

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CANDICE CARROLL, THOMAS)
MIMS, DIMITAR STOILOV,)
STEPHEN GASKINS, and)
CHRISTOPHER BRASSEAU,)
On Behalf of Themselves and All)
Others Similarly Situated,)

Civil Action Number: 2016-CP-00-255

Plaintiffs,

v.

SUMMONS
(Employment matter)

H. WAYNE DEWITT,

and

BERKELEY COUNTY,

Defendants.

FILED
2016 FEB -2 PM 2:53
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

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STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

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CANDICE CARROLL, THOMAS)
MIMS, DIMITAR STOILOV,)
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On Behalf of Themselves and All)
Others Similarly Situated,)

Civil Action Number: 2016 CP-08-255

Plaintiffs,

v.

COMPLAINT
(Jury Trial Demanded)

H. WAYNE DEWITT,

and

BERKELEY COUNTY,

Defendants.

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CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiffs Candice Carroll, Thomas Mims, Dimitar Stoilov, Stephen Gaskins and Christopher Brasseaux, on behalf of themselves and all others similarly situated, by way of their Complaint, allege and show unto this Honorable Court the following:

NATURE OF CLAIM

1. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure for unpaid wages, treble damages, and other relief under the South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann § 41-10-10, *et seq.*

2. Plaintiffs are former employees of the Defendants, who required Plaintiffs and similarly situated employees to work "off-the-clock" and wrongfully deducted wages from their pay.

PARTIES AND JURISDICTION

3. Plaintiff Candice Carroll is a former Detention Officer at the Hill-Finklea Detention Center and is a citizen and is a resident of Berkeley County, South Carolina.

4. Plaintiff Thomas Mims is a former Detention Officer at the Hill-Finklea Detention Center and is a citizen and is a resident of Berkeley County, South Carolina.

5. Plaintiff Dimitar Stoilov is a former Detention Officer at the Hill-Finklea Detention Center and is a citizen and a resident of Berkeley County, South Carolina.

6. Plaintiff Stephen Gaskins is a former Detention Officer at the Hill-Finklea Detention Center and is a citizen and a resident of Berkeley County, South Carolina.

7. Plaintiff Christopher Brasseau is a former Detention Officer at the Hill-Finklea Detention Center and is a citizen and a resident of Charleston County, South Carolina.

8. Defendant H. Wayne DeWitt is the former Sheriff of Berkeley County, South Carolina, and is sued for damages in his individual capacity.

9. Defendant Berkeley County is a political subdivision of the State of South Carolina.

10. At all times relevant herein, Defendants employed Plaintiffs and other similarly situated Detention Officers to work on their behalf in providing labor for their benefit at the Hill-Finklea Detention Center located in Berkeley County, South Carolina.

11. Plaintiffs bring this action individually and as a class action pursuant to Rule 23 of the South Carolina Rules of Civil Procedure on behalf of a class of individuals employed by Defendants and who were subject to the same compensation policies and practices of the Defendants from which the Plaintiffs' SCPWA claims arise.

12. This action satisfies the requirements of Rule 23(a) of the South Carolina Rules of Civil Procedure in the following manners:

- a. The proposed class is so numerous that the joinder of all individual members in this action is impracticable;
- b. There are questions of law and/or fact common to the members of the proposed class;
- c. The claims of Plaintiffs, the representatives of the proposed class, are typical of the claims of the proposed class;
- d. Plaintiffs, the representatives of the proposed class, will fairly and adequately protect the interests of the class; and
- e. The amount in controversy exceeds one hundred dollars for each member of the class.

FACTS

13. The Defendants manage and operate the Hill-Finklea Detention Center, an institution where people are detained when suspected of a crime, or when awaiting trial or sentencing. The Detention Center has a capacity to house approximately 325 inmates.

14. Plaintiff Candice Carroll was employed by the Defendants from approximately February of 2013 until approximately August 2014.

