Esquire
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601

If you choose to join this suit, it is entirely your own decision as to whether you want to be represented by the attorney for the named Plaintiffs or by an attorney of your own choosing. If you choose to be represented by the attorney representing the named Plaintiffs, you will not be charged attorney’s fees directly, up front. Attorney’s fees will be charged on a contingent basis, which means that the named Plaintiffs’ attorney will receive a portion of any money judgment or settlement entered in favor of the Class, or the Court may make a specific award of attorney’s fees to be paid by Defendant. You are free to be represented by a different attorney of your own choice and to discuss with that attorney how the costs and fees will be paid.

7. How to Join this Lawsuit

Attachment A to this Notice is a form entitled “Consent to Join Lawsuit” to be used if you decide to join this lawsuit under the Federal Claims. If you choose to be represented by attorneys for the named Plaintiffs, the Consent form must be filled out and sent to:

David E. Rothstein, Esquire
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601

and a copy sent to: Christopher W. Johnson, Esquire
GIGNILLIAT, SAVITZ & BETTIS, LLP
900 Elmwood Ave. Ste. 100

Columbia, SC 29201

The attorney for the named Plaintiffs will then file your Consent form with the United States District Court for the District of South Carolina. For your convenience, postage paid, addressed envelopes have been enclosed. Your envelopes must be postmarked within sixty (60) days of the date of this Notice. If your Consent form is not returned timely, you will not be allowed to participate in the Federal Claims.

If you choose to join this class action but choose a different attorney, the Consent form should be filled out and sent to: Clerk of Court, United States District Court for the District of South Carolina, 901 Richland Street, Columbia, South Carolina 29201, postmarked within sixty (60) days of the date of this Notice.

8. How Not to Join this Lawsuit

If you choose not to become involved in the Federal Claims, you do not have to fill out or file any forms and you may disregard and discard this notice. If you choose to exclude yourself from the State Law Claims, you must complete the “Opt-out” Form (Attachment B) and return the form to the Rothstein Law Firm, PA and to Gignilliat, Savitz & Bettis, LLP at the respective addresses above, postmarked within sixty (60) days of the date of this Notice. You may also return the form to the Court.

9. Further Information

Further information about this suit, the deadline for filing a Consent to Join Lawsuit form or an “Opt-out” Form, and the availability of Consent to Join Lawsuit forms or “Opt-out” Forms can be obtained by calling, writing or e-mailing Plaintiffs’ counsel as follows:

David E. Rothstein, Esquire
ROTHSTEIN LAW FIRM, PA
514 Pettigru Street
Greenville, South Carolina 29601
(864) 232-5870
(864) 241-1386 (facsimile)
derothstein@mindspring.com
www.rothsteinlawfirm.com

Attorney for Plaintiffs

Telephone calls will be received:
Monday through Friday, 8:30 a.m.-5:00 p.m., EST

10. The Court’s Authorization of this Notice

The contents of this Notice have been reviewed and authorized by the United States District

Court for the District of South Carolina, Cameron McGowan Currie, United States District Court Judge. The Court has taken no position regarding the merits of the named Plaintiffs' claims under either the FLSA or the South Carolina Payment of Wages Act, or any of the Defendant's defenses.

This Notice is for the sole purpose of determining the identity of those who wish to proceed with any rights they may have in this class action case. No guarantee is made that the Court will find your claim meritorious or grant any relief.

DO NOT CONTACT JUDGE CURRIE OR OTHER COURT PERSONNEL. THE COURT MUST REMAIN IMPARTIAL AND CANNOT MAKE ANY COMMENT ON YOUR RIGHTS OTHER THAN AS SET FORTH IN THIS NOTICE.

For further information on your rights, please contact the named Plaintiffs' attorney listed in Section 9 above, or any attorney of your choice.

11. Protection Against Retaliation

The Fair Labor Standards Act prohibits anyone from retaliating against you in any manner if you choose to take part in this lawsuit or if you testify in Court or in deposition about this case.

REMEMBER:

1. **Complete and return Attachment A (to both attorneys)* if you want to be INCLUDED IN the FEDERAL CLASS.**
2. **Complete and return Attachment B (to both attorneys)* if you want to be EXCLUDED FROM the STATE LAW CLASS.**

*** Two copies of each form and two envelopes are enclosed (one addressed to defense counsel and one to Plaintiffs' counsel). If you return either or both Attachments, be sure to send one copy of each Attachment to both attorneys. (You may make and return a copy of the Attachment or simply return duplicate versions of the Attachments.)**

IF YOU DO NOTHING, you will NOT be a member of the Federal Class, but you WILL be a member of the State Law Class.

Date of Notice: _____

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