

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

Andre Smith,)	CA No. <u>3:15-cv-03671-JFA</u>
)	
Plaintiff,)	
)	
vs.)	NOTICE OF REMOVAL
)	
Innovative Solutions of S.C., Inc.,)	
)	
Defendant.)	
_____)	

The Defendant Innovative Solutions of the S.C., Inc., invokes the Court’s jurisdiction pursuant to 28 U.S.C. §§ 1441 and 1446 and submits this Notice of Removal. Removal is proper based on the following grounds:

1. On July 14, 2015, Plaintiff initiated a civil action captioned Andre Smith vs. Innovative Solutions of S.C., Inc., Civil Action No. 2015-CP-40-04232, in the Court of Common Pleas for Richland County, South Carolina. The Complaint alleges causes of action arising under the Fair Labor Standards Act (“FLSA”) and the South Carolina Payment of Wages Law.

2. Defendant was served with a copy of the Summons and Complaint on August 24, 2015. A true and accurate copy of all process and pleadings served upon Defendant to date is attached hereto as Exhibit A and incorporated by reference.

3. The United States District Court has original jurisdiction over this case pursuant to 28 U.S.C. § 1331, in that Plaintiff has alleged causes of action arising under federal law, namely that Defendant interfered with rights protected by the FLSA. In accordance with the well-pleaded complaint rule, this intention to see redress pursuant to the FLSA presents a “federal question . . . on the face of the plaintiff’s properly-pleaded complaint.” *Caterpillar*,

Inc., v. Williams, 482 U.S. 386, 392 (1987); *King v. Marriott Int'l, Inc.*, 337 F.3d 421 (4th Cir. 2003).

4. This Notice of Removal is filed within 30 days of receipt by Defendant of the Summons and Complaint in accordance with 28 U.S.C. § 1446(b).

5. Defendant has not made any appearance in the Richland County Court of Common Pleas.

6. Defendant submits this Notice of Removal without waiving any defenses to the claims asserted by Plaintiff and without conceding that Plaintiff has alleged claims upon which relief may be granted.

7. This matter is properly removed to the Columbia Division because the action is pending in this division.

8. Written notice of the filing of this Notice of Removal will be given to Plaintiff, and filed with the Clerk of Court for the South Carolina Court of Common Pleas, Richland County.

WHEREFORE, Defendant asks that further proceedings in the South Carolina Court of Common Pleas, Richland County, be discontinued and that Civil Action No. 2015-CP-40-04232, now pending in the South Carolina Court of Common Pleas, Richland County, be removed to the United States District Court for the District of South Carolina, Columbia Division, and that such Court assume full jurisdiction as provided by law.

MOORE TAYLOR LAW FIRM, P.A.

By: /s/James Edward Bradley
James Edward Bradley, SC Bar # 66130
1700 Sunset Boulevard
P.O. Box 5709
West Columbia, SC 29171
(803) 796-9160
Attorney for Defendant

West Columbia, South Carolina

September 15, 2015

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ANDRE SMITH

Plaintiff(s)

vs.

INNOVATIVE SOLUTIONS OF S.C., INC.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP - 40-4232

Submitted By: GLENN WALTERS, ESQUIRE

Address: POST OFFICE BOX 1346, ORANGEBURG, SC
29116

SC Bar #: 13198

Telephone #: 803-531-8844

Fax #: 803-531-3628

Other:

E-mail: glennwaltersp@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input checked="" type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture-Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | |

Submitting Party Signature:



Date:

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Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Andre Smith,)
Plaintiff,)
v.)
Innovative Solutions of S.C.,)
Inc.)
Defendant(s).)
_____)

Case No. 2015-CP-40-_____

SUMMONS
(Jury Trial Requested)


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TO: THE ABOVE - NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the undersigned Attorney for the Plaintiff, at Post Office Box 1346, Orangeburg, SC 29116, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in this Complaint.

At Orangeburg, SC

Dated: 7/10, 2015


GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803-531-8844
Fax: 803-531-3628
SC Bar No.: 13198
Attorney for Plaintiff

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A handwritten signature in black ink, appearing to read 'M. Culler', is written over a horizontal line.

