

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

CHARLESTON DIVISION

Tracy Madden, Greg Carney, Frank Broccolo,  
Keith Poston, Jennifer Skipton, Grant Mizner,  
DeAnna Danley, Charlene Holbird, Michael  
Zofcak, Robin Stout, Erik VanDerHorst,  
Kenneth Atwell, David Shafer, Andrew  
Kilgore, Michelle Reid, Ryan Ellison, Casey  
Spirk, Josh Sims, Jennifer McComiskey, Karol  
Hodge, Brian Evanger, Brian Stafford, Roy  
McGinnis, Beth Cook, Buford Bost, Paul  
Stevens all individually and on behalf of all  
other similarly situated individuals,

Plaintiffs,

v.

Charleston County, South Carolina,

Defendant.

Civil Action No.: 2:14-cv-00208-DCN

**COMPLAINT**  
**(Jury Trial Demanded)**

Plaintiffs, Tracy Madden, Greg Carney, Frank Broccolo, Keith Poston, Jennifer Skipton, Grant Mizner, DeAnna Danley, Charlene Holbird, Michael Zofcak, Robin Stout, Erik VanDerHorst, Kenneth Atwell, David Shafer, Andrew Kilgore, Michelle Reid, Ryan Ellison, Casey Spirk, Josh Sims, Jennifer McComiskey, Karol Hodge, Brian Evanger, Brian Stafford, Roy McGinnis, Beth Cook, Buford Bost, and Paul Stevens, all individually and on behalf of all other similarly situated individuals, by way of their Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

**I. Nature of Claims**

1. This action is brought individually and as a collective action for unpaid overtime compensation, for liquidated damages, and for other relief under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. ("FLSA"). The collective action provisions under the FLSA provide for opt-in class participation.

2. Plaintiffs also include other causes of action under South Carolina law, including breach of contract and violation of the South Carolina Payment of Wages Act, on an individual

and class-wide basis. Those claims are proposed as opt-out class claims under Rule 23 of the Federal Rules of Civil Procedure.

**II. Parties, Jurisdiction, and Venue**

3. Plaintiff, Tracy Madden, is a citizen and resident of Berkeley County, South Carolina.
4. Plaintiff, Gregory Carney, is a citizen and resident of Orangeburg County, South Carolina.
5. Plaintiff, Frank Broccolo is a citizen and resident of Charleston County, South Carolina.
6. Plaintiff, Keith Poston, is a citizen and resident of Charleston County, South Carolina.
7. Plaintiff, Jennifer Skipton, is a citizen and resident of Berkeley County, South Carolina.
8. Plaintiff, Grant Mizner, is a citizen and resident of Berkeley County, South Carolina.
9. Plaintiff, DeAnna Danley, is a citizen and resident of Dorchester County, South Carolina.
10. Plaintiff, Charlene Holbird, is a citizen and resident of Berkeley County, South Carolina.
11. Plaintiff, Michael Zofcak, is a citizen and resident of Charleston County, South Carolina.
12. Plaintiff, Robin Stout, is a citizen and resident of Dorchester County, South Carolina.
13. Plaintiff, Erik VanDerHorst, is a citizen and resident of Charleston County, South Carolina.
14. Plaintiff, Kenneth Atwell, is a citizen and resident of Dorchester County, South Carolina.
15. Plaintiff, David Shafer, is a citizen and resident of Berkeley County, South Carolina.

16. Plaintiff, Andrew Kilgore, is a citizen and resident of Charleston County, South Carolina.
17. Plaintiff, Michelle Reid, is a citizen and resident of Berkeley County, South Carolina.
18. Plaintiff, Ryan Ellison, is a citizen and resident of Dorchester County, South Carolina.
19. Plaintiff, Casey Spirk, is a citizen and resident of Dorchester County, South Carolina.
20. Plaintiff, Josh Sims, is a citizen and resident of Charleston County, South Carolina.
21. Plaintiff, Jennifer McComiskey, is a citizen and resident of Dorchester County, South Carolina.
22. Plaintiff, Karol Hodge, is a citizen and resident of Charleston County, South Carolina.
23. Plaintiff, Brian Evanger, is a citizen and resident of Charleston County, South Carolina.
24. Plaintiff, Brian Stafford, is a citizen and resident of Charleston County, South Carolina.
25. Plaintiff, Roy McGinnis, is a citizen and resident of Berkeley County, South Carolina.
26. Plaintiff, Beth Cook, is a citizen and resident of Charleston County, South Carolina.
27. Plaintiff, Buford Bost, is a citizen and resident of Charleston County, South Carolina.
28. Plaintiff, Paul Stevens, is a citizen and resident of Dorchester County, South Carolina.
29. Defendant, Charleston County, is political subdivision of the State of South Carolina, with the power to sue and be sued in its own name. Defendant operates an EMS Department to provide emergency medical services to the citizens and residents of Charleston County, as well as to other persons within the County in need of emergency medical attention

or care.

