

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

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|----------------------|---|-----------------------------|
| JAMES LAMAR BLAKELY, |) | |
| |) | |
| Plaintiff, |) | 2:13-cv-01364-PMD |
| |) | COLLECTIVE ACTION COMPLAINT |
| vs. |) | (Jury Trial Requested) |
| |) | |
| |) | |
| BERKELEY COUNTY, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| _____ |) | |

Plaintiff James Lamar Blakely individually and on behalf of all others similarly situated individuals, by way of the Complaint in the above-captioned matter, alleges and shows unto this Honorable Court the following:

NATURE OF CLAIM

1. Plaintiff brings this lawsuit seeking recovery against Defendant for Defendant’s violation of the Fair Labor Standards Act, as amended (the “FLSA” or the “Act”), 29 U.S.C. §201 et. seq.

2. Plaintiff brings this lawsuit against Defendant as a collective action on behalf of himself and all other persons similarly situated Berkeley County law enforcement officers who suffered damages as a result of Defendant’s violations of the FLSA pursuant to the collective action provisions of 29 U.S.C. § 216(b).

3. Plaintiff also includes other causes of action under South Carolina Law on an individual and class wide basis. These claims are proposed as opt-out claims under Rule 23 of the Federal Rules of Civil Procedure.

4. Plaintiff also includes individual causes of action under the South Carolina Payment of Wages Act, S.C. Code Ann § 41-10-10, et seq.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff James Lamar Blakeley is a citizen and a resident of Berkeley County, South Carolina.

6. Defendant is a governmental agency providing police protection services through the Berkeley County Sheriff's Office.

7. Upon information and belief, at all times relevant to this complaint, Berkeley County Government employs persons such as Plaintiff and other similarly situated law enforcement officers to work on its behalf in providing labor for its benefit.

8. At all times material hereto, Plaintiff performed non-exempt duties for the Defendant in Berkeley County, South Carolina within the jurisdiction and venue of this Court.

9. Venue is proper in this District because Berkeley County has conducted substantial, continuous and systematic commercial activities in Charleston. Additionally, the unlawful labor practices and policies giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

10. Plaintiff brings 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 similarly situated law enforcement officers employed by Defendant within the three years prior to joining this lawsuit, who were non-exempt employees and who were entitled to overtime compensation, but who did not receive overtime compensation for such hours.

11. Plaintiff also brings 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 current law enforcement officers employed by Defendant in 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.

12. 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's 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 Plaintiff, the representative of the proposed Plaintiff's class, are typical of the claims of the proposed Plaintiff class;
and
- d. Plaintiff, the representative of the proposed Plaintiff's class, will fairly and adequately protect the interests of the class.

13. 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.

14. This Court has jurisdiction of the state claims alleged herein, and of the FLSA claim per 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b).

15. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367 over Plaintiff's 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.

16. At all times pertinent to this Complaint, Defendant was an enterprise engaged in interstate commerce or in the production of interstate commerce as defined by the Act, 29 U.S.C. § 203(r) and 203(s).

17. Based upon information and belief, the annual gross sales volume of the Defendant's business was in excess of \$500,000.00 per year at all times material hereto. Alternatively, the Plaintiff and those similarly situated employees worked in interstate commerce so as to fall within the protections of the FLSA.

FACTS

18. At all times relevant to this action, James Lamar Blakely is a law enforcement officer employed by Berkeley County Government.

19. Plaintiff was hired by Defendant in approximately 2001, and is currently employed by Defendant.

20. Upon information and belief, Defendant paid Plaintiff pursuant to a fluctuating work period pay plan. According to this pay plan Plaintiff was entitled to overtime compensation after he worked 171 hours in a 28-day period.

21. Plaintiff regularly worked in excess of 171 hours in a 28-day work cycle, and was rarely properly compensated for those hours. At all times relevant to this Complaint, Plaintiff was non-exempt employees for purposes of the FLSA.

22. The Defendant did not maintain accurate records of the hours that Plaintiff actually worked.

23. Plaintiff routinely worked holidays however the Defendant did not include this time as hours worked for purposes of computing overtime.

24. Beginning in September of 2008, Officer Blakely's job duties as a law enforcement officer for Berkeley County Government also included the training, care, boarding and handling of a canine.

25. In addition to his regularly scheduled hours of work, Officer Blakely spent time in connection with the care of canine's including feeding, watering, grooming, bathing, exercising, cleaning up after, training and bonding for which he was not compensated.

26. Officer Blakely is entitled to liquidated damages in an amount equal to the amount of the unpaid wages and overtime compensation owed to him by the Defendant pursuant to 29 U.S.C. § 216. Officer Blakely is entitled to recover their reasonable attorney's fees and costs of this action.

27. At all times relevant to this Complaint, Plaintiff was good and faithful employee of Defendant and performed the essential functions of their job in an exceptional and competent manner.

FOR A FIRST CAUSE OF ACTION

(Fair Labor Standards Act–Failure to Pay Overtime Wages)
(Individual and Collective Action)

28. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-27 as if restated herein verbatim.

29. Plaintiff and the members of the Plaintiff's class are employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this Complaint. Defendant failed to pay Plaintiff and the members of the Plaintiff's class for all overtime hours.

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

31. Plaintiff and the members of the Plaintiff's class are entitled to back wages for all overtime hours worked.

32. Plaintiff and the members of the Plaintiff's 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.

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

34. Plaintiff and the members of the Plaintiff's 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).

35. The work and pay records of Plaintiff and the members of the Plaintiff's 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. Plaintiff requests an order of this Court requiring Defendants to preserve such records during the pendency of this action.

36. Plaintiff is 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)

37. Plaintiff repeats and realleges each and every allegation of Paragraphs 1-36 as if restated herein verbatim.

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

39. Defendant employed Plaintiff and the members of the Plaintiff's class within the State of South Carolina.

40. Defendant owes Plaintiff and the members of the Plaintiff's 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 Plaintiffs' class and as required by law, including overtime pay required by the FLSA.

41. Defendant required Plaintiff and the members of the Plaintiff's class to work "off the clock," and did not pay them for all service rendered for the benefit of Defendant.

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

43. In addition, Defendant deducted amounts from the paycheck of Plaintiff and the members of the Plaintiff's class for improper purposes, upon false pretenses, and without providing proper written notice as required by Section 41-10-30(A) of the Act.

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

45. Pursuant to Section 41-10-80(C) of the Act, Plaintiff and the members of the Plaintiff's 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and similarly situated employees who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216 (b);
- b. Judgment against Defendants for an amount equal to Plaintiffs unpaid back wages at the applicable overtime rates;
- c. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- d. Liquidated damages in an amount equivalent to the overtime damages owed to Plaintiffs;

- e. 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;
- f. Treble damages pursuant to the South Carolina Payment of Wages Act
- g. Leave to add additional plaintiffs by motion, the filing of written consent forms; or any other method approved by the Court;
- h. Leave to amend to add other defendants who meet the definition of Plaintiffs “employer, 29 U.S.C. § 203(d);
- i. Injunctive relief to require Defendants to record, report and preserve records sufficient to enable Plaintiffs and similarly-situated employees to determine their wages, hours and conditions and practices of employment, including practices regarding deductions and payment and nonpayment of overtime as mandated by the FLSA.
- j. Attorneys’ fees and costs; and
- k. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff James Lamar Blakely behalf and on behalf of all other similarly situated employees hereby demand a trial by jury.

Respectfully submitted,
s/ Marybeth Mullaney
Marybeth Mullaney Fed. ID No. 11162
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May 20, 2013
Mount Pleasant, South Carolina.