

United States District Court)	In the United States District Court
)	District of South Carolina
District of South Carolina)	Florence Division
)	
Florence Division)	
)	
Jonathon K. Parker,)	Case No. 4:15-cv- <u>1389-BHH</u>
individually and on behalf of other similarly)	
situated employees,)	
)	
Plaintiff(s),)	
)	
v.)	Complaint
)	(Jury Trial Requested)
A Backyard Creation, LLC,)	
Peter Needham & William Johnston,)	
)	
Defendant(s).)	

The Plaintiffs, by and through their undersigned counsel, do hereby make the following claims and allegations.

PARTIES

1. Defendant, A Backyard Creation, LLC, is a business located in Horry County, South Carolina. A Backyard Creation, LLC, contracts in, does business in, and derives benefit from the laws of the State of South Carolina. Defendant, A Backyard Creation, LLC, may be served with process by serving its registered agent, William Johnston, at 109 Balsa Drive, Longs, SC 29568 or at anyplace he may be found.
2. Defendant, Peter Needham, is a resident of Horry County and the State of South Carolina, and within the jurisdiction of this Honorable Court.
3. Defendant, William Johnston, is a resident of Horry County and the State of South Carolina, and within the jurisdiction of this Honorable Court.
4. The Plaintiff, Jonathon K. Parker is a resident of Horry County and the State of South Carolina, and within the jurisdiction of this Honorable Court.

5. That all parties and subject matter herein mentioned are within the jurisdiction of this Honorable Court.

PLAINTIFFS' ORIGINAL COLLECTIVE ACTION COMPLAINT

Now comes Jonathon K. Parker on behalf of himself and all other employees similarly situated, to complain of Defendant A Backyard Creation, LLC, William Johnston and Patrick Needham and for a cause of action would show the Court as follows:

JURISDICTION & VENUE

6. The Plaintiff's claims arise under the Fair Labor Standards Act ("FLSA") 29 U.S.C. § 201 *et. seq.* Accordingly, this Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 216(b) and 28 U.S.C. §1331.
7. Venue is proper in the District of South Carolina because a substantial portion of the events forming the basis of this suit occurred in the District of South Carolina. Venue is also proper in the District of South Carolina because Defendant, A Backyard Creation, LLC, has its principal place of business in the District of South Carolina and Defendant(s) William Johnston and Patrick Needham reside in Horry County, South Carolina.

COVERAGE UNDER THE FLSA

8. At all material times, Defendant(s) have been an employer within the meaning of the FLSA.
9. At all material times, Defendant(s) have operated an enterprise within the meaning of the FLSA.
10. At all material times, Defendant(s) have operated an enterprise engaged in commerce and/or the production of goods for commerce within the meaning of the FLSA.

11. At all material times, Plaintiff was an employee who was engaged in commerce as required by the FLSA. Like the Plaintiff, the members of the Plaintiff Class were employees engaged in commerce in performing their duties for the Defendant.

CLASS ALLEGATIONS

12. Plaintiff filed this case as an “opt in” class action as specifically allowed by 29 U.S.C. § 216(b).
13. The Class that Plaintiff seeks to represent may be described as follows: All current or former laborers, technicians, service technicians or pool installers (“Pool Techs”) of Defendant(s), A Backyard Creation, LLC, Peter Needham and William Johnston or equivalent titles, which 1) performed installation of pools, water parks, lazy rivers, and hot tubs; 2) performed maintenance and/or cleaning of pools, water parks, lazy rivers, and hot tubs; 3) worked more than forty (40) hours per week without receiving payment for overtime at one and one half times their regular rate of pay.
14. Plaintiff seeks to represent only those members of the above-described group, who, after appropriate notice of their ability to opt-in to this action, have provided consent in writing to be represented by the Plaintiff’s counsel as required by 29 U.S.C. § 216(b).
15. Those people who choose to opt in collectively referred to as the “Plaintiff Class” will be listed on subsequent pleadings and copies of the written consents to sue will be incorporated here by reference.
16. Plaintiff contends that this action is appropriate for class action status because the Defendant(s) herein have acted in the same manner with regard to all members of the Plaintiff Class.

17. The members of the Plaintiff Class are similarly-situated to Plaintiff and are owed overtime wages for the same reasons as the Plaintiff. These employees should be notified of this case and given the opportunity to join this suit.

FACTUAL ALLEGATIONS

18. At all times relevant to this action, Defendant(s) have been subject to the requirements of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et. seq.*

19. For the purposes of this action, the “relevant period” is defined as such period commencing on the date that is three years prior to the filing of this action, and continuing thereafter.

20. Defendant(s) “Pool Techs” worked for the Defendant(s) installing pools, hot tubs and lazy rivers and performing maintenance and cleaning on the pools, hot tubs and lazy rivers for various clients throughout the greater grand strand area.

21. Plaintiff and other “pool techs” were all hourly employees prior to March of 2014 when the Defendant(s) suddenly changed the Plaintiff and other employees and/or “pool techs” to salary positions.

