

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

West McKinnon, on behalf of himself and all others similarly situated,)	Civil Action
)	No. <u>2:16-cv-1664-CWH</u>
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	(FLSA Collective Action)
Knight Enterprises S.E., LLC,)	
)	Jury Trial Requested
Defendant.)	
)	

Plaintiff West McKinnon, individually and on behalf of all other similarly situated individuals, by way of his Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

NATURE OF THE ACTION

1. This is a collective action brought under the Fair Labor Standards Act, 29 §§ 201 *et seq.*, (“FLSA”) asserting that Plaintiff and all others similarly situated, cable installation technicians, were misclassified as independent contractors by Defendant Knight Enterprises S.E., LLC and as a result was deprived of overtime, minimum wage, and other wages in violation of federal law. Plaintiff brings this case as a collective action on behalf of a group of cable installation technicians similarly situated who performed installation work for Defendant.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action is based on the FLSA and arises under a federal law of the United States.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

PARTIES

4. Defendant Knight Enterprises S.E., LLC (“Knight Enterprises S.E.”) is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, and has conducted business in South Carolina, North Carolina, and Florida. Knight Enterprises S.E. provides high-speed internet, cable television, and telephone services to customers in South Carolina, and in other states.

5. Plaintiff West McKinnon (“McKinnon”) is a citizen and resident of Beaufort County, South Carolina. Plaintiff currently works as a cable installation technician for Defendant.

6. Plaintiff brings these claims individually and on behalf of similarly situated individuals. Plaintiff seeks to bring this case as an opt-in collective action pursuant to § 216(b) of the FLSA, consisting of all individuals who worked as cable installation technicians for the Defendant, installing high-speed internet, cable television, and telephone services for customers and businesses, within the three years prior to the filing of this Complaint.

STATEMENT OF FACTS

7. During the last three years, Plaintiff and other similarly situated technicians worked as cable installation technicians for Knight Enterprises S.E. In this role, Plaintiff and other similarly situated technicians were responsible for installing, repairing, or constructing the facilities for high-speed internet, cable television, and/or telephone services.

8. During the time Plaintiff and other similarly situated technicians performed cable installation services for Defendant, Plaintiff and others similarly situated performed work

exclusively for Defendant, and did not provide any other high-speed internet, cable television, telephone, or any other related services except those provided to Defendant.

9. Knight Enterprises S.E. purports to contract with individuals to perform such installation, repair, construction, and supervisory work associated with monitoring the quality of those services. Defendant purports to call these individuals “independent contractors,” not employees, thereby avoiding its obligations to pay payroll taxes, workers’ compensation insurance, health insurance, unemployment insurance, overtime, and such other benefits.

10. In order to be hired by Defendant, Plaintiff and other similarly situated technicians were required to undergo stringent background checks and credit checks.

11. Each technician, including Plaintiff, was required to wear uniforms while working that displayed the Knight Enterprise S.E. logo, and the cost of the uniforms was deducted from their pay checks.

12. Each technician, including Plaintiff, was required to drive a work vehicle with a magnetic sign on the sides of it that displayed the Knight Enterprises S.E. logo, and the costs of such was deducted from their paychecks.

13. The so-called “independent contractors” that work for Knight Enterprises, S.E., including Plaintiff, are required to show up at a specific garage at a specific time in the morning. At such locations, they are given specific orders with instructions as to specific work which must be done that day, and each contractor is provided with specification books as to how each such installation, repair, or construction work is to be performed, and instructing each technician as to how to interact with customers.

14. The cable technicians, including Plaintiff, were subjected to monetary fines that were deducted from their paychecks if they failed to show up for the garage meetings at the exact time ordered by Knight Enterprises S.E. each morning.

15. Plaintiff and others similarly situated were not allowed to choose their days of work and are required to request days off from work at least two weeks in advance. Plaintiff and others similarly situated have been threatened by Defendant to be fired or have deductions in the amount of \$200.00 taken out of their paychecks in the event that they call out from work.

16. In addition, the cable technicians, including Plaintiff, were required to train in installation and repair, and some of the individuals hired by Defendant have no previous experience in telecommunications installation and repair.

17. All of the telecommunications equipment used by the technicians, including Plaintiff, must be picked up from a warehouse on Knight Enterprises S.E.'s property, and it is Knight Enterprises S.E. which informs each contractor of the amount of equipment needed to perform the jobs for that day.

18. Many of the technicians, including Plaintiff, have to purchase their tools for their work, such as compression tools and prep tools, from Defendant's warehouse and the cost of such items is taken out of their pay check by Defendant.

19. Technicians, including Plaintiff, often worked well over 40 hours per week. Typically, technicians, including Plaintiff, were ordered to work between 60 and 75 hours per week and, sometimes, have been ordered to work five to seven days a week by Defendant Knight Enterprises S.E. None of these technicians receive any overtime pay for the work performed beyond 40 hours a week.