30. Plaintiffs bring this action individually and as an opt-in, collective action pursuant to 29 D.S.C. § 216(b), on behalf of a class of all individuals employed by Defendant in its EMS Department at any time within the three years prior to joining this lawsuit, who were non-exempt employees and who worked in excess of forty (40) hours in any given work week, but who did not receive overtime compensation of at least one and a half times their regular hourly wage for any and all overtime hours, who were improperly denied pay for compensable times, and who were required to work more time than was actually included in their compensable time.

31. Plaintiffs also bring this action individually and as an opt-out class action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of a class of all individuals employed by Defendant's EMS Department as ambulance drivers, emergency medical technicians ("EMTs"), or paramedics at any time within the three years prior to the commencement of this lawsuit who were not paid all of their lawful wages for hours worked as required by state and federal law.

32. 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;
- b. There are questions of law and/or fact common to the members of the proposed Plaintiff class;
- c. The claims of Plaintiffs, the representatives of the proposed Plaintiff class, are typical of the claims of the proposed Plaintiff class; and
- d. Plaintiffs, the representatives of the proposed Plaintiff class, will fairly and adequately protect the interests of the class.

33. 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, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

34. 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.

35. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. §

1367, over Plaintiffs' pendent 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.

36. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant is located within in this judicial district and division, and the unlawful labor practices giving rise to Plaintiffs' claims were committed in the Charleston Division of this Court.

### **III. Facts**

37. Plaintiff Madden has been employed by Defendant's EMS Department since 1991 as a paramedic and crew chief.

38. Plaintiff Carney has been employed by Defendant's EMS Department for 17 years as a paramedic.

39. Plaintiff Broccolo has been employed by the Defendant's EMS Department since 2001 as a paramedic and crew chief.

40. Plaintiff Poston has been employed by the Defendant's EMS Department since 2004 as a paramedic.

41. Plaintiff Skipton was employed by the Defendant's EMS Department from November 2012 through March 2013 as a paramedic.

42. Plaintiff Mizner has been employed by the Defendant's EMS Department since 1996 as a paramedic.

43. Plaintiff Danley was employed by the Defendant's EMS Department from November 2008 through November 2012 as a paramedic, during which period she was full-time from November 2008 through April 2012 and later part-time from April 2012 through November 2012.

44. Plaintiff Holbird has been employed the Defendant's EMS Department since 1992 as a paramedic and crew chief.

45. Plaintiff Zofcak has been employed by the Defendant's EMS Department since May 2012 as an Emergency Medical Technician (hereinafter "EMT").

46. Plaintiff Stout has been employed by the Defendant's EMS Department since 2005 as an EMT, during which period she was part time from 2005 to 2007 and has been full time since 2007.

47. Plaintiff VanDerHorst has been employed by the Defendant's EMS Department since 2001 as a paramedic.

48. Plaintiff Atwell has been employed by the Defendant's EMS Department since 2001 as a paramedic.

49. Plaintiff Shafer has been employed by the Defendant's EMS Department since 2009 as a paramedic.

50. Plaintiff Kilgore has been employed by the Defendant's EMS Department since October 2007 as a paramedic.

51. Plaintiff Reid has been employed by the Defendant's EMS Department since 2006 as a paramedic.

52. Plaintiff Ellison has been employed by the Defendant's EMS Department since December 2007 as a paramedic.

53. Plaintiff Spirk was employed by the Defendant's EMS Department from June 2007 until September 2012 as a paramedic.

54. Plaintiff Sims has been employed by the Defendant's EMS Department since May 2008 as a paramedic.

55. Plaintiff McComiskey has been employed by the Defendant's EMS Department since May 2008 as an EMT.

56. Plaintiff Hodge has been employed by the Defendant's EMS Department since 1991 as a paramedic.

57. Plaintiff Evanger has been employed by the Defendant's EMS Department since December 2007 as an EMT.

58. Plaintiff Stafford has been employed by the Defendant's EMS Department since January 2013 as an EMT.

59. Plaintiff McGinnis has been employed by the Defendant's EMS Department since March 2007 as a paramedic.

60. Plaintiff Cook has been employed by the Defendant's EMS Department since 2006 as a part-time EMT.

61. Plaintiff Bost has been employed by the Defendant's EMS Department since 1974

as a paramedic.