22. Plaintiff and other “pool techs” continued to have the same job duties as salaried employees and they did as hourly employees.

23. Plaintiff and other “pool techs” do not have management positions or responsibilities.

24. Plaintiff and other “pool techs” do not direct the work of other “pool techs” and do not have the authority to hire or fire other employees or “pool techs.” Plaintiff and other “pool techs” do not interview prospective “pool techs” for positions or train other employees.

25. Plaintiff and other “pool techs” do not set or adjust other employees or “pool techs” hours or pay or evaluate the work of other “pool techs.”

26. Plaintiff and other “pool techs” do not plan the work for other employees or “pool techs” or determine their needs for supplies and materials.

UNPAID COMPENSATION AND FRAUDELENT RECORDS

27. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully rewritten herein.

28. Defendant(s) “pool techs” routinely worked more than forty (40) hours a week for the Defendant(s).

29. Defendant(s) have altered the records of hours worked by the Plaintiff and other “pool techs” so that regardless of how many hours actually worked by the Plaintiff and other “pool techs” they would only receive their salary.

30. Defendant(s) have failed to keep complete and accurate records of the hours worked by the Plaintiff and other “pool techs” in violation of the FLSA.

31. Defendant(s) did not pay the Plaintiff and other “pool techs” for their hours of work in excess of forty (40) hours per week at one and one half their regular rate, as required under the FLSA.

32. The Plaintiff and other “pool techs” were not exempt employees.

33. Defendant(s) have not made a good faith effort to comply with the FLSA. Rather the Defendant(s) knowingly, willingly and/or with reckless disregard carried out its illegal pattern or practice regarding overtime compensation.

34. Defendant(s) initially switched the Plaintiff and other “pool techs” to salary for the illegal purpose of not paying overtime to the Plaintiff and other “pool techs” for the hours they

worked over forty (40) in a week. The Defendant(s) salary scheme was willful and knowingly done in an attempt to avoid paying overtime to the Plaintiff and other “pool techs.”

COLLECTIVE ACTION ALLEGATIONS

35. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.
36. Other employees or “pool techs” have been victimized by this pattern, practice, and policy of the Defendant(s) in violation of the FLSA.
37. Thus, from discussion with other co-workers, Plaintiff is aware that the illegal practices and policies of the Defendant(s) have been imposed on other workers.
38. Other, similarly situated employees are being denied their lawful wages.
39. Other, similarly situated employees are having less than their full work hours recorded by Defendant(s).
40. Accordingly, Defendant(s) pattern or practice of failing to pay the employees overtime pay (at time and one half) as required by the FLSA results from Defendant(s) general application of policies and practices, and does not depend on the personal circumstances of the various “pool techs.”
41. Thus the Plaintiff’s experiences are typical of the experience of all “pool techs.”
42. All employees who meet the description of paragraph 13 above are similarly situated.
43. Although the issue of damages may be individual in nature, the facts related to liability are common to all “pool techs.”

44. Plaintiff and Plaintiff Class (“pool techs”) seek an amount of back pay equal to the overtime compensation which has been unlawfully withheld in a period beginning three years prior to the filing of this lawsuit and continuing until the date of trial.

FOR A FIRST CAUSE OF ACTION FAILURE TO PAY OVERTIME

45. Each and every allegation contained in the foregoing paragraphs is re-alleged as if fully re-written herein.

46. Defendant(s) failure to pay overtime wages to the “pool techs” was in violation of the FLSA. Accordingly, the Plaintiff and the Class are entitled to overtime in an amount equal to one and one half times their regular rate of pay for each hour worked over forty (40) in each workweek.

47. Additionally, the Plaintiff and Plaintiff Class are entitled to an amount equal to all of their unpaid wages as liquidated damages.

48. Plaintiff and Plaintiff Class are entitled to recover attorney’s fees and costs of this action as provided by the Fair Labor Standards Act, 29 U.S.C. § 216(b).

JURY DEMAND

49. The Plaintiff and Plaintiff Class hereby demand a jury trial.

PRAYER

WHEREFORE, the Plaintiff and Plaintiff Class request that this Court award them judgment against the Defendant(s) for the following relief:

- a) A declaration that the Defendant(s) have violated the Fair Labor Standards Act, specifically 29 U.S.C. 207, by failing to pay Plaintiff and all other similarly situated employees’ overtime pay at one and one half times their regular rate for all hours in excess of forty (40) worked during each seven-day work period;

- b) Actual damages;
- c) Incidental damages;
- d) Consequential damages;
- e) Damages for the full amount of their unpaid overtime compensation;
- f) An equal amount of liquidated damages;
- g) Reasonable attorney's fees, costs, and expenses of this action;
- h) Such other damages as this Honorable Court deems appropriate and just.

Respectfully Submitted,

S/William J. Luse

William J. Luse, Esquire

Federal ID # 9736

1601 Oak Street, Ste. 201

Myrtle Beach, SC 29577

Phone: 843-839-4795

Fax: 843-839-4815

lusewilliam@yahoo.co

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