

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

JORCELYN K REED,)	
On Behalf of Herself and Others)	Civil Action No.: <u>2:14-cv-04660-DCN</u>
Similarly Situated,)	
)	
Plaintiff,)	
)	
v.)	COLLECTIVE ACTION COMPLAINT
)	(Jury Trial Requested)
BUILDERS FIRSTSOURCE INC.,)	
BUILDERS FIRSTSOURCE HOLDING,)	
INC., BUILDERS FIRSTSOURCE-)	
ATLANTIC GROUP LLC., BUILDERS)	
FIRSTSOURCE-SOUTHEAST)	
GROUP, LLC,)	
)	
Defendants.)	
_____)	

Plaintiff Jorcelyn K. Reed individually and on behalf of all others similarly situated individuals, by way of their Complaint in the above-captioned matter, allege and show unto this Honorable Court the following:

NATURE OF CLAIM

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 provision under the FLSA provides for opt-in class participation.

2. 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

3. Plaintiff Jorcelyn K. Reed is a citizen and a resident of Charleston County, South Carolina.

4. Defendant, Builders FirstSource Inc., is a for-profit Delaware corporation, which upon information and belief is registered with South Carolina Secretary of State as Builders FirstSource Holding Inc., Builders FirstSource-Atlantic Group LLC, and Builders FirstSource - Southeast Group, LLC and is the entity for whom Plaintiff was employed.

5. Venue is proper in this District because the Defendants have conducted substantial, continuous and systematic commercial activities in Charleston, South Carolina. Additionally, the unlawful labor practices and policies giving rise to Plaintiff's claims were committed in the Charleston Division of this Court.

6. 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 sales coordinators 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 for such hours within the last three years.

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

8. 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.

9. At all times pertinent to this Complaint, Defendants owned an operation and existed as 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).

10. 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

11. Upon information and belief Defendants, Builders FirstSource Holding Inc. and Builders FirstSource-Atlantic Group LLC., and Builders FirstSource - Southeast Group, LLC do business in South Carolina as Builders FirstSource Inc.

12. Defendants are a leading supplier and manufacturer of structural and related building products for residential new construction. Builders FirstSource Inc. operates in 9 states, principally in the southern and eastern United States, and has 55 distribution centers and 52 manufacturing facilities, many of which are located on the same premises as distribution facilities. Manufacturing facilities include plants that manufacture roof and floor trusses, wall panels, stairs, aluminum and vinyl windows, custom millwork and pre-hung doors. Builders FirstSource Inc also distributes windows, interior and exterior doors, dimensional lumber and lumber sheet goods, millwork and other building products. See <http://www.bldr.com/BuildersFirstSource.aspx>.

13. The materials sold by Defendants are not retail in nature because they are construction products used mainly for the purpose of resale such as new housing developments, major renovations and commercial developments.

14. Plaintiff, Jorcelyn K. Reed was employed by the Defendants at it's location on 3155 Maybank Hwy, Johns Island, South Carolina from approximately April of 1992 until approximately July of 2014, a period of approximately 22 years.

15. Plaintiff was employed as sales coordinator. She was paid an hourly rate of \$12.89 an hour plus commission. The Plaintiff did not receive more than half of her compensation in the form of commissions on goods or services.

16. Plaintiff's primary duties included operating the cash register, waiting on customers, completing paperwork for purchases, deliveries and ordering products. In addition, Plaintiff was required to respond to the customer's requests for assistance.

17. Plaintiff was not regularly engaged in sales away from the Defendants' place or places of business.

18. Plaintiff was not compensated for her meal breaks. Plaintiff rarely got an uninterrupted meal break because she was expected to respond to calls for assistance from customers during her meal breaks.

19. The Plaintiff was often called upon to performed worked related duties during her meal break and she was not compensated for this time.

20. The majority of Plaintiff's meal breaks were spent predominantly to benefit the Defendants.

21. Plaintiff was also expected to make deliveries to customers and pick-up payments from customers "off the clock" both before and after her scheduled shift.

22. Plaintiff was not compensated for her mileage when she made deliveries for the Defendants in her personal vehicle.

23. The hours, Plaintiff and others spent, assisting customers during their meal breaks, making deliveries and picking up payments were not included in computing the total number of hours that Plaintiff worked for the week. This caused Plaintiff, along with other similarly situated individuals; to work more than forty hours a week and not get paid time and half.

24. Plaintiff had earned leave time that she should have been compensated for in her last paycheck and she was not paid for this time.

25. During the relevant limitations period, Plaintiff regularly worked in excess of forty (40) hours per week, and she was not compensated for time and half of her hourly wage. At all times relevant to this Complaint, Plaintiff was a non-exempt employee for purposes of the FLSA.

26. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendants for over 22 years and performed the essential functions of her 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)

27. Plaintiff, on behalf of herself and all similarly situated employees, realleges and incorporates by reference all preceding paragraphs as if they were set forth herein verbatim.

28. Plaintiff and the members of the Plaintiff's class were 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 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).

29. 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.

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

31. 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.

32. The failure of Defendants 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.

33. 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).

34. 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.

35. Plaintiff is also entitled to an award of reasonable attorney's 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)

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

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

38. Defendants employed Plaintiff and the members of the Plaintiff's class within the State of South Carolina.

39. Defendants owe 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 Defendants, as promised to Plaintiff and the members of the Plaintiff's class and as required by law.

40. Defendants 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 Defendants.

41. Defendants have 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.

42. Defendants 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. 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.

43. Plaintiff individually had earned leave time, which constituted wages under the Act, which was not paid to Plaintiff by the Defendants at the time of separation. Such failure to pay is a violation of the Act, and Plaintiff is entitled to recover an amount equal to three times the full amount of the unpaid 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 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. 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 for unpaid wages.
- 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 Plaintiff's employer, 29 U.S.C. § 203(d);
- i. Injunctive relief to require Defendants to record, report and preserve records sufficient to enable Plaintiff 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 Reed on her behalf and on behalf of all other similarly situated employees hereby demands a trial by jury.

Respectfully submitted,

s/ Marybeth Mullaney

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December 9, 2014
Mount Pleasant, South Carolina.