15. Plaintiff Thomas Mims was employed by the Defendants from approximately August of 2011 until approximately September of 2013.

16. Plaintiff Dimitar Stoilov was employed by the Defendants from approximately November 2012 until approximately June of 2015.

17. Plaintiff Stephen Gaskins was employed by the Defendants from approximately August 2011 until approximately May 2014.

18. Plaintiff Christopher Brasseau was employed by the Defendants from approximately December of 2010 until approximately May of 2014.

19. Plaintiffs were employed as Detention Officers. Their primary duties included ensuring the care and security of inmates at the Hill-Finklea Detention Center. Plaintiffs were responsible for processing inmates; serving meals; searching prisoners; advising inmates on institutional rules; and patrolling the jail area periodically to provide security and maintain order.

20. Defendants implemented a compensation policy for Plaintiffs and other Detention Officers under which Defendants paid Plaintiffs and other Detention Officers a salary for all hours worked. Defendants' compensation policy for Plaintiffs and other Detention Officers also provided for overtime compensation at a rate of one and one-half times the Detention Officer's regular rate of pay.

21. On September 28, 1998 the Berkeley County Council enacted Budget Ordinance No 98-9-79 which sets forth the Defendants' compensation plan for their Detention Officers as follows:

Compensation for certain personnel in the Sheriffs Department who report on a 28-day work period, who are paid overtime after 171 hours, and who are paid pursuant to the fluctuating workweek pay plan (29 CFR 778.114), shall be established on a basis to reflect overtime premium pay at time and one-half the regular rate of pay for overtime hours worked in each work period. The regular rate of pay for any such employee shall be found by dividing his salary for the period in which overtime is worked by his total hours worked in such period. The employee's overtime premium shall equal one and one-half of his regular hourly rate for such period for each hour worked in excess of 171 as permitted by the Fair Labor Standards Act. Council has previously determined the need to establish this method of pay for non-exempt employees in the Sheriff's Department receiving a

fixed salary for fluctuating hours and, therefore, shall compensate all such employees on the 28-day work period by using this overtime (time and one-half) method.

22. On July 28, 2014, Berkley County Council and Berkeley Administrator adopted a new Ordinance which revised the Defendants' compensation plan for their Detention Officers as follows:

Beginning the first full pay period following January 1, 2015, those personnel in the Detention Center who report on a 28-day work period shall no longer report on a 28-day work period and shall instead report on a bi-weekly basis. Any overtime hours in excess of 40 hours per week shall be compensated at an overtime premium rate of time and one-half the regular rate of pay or an amount required by law.

23. Due to training and staff shortages, the Defendants required the Plaintiffs and other similarly situated Detention Officers to work mandatory overtime in order for the detention center to function properly. Defendants required Plaintiffs and other similarly situated Detention Officers to work twelve-hour shifts.

24. As a result of the Defendants' mandatory overtime policy it was not unusual prior to January 2015 for the Plaintiffs and similarly situated detention officers to work as many as one hundred twenty (120) to one hundred forty-five (145) hours in a two-week period.

25. In contrast to the Defendants' compensation policy that required Defendants to compensate Plaintiffs for all time worked, Defendants did not compensate Plaintiffs and similarly situated employees for work they performed before and after their scheduled shifts.

26. Prior to the start of their scheduled shift, Plaintiffs and similarly situated Detention Officers were required to perform a "headcount" of the inmates housed within the Detention Center. This required Detention Officers to account for each and every

inmate before the start of the shift. The headcount regularly took approximately thirty minutes, but could take up to one hour depending on the circumstances. Defendants did not compensate Plaintiffs and other Detention Officers for the time they spent performing this work.

27. After Plaintiffs and other Detention Officers completed the headcount, Defendants required them to attend a “briefing” before the start of their scheduled shift. The briefing regularly took approximately fifteen to twenty minutes. During the briefing the shift leader gives work assignments and instructions for the shift to Plaintiffs and other Detention Officers. Defendants did not compensate Plaintiffs and other Detention Officers for the time they spent performing this work.