MICHAEL CULLER, Esquire
1540 Russell Street, Suite 103
Orangeburg, SC 29115
Phone: 803-536-5055
Fax: 803-536-5063
SC Bar No.: 018012
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Andre Smith,)
Plaintiff,)
v.)
Innovative Solutions of S.C.,)
Inc.)
Defendant(s).)
_____)

Case No. 2015-CP-40-_____

COMPLAINT
(Jury Trial Requested)

Plaintiff, Andre Smith individually and on behalf of all others similarly situated individuals, by way of their Complaint in the above-captioned matter, would 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 provide for opt-in class participation.

PARTIES, JURISDICTION AND VENUE

2. Andre Smith is a citizen and a resident of Richland County, South Carolina.
3. Plaintiff brings this action on behalf of himself and other similarly situated employees of Defendants for overtime compensation and

other relief under the Fair Labor Standards Act, as amended (the “FLSA” or the “Act”), 29 U.S.C. §201 et. Seq.

4. 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 individuals employed by Defendant within the three years prior to joining this lawsuit, who were non-exempt employees and who worked in excess of forty hours in any given work week, but who did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours and who were required to work more time than was actually included in their compensable time.
5. Defendant, Innovative Solutions of S.C., Inc., is a for-profit corporation, organized under the laws of South Carolina operating in the Richland area.
6. Venue is proper in this District because Defendant is located near this County. Presently and at all times, Defendant has conducted substantial, continuous and systematic commercial activities in Richland County and the unlawful labor practices giving rise to Plaintiff's claims were committed in the Richland County Division of this Court.
7. 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).

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 material hereto, Innovative Solutions of S.C., Inc. managed, owned and/or operated an enterprise, and regularly exercised the authority to hire and fire employees, determine the work schedules of employees, set the rate of pay of employees and control the finances and operations of such business. By virtue of such control and authority, Innovative Solutions of S.C., Inc. was an employer of Plaintiff as such term is defined by the Act. 29 U.S.C. § 2011 et seq.
10. At all times pertinent to this Complaint, Defendant owned an operation and 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).
11. Based upon information and belief, the annual gross sales volume of the Defendant's business was in excess of \$500,000.00 per annum 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

12. Upon information and belief, the Defendant, Innovative Solutions of S.C., Inc., has locations at 431 Mission Ct., Irmo, SC 29063.
13. Defendant has employed the Plaintiff since approximately until July, 2013. Plaintiff worked as a Heating and Air Conditioning Technician. Plaintiff was not allowed to exercise discretion and independent judgment with respect to matters of significance.
14. Plaintiff's duties included heating, air conditioning and refrigeration repair.
15. Plaintiff was a non-exempt employee and was entitled to overtime pay when he worked more than 40 hours a week.
16. Plaintiff frequently worked in excess of sixty (60) hours a week. Despite working over forty (40) hours per workweek, Plaintiffs did not receive overtime compensation in the amount of at least one and a half times the regular hourly wage for this time.
17. Defendant 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.
18. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendant and consistently performed all of the essential functions of his job in an acceptable and competent manner.

19. Upon information and belief, Defendant supervised, instructed and authorized managerial employees to engage in the above unlawful practices and ratified their actions afterwards in order to increase corporate profits and reduce the costs of labor.
20. At all times pertinent to this complaint, Defendant failed to comply with Title 29 U.S.C. §§ 201-209 in that Plaintiff and those similarly-situated clerical staff performed labor for Defendant for which Defendant made no provision to pay Plaintiff and other similarly-situated employees compensation to which they were lawfully entitled.

FOR A FIRST CAUSE OF ACTION
(Fair Labor Standards Act-Failure to Pay Overtime Wages)
(Individual and Collective Action)

21. Plaintiff repeat and reallege each and every allegation of Paragraphs 1-20 as if restated herein verbatim.
22. Plaintiffs and the members of the Plaintiff class were employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this complaint. Defendant failed to pay Plaintiffs and the members of the Plaintiff 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).
23. Defendant also failed to pay Plaintiffs and the members of the Plaintiff class for all compensable time for which Plaintiffs provided work for the benefit of Defendant.

