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

Jeronica Brown, on behalf of herself and all others similarly situated, Plaintiff, vs. Republic Services of South Carolina, LLC d/b/a Republic Services, Defendant.	Civil Action No. 2:16-cv-2804-CWH **COMPLAINT** **(FLSA Collective Action/Class Action under the S.C. Payment of Wages Act)** **Jury Trial Requested**

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

NATURE OF THE ACTION

1. This action is brought individually and as a collective action asserting that Plaintiff and all others similarly situated, waste disposal drivers, are entitled to recover unpaid overtime compensation, liquidated damages, attorneys' fees, and costs, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 §§ 201 *et seq.*, ("FLSA"). The collective action provisions under the FLSA provide for opt-in class participation.

2. Plaintiff also brings this action individually and on behalf of all similarly situated current and former waste disposal drivers in South Carolina pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the South Carolina Payment of Wages Act, South Carolina Code Ann. § 41-10-10, *et seq*. ("SCPWA"). These claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff Jeronica Brown ("Brown") is a citizen and resident of Orangeburg County, South Carolina.

4. Brown was employed as a nonexempt waste disposal driver for Defendant's waste disposal facility in North Charleston, South Carolina from approximately October 2012 through May 23, 2016.

5. Brown brings this action on behalf of herself and on behalf of all other similarly situated nonexempt waste disposal drivers employed by Defendant Republic Services of South Carolina, LLC ("Class Members") during the preceding three years.

6. Brown's written Consent to Join form is attached hereto as Exhibit A.

7. Upon information and belief, Defendant Republic Services of South Carolina, LLC ("Republic Services") is a limited liability company organized and existing pursuant to the laws of the State of Delaware, and has conducted business in South Carolina, North Carolina, and other states. Republic Services provides waste disposal services to customers in South Carolina, North Carolina, and other states.

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b), because this action is based, in part, on the FLSA.

9. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff's pendent and supplemental 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.

10. 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.

COLLECTIVE ACTION ALLEGATIONS

11. 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 are or were employed by Republic Services as waste disposal drivers within three (3) years prior to the commencement of this lawsuit. (the "FLSA Class").

12. 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 suffered damages in the nature of lost overtime and minimum and other wages resulting from Defendant's wrongful conduct.

SOUTH CAROLINA CLASS ACTION ALLEGATIONS

13. Plaintiff brings the third Cause of Action, the South Carolina Payment of Wage Act ("SCPWA") claims, as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all similarly situated current and former individuals employed by Defendant as waste disposal drivers by Defendant in South Carolina within three (3) years prior to the commencement of this lawsuit. ("SC Rule 23 Class").

14. Upon information and belief, this action satisfies the requirements of Rule 23(a), Fed. R. Civ. P., as alleged in the following particulars:

a. The proposed Plaintiff class is so numerous that joinder of all individual members in this action is impracticable, and the disposition of their claims as a class will benefit the parties and the Court;

b. There are questions of law and/or facts common to the members of the proposed Plaintiff class;

c. The claims of Plaintiff, the representative of the proposed Plaintiff class, are typical of the claims of the proposed Plaintiff class; and

d. Plaintiff, the representative of the proposed Plaintiff class, will fairly and adequately protect the interests of the class.

15. In addition, upon information and belief, this action satisfies one or more of the requirements of Rule 23(b) Fed. R. Civ. P., because the questions of law and/or fact common to the members of the proposed Plaintiff class predominate over any questions affecting only individual members.

16. A class action is superior to other available methods for the fair and efficient adjudication of the controversy – particularly in the context of wage and hour litigation where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual SC Rule 23 Class Members are small in the sense pertinent to a class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual SC Rule 23 Class Members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in a significant saving of these costs. The prosecution of separate actions by individual SC

Rule 23 Class Members would create a risk of inconsistent and/or varying adjudications with respect to the individual SC Rule 23 Class Members, establishing incompatible standards of conduct for Defendants and resulting in impairment of the SC Rule 23 Class Members' rights and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

17. Upon information and belief, Defendant throughout the State of South Carolina violates the SCPWA. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

18. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

STATEMENT OF FACTS

19. Defendant has residential, commercial, and industrial divisions that employ waste disposal drivers.

20. Defendant's waste disposal drivers all collect, transport, and dispose of waste.

21. Defendants waste disposal drivers are all nonexempt employees under the FLSA.

22. Plaintiff was a nonexempt waste disposal driver for Defendant.

23. Class Members are (and/or were) nonexempt waste disposal drivers for Defendant within the three (3) years prior to the filing of this lawsuit.

24. None of the FLSA exemptions relieving a covered employer of the statutory duty to pay employees overtime at one and one half times the regular rate of pay apply to Defendant, Plaintiff, or the Class Members.

25. Plaintiff and the Class Members are similarly situated with respect to their job duties, their pay structure, and, as set forth below, the policies of Defendant resulting in FLSA violations.