28. At the end of the shift, Plaintiffs and similarly situated law enforcement officers were not permitted to leave their post until the Detention Officers who were relieving them had satisfactorily completed the headcount and briefing, which often required the Plaintiffs and other Detention Officers to work past their regularly scheduled shift. Defendants frequently did not compensate Plaintiffs and other Detention Officers for the time they spent performing this work.

29. As a result of the Defendants’ policies both pre- and post-shift, the Plaintiffs were regularly not compensated for at least thirty minutes to one hour of work performed during each shift.

30. Plaintiffs’ supervisors were aware that Plaintiffs and other similarly situated employees were performing work both before and after their shift without being paid. The work performed by Plaintiffs both pre- and post-shift was during operational hours, in full view of the Plaintiffs’ supervisors, and the supervisors were aware that

Defendants' policies required Plaintiffs and similarly situated Detention Officers to work "off-the-clock."

31. In August of 2013, Defendants conducted a review of certain pay practices and determined that Plaintiffs and similarly situated Detention Officers should have been compensated for time worked before and after their scheduled shift. The Defendants gave Plaintiffs a check for unpaid wages. The amount of the check, however, did not fairly compensate Plaintiffs for their unpaid wages.

FOR A FIRST CAUSE OF ACTION

(Violations of the South Carolina Payment of Wages Act)
(Individual and Class Action)

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

33. Each Defendant is an "employer" as defined by the SCPWA, S.C. Code § 41-10-10(1).

34. Defendants employed Plaintiffs and the members of the Plaintiffs' class within the State of South Carolina.

35. Defendants failed to pay "wages," as defined by the SCPWA, S.C. Code §41-10-10(2), to the Plaintiffs and members of the Plaintiff's class pursuant to the Defendants' compensation policies as set forth in their ordinances.

36. Defendants required Plaintiffs and the members of the Plaintiffs' class to work "off the clock," and did not pay them for all service rendered for the benefit of Defendants, in violation of the SCPWA.

37. Defendants improperly deducted money from Plaintiff and similarly situated employees' paychecks, in violation of the SCPWA.

38. Defendants have failed to pay Plaintiff and the members of the Plaintiff's class all wages due, as required by the SCPWA, S.C. Code §§41-10-40 and -50.

39. Pursuant to S.C. Code §41-10-80(C), Plaintiffs and the members of the Plaintiffs' 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, Plaintiffs Carroll, Mims, Stoilov, Gaskins and Brasseaux, on behalf of themselves and all other similarly situated employees, seek judgment against the Defendants as follows:

- a. An order certifying a class action under Rule 23 of the South Carolina Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act;
- b. An award of compensatory damages in the amount of the unpaid wages and unlawful deductions from wages owed by Defendants to Plaintiffs and similarly situated employees;
- c. An award of treble damages pursuant to the South Carolina Payment of Wages Act;
- d. An award of the reasonable attorneys' fees and costs incurred by Plaintiffs and similarly situated employees in bringing this action; and
- e. All such further relief as the Court deems just and equitable.

JURY DEMANDED

Plaintiffs Carroll, Mims, Stoilov, Gaskins and Brasseaux on their 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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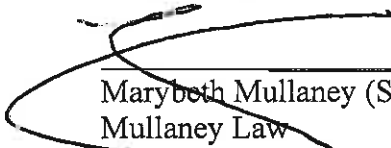
Attorney for Plaintiffs

January 28, 2016
Mount Pleasant, South Carolina.

JURY DEMANDED

Plaintiffs Carroll, Mims, Stoilov, Gaskins and Brasseaux on their behalf and on behalf of all other similarly situated employees hereby demands a trial by jury.

Respectfully submitted,



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January 28, 2016
Mount Pleasant, South Carolina.