24. Plaintiffs and the members of the Plaintiff 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).
25. Plaintiffs and members of the Plaintiff 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.
26. The failure of Defendant to compensate Plaintiffs for overtime work and for “off the clock hours” as required by the FLSA was knowing, willful, intentional, done in bad faith.
27. Plaintiffs and the members of the Plaintiff 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).
28. The work and pay records of Plaintiffs and the members of the Plaintiff 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. Plaintiffs request an order of

this Court requiring Defendant to preserve such records during the pendency of this action.

29. Plaintiffs are 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
(Recovery of Federal Minimum Wage)
(Individual and Collective Action)

30. Plaintiff reincorporates and readopts all allegations contained within Paragraphs 1-29 above.
31. Plaintiffs and those similarly situated employees, are/were entitled to be paid minimum wage for each hour worked during employment with Defendant.
32. Plaintiffs have demanded proper compensation for one or more weeks of work with Defendant, but Defendant has refused and/or failed to compensate Plaintiffs for the same.
33. As a result of Defendant's actions in this regard, Plaintiffs have not been paid the minimum wage for each hour worked during one or more weeks of employment with Defendant because their hourly wages were reduced below the applicable Federal minimum wage requirement.
34. Defendant willfully failed to pay Plaintiffs minimum wage for one or more weeks of work contrary to 29 U.S.C. § 206 because Defendant

was well aware of the minimum wage law requirements but continued its violations.

35. In addition, Defendants failed to post the required posting regarding minimum wage requirements.
36. Also, Defendants failed to maintain required records regarding Plaintiffs time and pay as required by law.
37. As a direct and proximate result of Defendant's deliberate underpayment of wages, Plaintiffs, and those similarly situated employees, have been damaged in the loss of minimum wages for one or more weeks of work with Defendant.

FOR A THIRD CAUSE OF ACTION
(South Carolina Payment of Wages Act)
(Individual and Class Action)

38. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-37 as if restated herein verbatim.
39. Defendant is an "employer" as defined by the South Carolina Payment of Wages Act, S.C. Ann. § 41-10-10(1).
40. Defendant employed Plaintiffs and the members of the Plaintiff class within the State of South Carolina.
41. Defendant owes Plaintiffs and the members of the Plaintiff 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 Plaintiff class and as required by law, including overtime pay required by the FLSA.

42. Defendant required Plaintiffs and the members of the Plaintiff class to work “off the clock,” and did not pay them for all service rendered for the benefit of Defendant.
43. Defendant has failed to pay Plaintiffs and the members of the Plaintiff class all wages due, as required by Sections 41-10-40 and -50 of the Act.
44. In addition, Innovative Solutions, deducted amounts from the paychecks of Plaintiffs and the members of the Plaintiff class for improper purposes, upon false pretenses, and without providing proper written notice as required by Section 41-10-30(A) of the Act.
45. Defendant’s failure to pay Plaintiffs and the members of the Plaintiff class all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.
46. Pursuant to Section 41-10-80(c) of the Act. Plaintiffs and the members of the Plaintiff 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 Smith and similarly situated employees who join this demand:

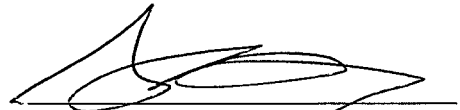
- a. Designation of this action as a collective action on behalf of the FLSA collective class pursuant to 29 U.S.C. § 216(b);
- b. Judgment against Defendants for an amount equal to Plaintiffs unpaid back wages at the applicable overtime rates;
- c. Judgment against Defendants that their violation of the FLSA and its implementing regulations were willful;
- d. Liquidated damages in an amount equivalent to the overtime damages owed to Plaintiffs;
- e. Treble damages pursuant to the South Carolina Payment of Wages Act;
- f. Leave to add additional plaintiffs by motion, the filing of written consent forms; or any other method approved by the Court;
- g. Leave to amend to add other defendants who meet the definition of Plaintiffs "employer," 29 U.S.C. § 203(d);
- h. 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;
and

- i. Attorneys' fees and costs; and
- j. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiff Smith on his behalf and on behalf of all other similarly-situated employees hereby demands a trial by jury.



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Phone: 803 531-8844
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SC Bar No.: _____
Attorney for Plaintiff



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SC Bar No.: 019012
Attorney for Plaintiff

At Orangeburg, South Carolina

Dated: July 10, 2015