

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

Barry Chapman, individually and behalf of
other similarly situated consenters,

Plaintiff,

vs.

NuWay Enterprises, LLC, Amanda
Guthrie, individually, and William Guthrie,
individually,

Defendants.

Case No: ~~18-cv-02250~~ 3:18-cv-02250-MGL

**COMPLAINT
(Jury Trial Demanded)**

Plaintiff Barry Chapman, by and through his undersigned counsel, and complaining of Defendants, makes the following allegations individually and, as to the Fair Labor Standards Act (hereinafter “FLSA”) claims, on behalf of himself and all others similarly situated:

JURISDICTION, VENUE, AND PARTIES

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, as this action is brought pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*, and its implementing regulations, 29 CFR Part 541, *et seq.*

2. The Court has supplemental jurisdiction to hear the state law claims pursuant to 28 U.S.C. § 1367, as they are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

3. Venue lies within this District pursuant to 28 U.S.C. § 1391, as Defendant NuWay Enterprises, LLC’s principal place of business and the individual Defendants’ residence lie within this District, which also is where a substantial part of the events or omissions giving rise to the claims alleged herein occurred.

4. Defendant NuWay Enterprises, LLC (hereinafter “Defendant NuWay”) is a for-profit corporation organized under the laws of the State of South Carolina with its principal place of business at 148 Dahlia Street in Lexington, South Carolina.

5. Defendants Amanda and William Guthrie are individual citizens and residents of Lexington County, South Carolina, who, at all times relevant hereto, exercised control over Defendant NuWay and personally directed and condoned the deprivation of compensation due to Plaintiff and others similarly situated under the FLSA, as set forth herein.

6. Plaintiff, a former employee of Defendant NuWay Enterprises, LLC, brings this action against Defendants on behalf of himself individually and behalf of other similarly situated members of the underground and aerial crews who were paid on an hourly basis (hereinafter “Consenters”) of Defendant NuWay Enterprises, LLC.

FACTS

7. Plaintiff repeats and realleges the allegations above as if set forth fully verbatim herein.

8. At all times relevant hereto, Defendants were and remain employers within the meaning of the FLSA, 29 U.S.C. § 203, and the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10, and are in the business of an enterprise engaged in interstate commerce, namely line construction.

9. Defendants maintain and maintained at all times relevant hereto two “crews:” an underground crew and an aerial crew.

10. The crew members paid on an hourly basis, the Consenters, were and continue to be non-exempt employees.

11. At all times relevant hereto, the members of these crews, the Consenters, were employees within the meaning of the FLSA, 29 U.S.C. § 203, and the South Carolina Payment of Wages Act,

12. Plaintiff was employed on the aerial crew as a lineman from around December 2014 until August 2018.

13. During the past three years, Plaintiff and other Consenters of the underground and aerial crews were not paid overtime for time worked in excess of forty (40) hours per week.

14. Additionally, Plaintiff and the members of the underground and aerial crews were not paid at all, much less at their agreed-upon rate of pay, for the time worked prior to 7 a.m., though they were required by Defendants to be at work and begin to work prior to that time.

15. Defendants had a practice of altering time cards submitted by Plaintiff and other crew members such that they could not be paid unless they signed off on altered time cards.

16. The individual Defendants controlled Defendant NuWay and the compensation of its employees and were aware that these practices were prohibited by law.

17. These practices were done at the direction of the individual Defendants.

18. Defendant William Guthrie stated in an employee meeting that he could avoid paying overtime to the individuals by paying them through another one of his family's companies.

19. Employees previously quit working for Defendants due to Defendants' practices regarding overtime compensation.

20. Upon information and belief, Defendants failed and continue to fail to accurately record, report, and/or preserve accurate records of Plaintiff and the other Consenters regarding their wages, hours, and conditions and practices of employment in contravention of the FLSA.

AS AND FOR A FIRST CAUSE OF ACTION
(Violation of the FLSA for Failure to Pay Overtime to Non-Exempt Employees)

21. Plaintiff repeats and realleges the allegations above as if set forth fully verbatim herein.

22. The Consenters were not compensated by Defendants for overtime for hours worked in excess of forty (40) hours per week in the past three years.

23. In fact, during that time, Defendants maintained a policy and practice of requiring compensatory time in lieu of overtime, in contravention of the FLSA and its implementing regulations.