62. Plaintiff Stevens has been employed by the Defendant's EMS Department since 2001 as an EMT.

63. At all times relevant to this Complaint, Plaintiffs and members of the Plaintiff class were non-exempt employees for purposes of the Fair Labor Standards Act.

64. During the relevant limitations period, Plaintiffs regularly worked in excess of forty (40) hours per week, generally working either on twelve (12) or twenty-four (24) hour shifts, which rotated every other week, depending on whether the week was considered a "short week" or a "long week." Plaintiffs did not receive the correct overtime pay as required by the FLSA, because Defendant promulgated an unlawful policy that EMS workers were not eligible for overtime or regular compensation for certain periods of work.

65. At all times relevant to this Complaint, Plaintiffs and the members of the proposed Plaintiff class were not regularly engaged in fire protection or law enforcement activities during their employment with Defendant, nor were they regularly or routinely dispatched to fire suppression or law enforcement situations.

66. Furthermore, Plaintiffs were actually scheduled to work an additional 15 minutes every shift they were assigned, although they were not paid for the additional 15 minutes beyond the named 12 or 24 hour shift, among other pay abnormalities.

67. The Plaintiffs and members of the Plaintiff class were offered contracts by the Defendants and accepted those contracts, which provide the Plaintiffs and the members of the Plaintiff class would be paid an hourly rate based upon an annual salary; however, the Plaintiffs and members of the Plaintiff class were not properly paid in accordance with their contractual agreement, among other pay abnormalities.

68. At all times relevant to this Complaint, Plaintiffs were good and faithful employees of Defendant and consistently performed all of the essential functions of their jobs in an acceptable and competent manner.

69. Plaintiffs and other members of the Plaintiff class previously raised or articulated their concerns to officials within Defendant's County Administration as well as within Defendant's EMS Department about the Department's policies and practices regarding the recording of compensable time, the calculation of overtime compensation and incorrect hourly pay rate; however, Plaintiffs were intimidated and coerced to continue working under these unlawful conditions by their immediate supervisors, by the EMS Department upper management, and by Defendant's Human Resources Department.

**FOR A FIRST CAUSE OF ACTION  
(Fair Labor Standards Act-Failure to Pay Overtime Wages)  
(Individual and Collective Action)**

70. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-69 as if restated herein verbatim.

71. Defendant is an "employer" for purposes of the Fair Labor Standards Act, 29 U.S.C. § 203(d), because it is a "public agency."

72. Plaintiffs and the members of the Plaintiff class were employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this Complaint.

73. Defendant failed to pay Plaintiffs and the members of the Plaintiff class at the rate of one-and-one-half times the regular rate at which he or she was employed 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).

74. Defendant also failed to pay Plaintiffs and the members of the Plaintiff class for all compensable time for which Plaintiffs provided work for the benefit of Defendant.

75. Plaintiffs and the members of the Plaintiff class are entitled to back wages at the rate of one-and-one-half times the regular rate at which he or she was employed for all overtime hours worked in excess of forty (40) hours per week, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

76. Plaintiffs and the members of the Plaintiff class are also entitled to an award of back pay at their regular hourly rate or their overtime rate, as appropriate compensation for all time spent in working for Defendant, which was wrongfully excluded by Defendant in calculating their compensable time.

77. The failure of Defendant to compensate Plaintiffs for overtime work and for "off the clock hours" as required by the FLSA was knowing, willful, intentional, and done in bad faith.

78. Plaintiffs and the members of the Plaintiff class are also entitled to liquidated damages equal for the amount of overtime compensation and unpaid compensation due to them under the FLSA, pursuant to section 16(b) of the FLSA, 29 U.S.C. § 216(b).

