

COUNTY OF YORK

James Jordan Austin

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

2017-CP - 46

FILED-RECEIVED
MAR 22 AM 8:23
DAVID HARRISTON
C.C. CLERK
YORK COUNTY, SC

The City of York

Defendant(s)

Submitted By: Chan M. Ahn
Address: Jordan Law Firm PC
546 E. Main Street
Rock Hill SC 29730

SC Bar #: 102173
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Other:
E-mail: chan@jordanlawfirmnpc.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- [X] JURY TRIAL demanded in complaint. [] NON-JURY TRIAL demanded in complaint.
[] This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
[X] This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
[] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: [] Constructions (100), [] Debt Collection (110), [] General (130), [] Breach of Contract (140), [] Fraud/Bad Faith (150), [] Failure to Deliver/Warranty (160), [] Employment Discrim (170), [X] Employment (180), [] Other (199)
Torts - Professional Malpractice: [] Dental Malpractice (200), [] Legal Malpractice (210), [] Medical Malpractice (220), [] Notice/ File Med Mal (230), [] Other (299)
Torts - Personal Injury: [] Conversion (310), [] Motor Vehicle Accident (320), [] Premises Liability (330), [] Products Liability (340), [] Personal Injury (350), [] Wrongful Death (360), [] Assault/Battery (370), [] Slander/Label (380), [] Other (399)
Real Property: [] Claim & Delivery (400), [] Condemnation (410), [] Foreclosure (420), [] Mechanic's Lien (430), [] Partition (440), [] Possession (450), [] Building Code Violation (460), [] Other (499)
Inmate Petitions: [] PCR (500), [] Mandamus (520), [] Habeas Corpus (530), [] Other (599)
Administrative Law/Relief: [] Reinstate Drv. License (800), [] Judicial Review (810), [] Relief (820), [] Permanent Injunction (830), [] Forfeiture-Petition (840), [] Forfeiture-Consent Order (850), [] Other (899)
Judgments/Settlements: [] Death Settlement (700), [] Foreign Judgment (710), [] Magistrate's Judgment (720), [] Minor Settlement (730), [] Transcript Judgment (740), [] Lis Pendens (750), [] Transfer of Structured Settlement Payment Rights Application (760), [] Confession of Judgment (770), [] Petition for Workers Compensation Settlement Approval (780), [] Other (799)
Appeals: [] Arbitration (900), [] Magistrate-Civil (910), [] Magistrate-Criminal (920), [] Municipal (930), [] Probate Court (940), [] SCDOT (950), [] Worker's Comp (960), [] Zoning Board (970), [] Public Service Comm. (990), [] Employment Security Comm (991), [] Other (999)
Special/Complex/Other: [] Environmental (600), [] Automobile Arb. (610), [] Medical (620), [] Other (699), [] Sexual Predator (510), [] Permanent Restraining Order (680), [] Pharmaceuticals (630), [] Unfair Trade Practices (640), [] Out-of State Depositions (650), [] Motion to Quash Subpoena in an Out-of-County Action (660), [] Pre-Suit Discovery (670)

Submitting Party Signature:

[Handwritten Signature]

Date: 03-21-2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
James Jordan Austin,)
)
Plaintiff,)
)
vs.)
)
The City of York,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2017-CP-46-00814

SUMMONS
(JURY TRIAL DEMAND)


FILED-RECEIVED
2017 MAR 22 AM 8:23
DAVID HAYLIDORF
C.C. JUDGE
YORK COUNTY, SC

TO THE DEFENDANT ABOVE NAMED:

A lawsuit has been filed against you. Within thirty days after service of this summons on you (not counting the day you receive it), you must serve on the plaintiff an answer to the attached Complaint or a motion under Rule 12 of the South Carolina Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Chan M. Ahn, whose address is 546 East Main Street, South Carolina 29730. If you fail to do so, judgment by default will be entered against you for the relief demanded in the Complaint. You also must file your answer or motion with the court.