20. For example, during a typical workweek, Plaintiff worked six days per week, Monday through Saturday, from 7:00 A.M. until 7:00 P.M. Defendant required Plaintiff to arrive at Defendant's garage by no later than 7:00 A.M. each morning. If Plaintiff was late arriving at Defendant's garage, his pay was deducted for tardiness.

21. There is virtually no opportunity for technicians, including Plaintiff, to work for any other cable companies or to perform any other telecommunications work while working for Knight Enterprises S.E. as Defendant exercises strict control over how their time is spent during the workday.

22. Further, in the event that Knight Enterprises, S.E. is unsatisfied with work performed by cable installation technicians, Defendant requires such technicians to go out and correct any deficiency, and to make any repairs and on such occasions, the technicians, including Plaintiff, are not paid for their time working to correct such problems.

23. Additionally, technicians, including Plaintiff, are not permitted to negotiate the price with either the customer or the Defendant.

24. The technicians, including Plaintiff, were paid on a piece rate basis, being paid per job regardless of how many hours each job took.

COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff brings this action as a collective action on behalf of a class of individuals similarly situated. Specifically, Plaintiff brings these claims under the Fair Labor Standards Act as a collective action and will request the Court to grant conditional certification under 29 U.S.C. § 216(b), and to order notices to potential opt-in individuals who have performed cable installation services for Knight Enterprises S.E. and who were classified as independent contractors.

26. Potential opt-in members of the collective action are similarly situated to Plaintiff. They all held the same job positions and had substantially similar job requirements and pay provisions. They are or were subject to the same common practices, policies, and plans of Defendant. They all suffer damages in the nature of lost overtime and wages resulting from Defendant's wrongful conduct.

FIRST CAUSE OF ACTION
Violation of Fair Labor Standards Act 29 U.S.C. § 207
(Failure to Pay Overtime)
(Brought on behalf of Plaintiff and the FLSA Collective)

27. Plaintiff realleges each and every allegation contained above as if repeated here verbatim.

28. This cause of action arises from Defendant's violations of the FLSA, 29 U.S.C. § 207, for its failure to pay Plaintiff and other similarly situated employees at the overtime rate for all hours worked in excess of forty (40) per workweek.

29. As set forth above, Plaintiff, and all other similarly situated employees, were employed by Defendant.

30. At all times pertinent hereto, Defendant engaged in interstate commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(r) and 203(s).

31. At all times pertinent hereto, Defendant's annual gross volume of sales made or business done was not less than Five Hundred Thousand and 0/100 (\$500,000.00) Dollars. Alternatively, Plaintiff, and all other similarly situated employees, worked in interstate commerce so as to fall within the protection of the FLSA.

32. The business of Defendant was and is an enterprise engaged in commerce as defined by 29 U.S.C. § 203(s)(1) and, as such, Defendant is subject to, and covered by, the FLSA.

33. Plaintiff asserts that under the economic realities test of the FLSA, Plaintiff and others similarly situated are or were improperly classified as independent contractors rather than

employees of Defendant and that Defendant exercised sufficient control over their day to day activities, and economic circumstances, to make Plaintiff's statutory employees under the FLSA. Plaintiff and other similarly situated technicians are therefore covered employees under the FLSA.

34. Plaintiff and other similarly situated individuals regularly work or worked well more than forty (40) hours per week every week, usually sixty (60) or more hours per week.

35. Defendant failed to pay Plaintiff and other similarly situated employees at the overtime rate of one and one half times the normal rate of pay for all hours worked over forty (40) per workweek.

36. Defendant's failure to pay compensation at the overtime rate for all hours worked over forty (40) per workweek, is a willful violation of the FLSA, since the company's conduct shows that it either knew that its conduct violated the FLSA or showed reckless disregard for whether its actions complied with the FLSA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of all other similarly situated persons, respectfully requests that this Court grant the following relief:

a. An order authorizing the sending of appropriate notice to current and former employees of Defendant who are potential members of the collective action under the Fair Labor Standards Act;

b. A declaratory judgment that Defendant has willfully and in bad faith violated the overtime wage provisions of the FLSA, and has deprived Plaintiff and the FLSA Collective Members of their rights to such compensation;

c. An order requiring Defendant to provide a complete and accurate accounting of all the overtime wages to which Plaintiffs and the FLSA Collective Members are entitled;

d. An award of monetary damages to Plaintiffs and the FLSA Collective Members in the form of back pay for unpaid overtime wages due, together with liquidated damages in an equal amount;

e. Injunctive relief ordering Defendant to amend its wage and hour policies to comply with applicable laws

f. Pre-judgment interest;

g. Attorneys' fees and costs; and

h. Such further relief as the Court deems just and proper.

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Charleston, South Carolina
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