Defendant did not pay Plaintiff and Class Members overtime in accordance with the FLSA.

26. Defendant paid Plaintiff and the Class Members a day rate, plus other forms of compensation for services.

27. In addition to the day rate that Defendant paid Plaintiff and the Class Members, Defendant compensated Plaintiff and the Class Members for the same type of work that they normally performed on an hourly basis. Generally, when Defendant paid Plaintiff and the Class Members on an hourly basis, as opposed to a daily basis, it referred to these hourly payments as "help pay."

28. Defendant also compensated Plaintiff and the Class Members on a basis other than the daily rate basis for what Defendant categorized as "incentive pay," "extra pay," and "miscellaneous pay."

29. Additionally, in the event that Plaintiff and the Class Members finished their route for the day early or needed to work for only half of the day, Defendant, at least at times, did not pay them the day rate, but rather compensated them on an hourly basis and in a lesser amount than the day rate.

30. Defendant also compensated Plaintiff and the Class Members with "DTS Rewards" through their "Dedicated to Safety" ("DTS") Program wherein Plaintiff and the Class Members would be compensated by way of incentive pay in the form of

"points" which could be used to purchase a vast variety of items from an online website.

31. Moreover, Defendant compensated Plaintiff and the Class Members for mandatory "safety training" and/or "safety meetings" on an hourly pay basis.

32. Plaintiff and the Class Members were (and/or are) hired to work a regular workweek consisting of forty (40) hours per workweek.

33. Plaintiff and the Class Members were (and/or are) required to work overtime hours when requested by Defendant, and were (and/or are) subject to potential disciplinary action for refusing to work overtime.

34. Plaintiff and the Class Members regularly work (and/or worked) over forty (40) hours in a workweek as waste disposal drivers.

35. For example, during a typical workweek, Plaintiff worked six days per week, Monday through Saturday, from approximately 6:00 A.M. until 4:00 P.M. on Monday through Friday and from approximately 6:00 A.M. until 12:00 P.M. on Saturday.

36. In calculating Plaintiff's and the Class Members' overtime pay rate, Defendant calculated Plaintiff's and the Class Members' regular rate of pay by dividing the total amount of compensation by the total hours worked in a workweek, also known as "half-time."

37. Defendant's calculation of Plaintiff's and the Class Members' regular rate of pay does not comply with the FLSA.

38. Defendant did not pay (and/or does not pay) Plaintiff or the Class Members time and one-half for hours worked over forty (40) hours in a workweek.

39. The FLSA requires non-exempt employees to be compensated for overtime work at the mandated overtime pay rate.

40. Plaintiff and the Class Members were (and/or are) entitled to receive time and one-half compensation for all hours worked over forty (40) hours in a workweek.

41. The payment scheme used by Defendant to pay Plaintiff and the Class Members did not (and/or does not) comply with the FLSA.

42. Defendant violated and continues to violate the FLSA by failing to pay its waste disposal drivers, including Plaintiff and the Class Members, time and one-half for each hour worked in excess of forty (40) hours per workweek.

43. As Defendant's employees, Plaintiff and the Class Members were subjected to (and/or are subjected to) the same or a substantially similar payment scheme, as described above.

44. On several occasions, Plaintiff and other similarly situated drivers complained to management that their overtime was not being calculated correctly and pleaded with them to correct it.

45. In response to Plaintiff's and other similarly situated drivers' complaints, Republic Services management told Plaintiff and her fellow drivers that they were paid "Chinese overtime," that paying only "Chinese overtime" was Republic's corporate-wide policy, and that the company would not pay them overtime at the regular rate of one and one half times their pay.

46. At no point in time was there a clear and mutual understanding between the Plaintiff and Class Members and the Defendant that a fixed salary would compensate them for all hours worked each week whatever that number may be. To the contrary, Plaintiff and others similarly situated were advised at the time of hire that their fixed salary would only compensate them for up to, but not to exceed, forty (40) hours per workweek.

Deductions for "Meal Periods" and "DTS Rewards."

47. Defendant has a policy that requires its employees, including Plaintiff and the Class Members, to take a thirty (30) minute meal period each and every workday.

48. Defendant was aware that Plaintiff and the Class Members regularly worked through their 30-minute meal periods.

49. When calculating Plaintiff's and the Class Members' hours each pay period, Defendant deducted thirty (30) minutes from Plaintiff's and the Class Members' daily on-the-clock hours. In other words, for each 5-day workweek, Defendant deducted 2.5 hours from each workweek's total on-the-clock hours. For a 6-day workweek, Defendant deducted 3 hours from each workweek total on-the-clock hours.

50. Defendant was aware that Plaintiff and the Class Members regularly worked through the required 30-minute meal period.

51. Defendant's systematic deduction of the 30-minute meal period from Plaintiff's and the Class Members' on-the-clock time resulted in Plaintiff and the Class Members working overtime hours for which they were not compensated.