79. The work and pay records of Plaintiffs and the members of the Plaintiff class are in the possession, custody, and/or control of Defendant, and Defendant is under a duty pursuant to section 11(c) of the FLSA, 29 U.S.C. § 211(c), and pursuant to the regulations of the United States Department of Labor to make, keep and preserve such payroll and other



employment records from which the amount of Defendant's liability can be ascertained. Plaintiffs request an order of this specifically Court requiring Defendant to preserve such records during the pendency of this action.

80. Plaintiffs are also entitled to an award of reasonable attorneys' fees and costs incurred in prosecuting this action, pursuant to 29 U.S.C. § 216(b).

**FORA SECOND CAUSE OF ACTION  
(South Carolina Payment of Wages Act)  
(Individual and Class Action)**

81. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-80 as if restated herein verbatim.

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

83. Defendant employed Plaintiffs and the members of the Plaintiff class within the State of South Carolina.

84. Defendant owes Plaintiffs and the members of the Plaintiff class "wages" as defined in Section 41-10-10(2) of the Act, to compensate them for labor rendered to Defendant, as promised to Plaintiffs and the members of the Plaintiff class and as required by law, including overtime pay required by the FLSA.

85. Defendant required Plaintiffs and the members of the Plaintiff class to work "off the clock," and did not pay them for all service rendered for the benefit of Defendant.

86. Defendant has failed to pay Plaintiffs and the members of the Plaintiff class all wages due, as required by Sections 41-10-40 and -50 of the Act.

87. In addition, Defendant's EMS Department improperly calculated the amounts owed to the Plaintiffs and the members of the Plaintiff class on their paychecks for improper purposes, upon false pretenses, and without providing proper written notice as required by Section 41-10-30(A) of the Act.

88. Defendant's failure to pay Plaintiffs and the members of the Plaintiff class all wages due is willful, without justification, and in violation of the duty of applicable statutory mandates.

89. Pursuant to Section 41-10-80(C) of the Act, Plaintiffs and the members of the Plaintiff 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

attorneys' fees.

**FOR A THIRD CAUSE OF ACTION  
(Breach of Contract)  
(Individual and Class Action)**

90. Plaintiffs repeat and reallege each and every allegation of Paragraphs 1-89 as if restated herein verbatim

91. Plaintiffs and the members of the Plaintiff class entered into a contract with Defendant where Plaintiffs and the members of the Plaintiff class would provide services and labor to Defendant in exchange for agreed-upon wages.

92. The contracts offered by the Defendant and accepted by the Plaintiffs and the members of the Plaintiff class provide the Plaintiffs and the members of the Plaintiff class would be paid an hourly rate based upon an annual salary.

93. Plaintiffs and the members of the Plaintiff class fulfilled their obligations under the contract.

94. Defendant breached the contracts with Plaintiffs and the members of the Plaintiff class by not paying them all amounts due.

95. As a direct and proximate result of Defendant's breach, Plaintiffs and the members of the Plaintiff class have sustained damages.

96. Plaintiffs and the members of the Plaintiff class are informed and believe they are entitled to actual damages, prejudgment interest, plus the costs of this action.

WHEREFORE, having fully set forth their allegations against Defendant, Plaintiffs respectfully request that the Court enter judgment for the following relief:

- a. An order authorizing the sending of appropriate notice to current and former employees of Defendant's EMS Department 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 compensation provisions of the FLSA, and has deprived Plaintiffs and the members of the Plaintiff class of their rights to such compensation;
- c. An order requiring Defendant to provide a complete and accurate accounting of all the overtime compensation and other compensation to which Plaintiffs and the members of the Plaintiff class are entitled;

- d. An award of monetary damages to Plaintiffs and the members of the Plaintiff class in the form of back pay for overtime compensation and other compensation due, together with liquidated damages in an equal amount;
- e. An award of monetary damages to the Plaintiffs and the members of the Plaintiff class for breach of contract;
- f. Injunctive relief ordering Defendant to amend its wage and hour policies to comply with applicable laws;
- g. Pre-judgment interest;
- h. 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;
- i. Treble damages pursuant to the South Carolina Payment of Wages Act and/or FLSA;
- j. Attorneys' fees and costs; and
- k. Such further relief as the Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Respectfully submitted,

s/ Michael J. Jordan  
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Goose Creek, South Carolina.