

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

FRANK MCCRAY	)	Civil Action No.: <u>2:15-cv-04115-DCN</u> ,
On Behalf of Himself and Others	)	
Similarly Situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	<b>COLLECTIVE ACTION COMPLAINT</b>
	)	<b>(Jury Trial Requested)</b>
CITY OF GOOSE CREEK,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff, Frank McCray individually and on behalf of all others similarly situated, by way of their Complaint, alleges the following:

**NATURE OF CLAIMS**

1. Plaintiff bring this action individually and as a collective action pursuant to 29 U.S.C. §216(b) for unpaid overtime compensation, liquidated damages, and other relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 201 et seq. Plaintiff also brings this action individually and as a class action for unpaid wages, treble damages, and other relief under the South Carolina Payment of Wages Act, S.C. Code Ann § 41-10-10, et seq.

2. Plaintiff is a former employee of the Defendant, who required Plaintiffs and similarly, situated employees to work “off-the-clock,” and from whom Defendant wrongfully deducted wages from his pay.

**PARTIES, JURISDICTION AND VENUE**

3. Plaintiff Frank McCray is a citizen and a resident of Dorchester County, South Carolina.

4. Defendant, City of Goose Creek is a municipality corporation organized and existing under the laws of the State of South Carolina.

5. The Defendant, City of Goose Creek, is an employer within the meaning of 29 U.S.C. §203(d).

6. Plaintiffs bring this action individually and on behalf of all other similarly situated employees of Defendant as an “opt-in” collective action pursuant to 29 U.S.C. §216(b).

7. This Court has jurisdiction of the federal claims alleged herein pursuant to 28 U.S.C. § 1331, and 29 U.S.C. § 216 (b). In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, of Plaintiff’s pendent claims, which are brought pursuant to the statutory law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

8. Venue is proper in this District because the Defendant has conducted substantial, continuous and systematic commercial activities in South Carolina, and Defendant’s unlawful labor practices and policies giving rise to Plaintiff’s claims were committed in the Charleston Division of this Court.

### **FACTS**

9. Defendant, City of Goose Creek is municipality, which provides sanitation services to the residents of Goose Creek consisting of collecting and disposing of household garbage and yard debris from the residents on a weekly basis.

10. Plaintiff Frank McCray was employed by the Defendants from approximately February of 2003 until May of 2015.

11. The Plaintiff was employed as “Refuse Collector”. This position involved manual labor consisting of removing household garbage, yard debris and taking it away for disposal.

12. Plaintiff’s job did not require him to load or transport pre-sorted recyclables. Plaintiff removed waste, which was not a good in the stream of commerce.

13. The Defendant paid Plaintiff an hourly rate of \$13.33. Plaintiff had an employment agreement with the Defendant, whereby the Defendant agreed to pay him an hourly rate for all hours worked.

14. Plaintiff was not involved in trips that involved interstate travel.

15. Plaintiff’s job required him to remain within Berkeley County; he could not have been called upon to make interstate trips.

16. Plaintiff and all similarly situated Refuse Collectors are non-exempt employees.

17. Plaintiff did not exercise discretion or independent judgment with respect to the household garbage or the yard debris he collected and dispose of.

18. At all times relevant herein, Defendant maintained a policy and practice under which it automatically deducted thirty (30) minutes from the work time each work day from Plaintiff and similarly situated employees for meal breaks

19. At all times relevant herein, Defendant maintained a policy and practice of requiring Plaintiff and other similarly situated employees of disposing of garbage at the landfill during their scheduled meal break. As a result of this practice the Plaintiff and other Refuse Collectors did not receive thirty (30) minutes within which to eat a meal, as they were engaged in the performance of duties predominantly for Defendant’s benefit.

20. In some workweeks, this caused Plaintiff and other similarly situated employees to work more than forty (40) hours without receiving overtime compensation for the hours beyond forty (40) in that week. In other workweeks, this caused Plaintiffs and similarly situated employees to perform work without receiving their hourly rate of pay for all hours worked.

21. Plaintiff and similarly situated employees also performed work before and after their scheduled shift that they were not paid for. For instance both pre and post shift, Plaintiff and similarly situated employees, washed the trucks, fueled the trucks, attended meetings, and loaded equipment which was integral and indispensable to their work. Often times Plaintiff and similarly situated employees were not paid for the time they spent performing these activities.

22. Plaintiff's supervisors were aware that Plaintiff and other similarly situated employees were regularly performing work without being paid.

23. During his employment with Defendant, Plaintiff and other similarly situated employees typically worked approximately three (3) to six (6) hours a week that they were not compensated for.

24. Defendant had a policy whereby Plaintiff earned vacation and sick time after he worked a certain number of hours.

25. Defendant had a practice of paying employees for their unused vacation and sick time when they left employment.

26. Plaintiff was not compensated for his unused vacation and sick time in his last paycheck.

27. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendant for over twelve years and performed the essential functions of his job in an professional and competent manner.

**FOR A FIRST CAUSE OF ACTION**

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

28. 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.

29. Plaintiff and the members of the Plaintiff's class were employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this Complaint. Defendants failed to pay Plaintiff and the members of the Plaintiffs' class at the rate of one-and-a-half times their regular 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).

30. Plaintiff and similarly situated employees are entitled to unpaid overtime compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours during a workweek, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

31. Defendant's violations of the FLSA were willful.

32. Plaintiff and similarly situated employees are also entitled to liquidated damages in an amount equal to the amount of unpaid overtime compensation due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

33. Plaintiff and similarly situated employees are also entitled to an award of reasonable attorney's fees and costs incurred in pursuing 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)

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

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

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

37. 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 Defendants, as promised to Plaintiff and the members of the Plaintiff's class.

38. Defendant required Plaintiff and the members of the Plaintiff's class to work and did not pay them for all service rendered for the benefit of Defendant.

39. 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.

40. Defendant's failure to pay Plaintiffs and the members of the Plaintiff's class all wages due is willful.

41. 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 respectfully pray that this Court award the following relief:

- a. Certification of this action as a collective action pursuant to 29 U.S.C. § 216 (b);
- b. An award against Defendant in the amount the unpaid overtime compensation owed to Plaintiff and similarly situated employees;
- c. An award of liquidated damages against the Defendant in the amount equal to the unpaid overtime compensation owed to Plaintiff and similarly situated employees;
- d. An award of unpaid wages against the Defendant in the amount of straight wages owed to Plaintiff and members of Plaintiff's class;
- e. Treble damages against Defendant in favor of Plaintiff and members of Plaintiff's class pursuant to the South Carolina Payment of Wages Act;
- f. An award of Plaintiff's reasonable attorneys' fees and costs; and
- g. All such further relief as the Court deems just and equitable.

**JURY DEMANDED**

Plaintiff McCray on his 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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October 5, 2015  
Mount Pleasant, South Carolina.