52. Defendant's systematic deduction of the 30-minute meal period from hours worked in excess of forty (40) hours per workweek deprived Plaintiff and the Class Members of overtime pay in violation of the FLSA.

53. Plaintiff and the Class Members were subjected to (and/or are subject to) the same or a substantially similar policy, practice, or scheme of having the 30-minute meal period deducted from their on-the-clock time, as described above.

54. Defendant also has (and/or had) a policy known as the "Dedicated to Safety" Program wherein it provides incentive pay by compensating employees with "points" which can be used to purchase a vast variety of items on an online website, https://propelhq.incentiveusa.com.

55. Defendant provides (and/or provided) these "rewards" to Plaintiff and the Class Members on both a quarterly and annual basis for meeting Defendant's criteria for safe operation of their waste trucks.

56. When Defendant provides (and/or provided) these DTS "rewards" to Plaintiff and the Class Members, it would make improper deductions from Plaintiff's and the Class Members' other wages, including day rate wages and hourly wages, without a legally sufficient reason for doing so, and without providing any advance written notice to Plaintiff and the Class Members of the deductions from their pay.

57. Defendant did not keep accurate records of wages earned or of hours worked by Plaintiff and others similarly situated, nor did Defendant provide Plaintiff and others similarly situated with itemized statements illustrating their hours worked, their pay, or deductions made from their pay.

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

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

59. 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 proper overtime rate of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) per workweek.

60. As set forth above, Plaintiff, and all other similarly situated employees, were or have been employees of Defendant within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

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

62. 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.

63. 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.

64. Plaintiff and other similarly situated individuals regularly work or worked well more than forty (40) hours per week every week, usually at least fifty-six (56) or more hours per week.

65. 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 as further described above.

66. Defendant's practice of failing to pay Plaintiff and the Class Members the time and a half rate for hours in excess of forty (40) hours per workweek violates the FLSA. 29 U.S.C. § 207.

67. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one half times the regular rate at which its employees are employed are applicable to the Defendant or the Plaintiff and the Class Members.

68. 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.

SECOND CAUSE OF ACTION
Violation of South Carolina Payment of Wages Act S.C. Code § 41-10-10, et. al.
(Brought on behalf of Plaintiff and the SC Rule 23 Class)

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

70. At all relevant times, Defendant has employed, and/or continues to employee, Plaintiff and each of the SC Class members within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 ("SCPWA"). Plaintiff and the SC Class members are "employees" within the meaning of the SCPWA and are not free from the control and direction of Defendant.

71. Defendant is an "employer" as defined by the South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann. § 41-10-10(1), because it employs individuals in the State of South Carolina.

72. Pursuant to S.C. Code Ann. § 41-10-40(C) of the SCPWA, "[e]very employer shall notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment . . . ." and the "employer shall furnish each employee with an itemized statement showing his gross pay and the deductions made from his wages for each pay period."

73. Defendant willfully failed to provide Plaintiff and others similarly situated with proper notice at the time of their hiring as required by the law nor did Defendant provide them with compliant wage statements for each of their pay periods as required by the law.

74. Pursuant to S.C. Code Ann. § 41-10-40(C) of the SCPWA, "[a]n employer shall not withhold or divert any portion of the employee's wages unless the employer is required or permitted to do so by state or federal law . . . ."

75. Further, "any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective." S.C. Code Ann. § 41-10-30(A).

76. Defendant, however, did not pay Plaintiff and the SC Class members all wages due to them, nor did Defendant provide Plaintiff and the SC Class members with at least seven days advance written notice of the deductions or the amounts of the deductions Defendant made to their paychecks.

77. For example, Defendant made unauthorized and illegal deductions from the wages of Plaintiff and the SC Class members for improper reasons and without advance written notice when it made deductions from their pay in connection with DTS "rewards" they received.

78. Accordingly, Plaintiff and the members of the SC Class are entitled to receive all compensation of "wages" due and owing to them.

79. Defendant willfully failed to pay Plaintiff and others similarly situated "wages" as defined in section 41-10-10(2) of the SCPWA for all work performed, according to the law.

80. Defendant has withheld wages of the Plaintiff and others similarly situated without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

81. As a direct and proximate result of Defendant's willful conduct, Plaintiff and others similarly situated have suffered substantial losses and have been deprived of compensation to which they are entitled, including monetary damages in the amount of three (3) times the amount of their unpaid wages and other remedies afforded under state and federal law as well as costs and reasonable attorneys' fees pursuant to S.C. Code Ann. § 41-10-80 of the SCPWA.

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 Plaintiff 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. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure to remedy the class-wide violations of the South Carolina Payment of Wages Act suffered by the SC Rule 23 Class;

h. An award of monetary damages to Plaintiff and the members of the SC Rule 23 Class in the form of back pay for all unpaid wages due, together with treble damages pursuant to the South Carolina Payment of Wages Act;

i. Attorneys' fees and costs; and

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

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