24. Upon information and belief, Defendants were and are well-aware of their obligations under the FLSA such that their conduct, as alleged, constitute a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a), as Defendants knew or showed reckless disregard for the fact that the alleged conduct and practices violated the FLSA and its implementing regulations.

25. Plaintiff and similarly-situated Consenters who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA class pursuant to 29 U.S.C. § 216(b);
- b. Judgment against Defendants for an amount equal to the unpaid back wages at the applicable overtime rates;
- c. Judgment against Defendants that its violations of the FLSA and its implementing regulations were willful;
- d. Liquidated damages in an amount equivalent to the minimum wage damages owed to Consenters;
- e. All recoverable costs, expenses, and attorneys' fees incurred in pursuing this action;
- 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 additional defendants who meet the definition of "employer" of the Consenters under 29 U.S.C. § 203(d);
- h. Injunctive relief to require Defendants to record, report, and preserve records sufficient to enable the Consenters to determine their wages, hours, and conditions

and practices of employment, including practices regarding deductions and payment or nonpayment of overtime, as mandated by the FLSA; and

- i. Such other and further relief as deemed just and equitable by this Court.

AS AND FOR A SECOND CAUSE OF ACTION
(Violation of the FLSA for Failure to Pay Minimum Wage)

26. Plaintiff repeats and realleges the allegations above as if set forth fully verbatim herein.

27. Plaintiff and the Consenters were required to work hours for Defendants during the past three years but received no compensation for the hours worked.

28. Plaintiff and the Consenters were entitled to minimum wage for the time worked.

29. Plaintiff and similarly-situated Consenters who join this action demand:

- a. Designation of this action as a collective action on behalf of the FLSA class pursuant to 29 U.S.C. § 216(b);
- b. Judgment against Defendants for an amount equal to the unpaid minimum wage at the applicable rate;
- c. Judgment against Defendants that its violations of the FLSA and its implementing regulations were willful;
- d. Liquidated damages in an amount equivalent to the minimum wage damages owed to Consenters;
- e. All recoverable costs, expenses, and attorneys' fees incurred in pursuing this action;
- 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 additional defendants who meet the definition of "employer" of the Consenters under 29 U.S.C. § 203(d);

- h. Injunctive relief to require Defendants to record, report, and preserve records sufficient to enable the Consenters to determine their wages, hours, and conditions and practices of employment, including practices regarding deductions and payment or nonpayment of overtime, as mandated by the FLSA; and
- i. Such other and further relief as deemed just and equitable by this Court

AS AND FOR A THIRD CAUSE OF ACTION OR CAUSE OF ACTION IN THE
ALTERNATIVE
(Violation of the South Carolina Payment of Wages Act for Failing to Pay for Time Worked at the Agreed-Upon Rate)

- 2. Plaintiff repeats and realleges the allegations above as if set forth fully verbatim herein.
- 3. At all times relevant hereto, Defendants were “employers” under the South Carolina Payment of Wages Act.
- 4. Plaintiff and the Consenters were advised that they would be paid a certain rate for hours worked for Defendants.
- 5. Defendants began deducting time from Plaintiff and the Consenters for hours worked and failed to compensate them for the wages to which they were entitled at the agreed-upon rate.
- 6. Defendants further failed to provide written notice of the hours and wages agreed upon as required by the South Carolina Payment of Wages Act and failed to maintain
- 7. Defendants also withheld and diverted portions of Plaintiff and the Consenters’ wages when not required or permitted to do so by state or federal law and without written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.
- 8. Upon information and belief, Defendants failed to keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years.

9. Plaintiff and similarly-situated Consenters who join this action demand:

- a. An amount equal to three times the full amount of the unpaid wages owed to them;
- b. Judgment against Defendants that the failure to pay the agreed-upon rates and/or improper deductions constituted violations of the South Carolina Payment of Wages Act;
- c. Leave to add additional plaintiffs by motion, the filing of written consent forms, or any other method approved by the Court;
- d. Leave to amend to add additional defendants who meet the definition of “employer” of Plaintiff and the Consenters under the South Carolina Payment of Wages Act;
- e. The costs and reasonable attorney's fees as the court may allow; and
- f. Such other and further relief as deemed just and equitable by this Court.

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