

4. Defendant, Eadie Industrial Inc., is a for-profit corporation, organized under the laws of South Carolina.

5. Defendant, Eadie Construction Company Inc., is a for-profit corporation, organized under the laws of South Carolina.

6. Upon information and belief, Defendant, Keith Eadie is the owner and manger of Eadie's Industrial Inc. and Eadie's Construction Company Inc.

7. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in Charleston Division of this Court. The Defendants' industrial shop is located 147 Vacuum Lane in Ridgeville, SC. Additionally, the unlawful labor practices and policies giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

8. 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 non-exempt employees 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.

9. 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).

10. 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.

11. At all times pertinent to this Complaint, Defendants were 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).

12. Based upon information and belief, the annual gross sales volume of the Defendants' 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

13. The Defendants specialize in industrial and municipal drain & vacuum work. They offer vacuum services, hydro blasting, ditch renovations, hydro-excavation, water blasting, installation of underground utilities, and video inspection along with other site work. See <http://www.eadiesconstruction.com/4394.html>

14. At all times relevant to this action, Kevin L. Allard was employed by the Defendants "off and on" from approximately 2001 until January 2014.

15. The Plaintiff was a pipe layer. His primary responsibilities included installing pipes for sewer and water systems along with cleaning out clogged storm drains, catch basins, pump stations, and u-drains.

16. Plaintiff was paid by the hour and in January of 2014 he was paid a rate of \$15.50 an hour.

17. Plaintiff regularly worked over 40 hours a week.

18. Plaintiff was a non-exempt employee and was entitled to overtime pay when he worked more than 40 hours a week.

19. Despite working over forty (40) hours per workweek, Plaintiff regularly did not receive overtime compensation in the amount of at least one and a half times his regular hourly rate.

20. When Plaintiff worked over 40 hours a week, Defendants characterized much of this time as “Shop Time” or “Regular Sewer Hours” or “Water/Storm Drain Hours” and would pay Plaintiff at his regular hourly rate instead of time and half. For instance, Plaintiff’s pay stub for August 1, 2013 to August 7, 2013 states that Plaintiff worked the following hours:

(10) Hours at “Reg Hr Drain and Vacuum” was paid a rate of \$15.50

(13) Hours at “Hr Shop Time” was paid a rate of \$15.50

(30) Hours at “Hr Water/Storm Drain” was paid a rate of \$15.50

(.75) Hours “OT Drain and Vacuum” was paid a rate of \$23.25.

21. According to Defendants’ own records, Plaintiff worked a total of 53.75 hours during the week of August 1, 2013 to August 7, 2013, however he only received time and half compensation for .75 hours.

22. During his employment with Defendants, Plaintiff and similarly situated employees regularly worked more then forty (40) hours in a workweek, and oftentimes Defendants failed to pay them one and one-half times their regular rate of pay for all hours worked in excess of forty (40) per workweek during one or more work weeks.

23. Plaintiff was regularly required to work “off the clock”.

24. Plaintiff was not compensated for the time he spent traveling from the Defendants’ industrial shop to job assignments even though Plaintiff performed principal

activities that were integral and indispensable to his principal duties at the shop before he drove to the job assignment.

25. Plaintiff regularly arrived at the shop at approximately 6:00 a.m, upon arrival he would drive the company truck to the gas station to fuel the truck along with several gas tanks. Plaintiff fueled up the pumps and other equipment and loaded the company truck with equipment that was necessary for his work assignments for that day. Plaintiff was not compensated for this time, usually Plaintiff was not “on the clock” until 7:30 a.m when he arrived on the assigned job site in the company truck.

26. Upon information and belief, Defendants failed to maintain accurate records of Plaintiff’s time. The records, if any, concerning the number of hours worked by Plaintiff and all other similarly situated employees as Plaintiff are in the possession and custody of Defendants.

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

28. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendants and performed the essential functions of his 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)

29. Plaintiff, on behalf of himself and all similarly situated employees, reallege and incorporate by reference all preceding paragraphs as if they were set forth herein verbatim.

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

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

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

33. 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 Defendants, which was wrongfully excluded by Defendants in calculating their compensable time.

34. The failure of Defendants to compensate Plaintiff for overtime work as required by the FLSA was willful.

35. 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).

36. The work and pay records of Plaintiff and the members of the Plaintiff's class are in the possession, custody, and/or control of Defendants, and Defendants are 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 Defendants' liability can be ascertained. Plaintiff requests an order of this Court requiring Defendants to preserve such records during the pendency of this action.

37. 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).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Allard along with similarly situated employees who join this action demand:

- a. Certification 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 Plaintiff's 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 Plaintiff;
- e. Leave to add additional plaintiffs by motion, the filing of written consent forms; or any other method approved by the Court;

- f. Injunctive relief to require Defendant to record, report and preserve records sufficient to enable Plaintiff's 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.
- g. Attorney's fees and costs; and
- h. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Allard on behalf of himself and on behalf of all other similarly situated employees hereby demands a trial by jury.

Respectfully submitted,
s/ Marybeth Mullaney
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Attorney for Plaintiff

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Mount Pleasant, South Carolina.