JORDAN LAW FIRM, P.C.

By:


Chan M. Ahn (SC Bar #102173)
chan@jordanlawfirmpc.com


D. Bradley Jordan (SC Bar #0015268)
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546 East Main Street
Rock Hill, SC 29730
Telephone: (803) 817-7999
Fax: (803) 817-9704
Attorneys for the Plaintiff

March 20, 2017
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 James Jordan Austin,)
)
 Plaintiff,)
)
 vs.)
)
 The City of York,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2017-CP-46- 00814

COMPLAINT
 (JURY TRIAL DEMANDED)

FILED-RECEIVED
 2017 MAR 22 AM 8:23
 DAVID H. WILSON
 CLERK, C.T. & G.S.
 YORK COUNTY, SC

Plaintiff, James Jordan Austin (“Mr. Austin”), brings this action against Defendant, the City of York (“the City”) based on the allegations set forth below.

PARTIES

1. Mr. Austin is a citizen and resident of York, York County, South Carolina.
2. The City is a municipality (as defined by S.C. Code Ann. § 5-1-20(1)) and political subdivision (as defined by S.C. Code Ann. § 15-78-30(h)) of the State of South Carolina, located in York County, South Carolina.

JURISDICTION AND VENUE

3. This Court has subject-matter jurisdiction over the claims in this lawsuit under Article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.
4. This Court has personal jurisdiction over the City because it is a municipality and political subdivision located in York County, South Carolina.
5. Venue is proper in this circuit under South Carolina Code § 15-7-30 because the City is located in York County, South Carolina, and the acts and omissions that are the subject matter of this action occurred in York County, South Carolina.

FACTS

6. Mr. Austin became employed by the City as a full-time firefighter on or about December 5, 2005.

7. At all times relevant to this Complaint, the City was Mr. Austin's employer within the meaning of the South Carolina Payment of Wages Act ("the Act").

8. At the time when Mr. Austin became employed by the City in 2005, his regular wages were to be calculated at the rate of \$11.57 per hour. Mr. Austin's regular pay rate increased gradually over time, and it rose to \$14.08 per hour in 2009, to \$14.50 in 2010, to \$14.79 in 2011, to \$15.57 in 2012, to \$15.88 in 2013, to \$16.20 in 2014, and to \$16.52 in 2015.

9. In addition to his regular wages, Mr. Austin was to be "compensated for overtime at time-and-one-half for all hours worked over forty (40) in a seven (7) calendar day work week" as set forth in the City of York Personnel Policy Manual, which is currently available at the City's official website (www.yorkcitysc.com/Links.aspx).

10. At all times relevant to this Complaint and throughout the time of Mr. Austin's employment with the City, Mr. Austin consistently worked on a "24 on/48 off" shift schedule, under which he worked 24 consecutive hours and had 48 consecutive hours following his work hours off, regardless of the day of the week or the holidays. Under this shift schedule, Mr. Austin's weekly work hours followed the "72-48-48" pattern, *i.e.*, he worked 72 hours in one calendar week and 48 hours per week in two subsequent calendar weeks. He would then work 72 hours in one calendar week again, to be followed by two 48-hour work weeks.

11. Consequently, Mr. Austin's total work hours in one typical calendar year reached an aggregate of 2,904 hours, generated from 17 72-hour work weeks and 35 48-hour work weeks per year.

12. For each 72-hour work week, Mr. Austin worked 32 hours of overtime, and for each 48-hour work week, he worked 8 hours of overtime.

13. Thus, for each typical year during his employment with the City, Mr. Austin was entitled to overtime compensation at the “time-and-one-half” rate for an aggregate of 824 hours, which consisted of “all hours worked over forty (40) in a seven (7) calendar day work week,” as set forth in the City’s Personnel Policy Manual.

14. However, Mr. Austin was never compensated for these hours.

15. On or about January 31, 2016, Mr. Austin was separated from the City.

16. Subsequent to his separation from the City, Mr. Austin made numerous requests for the City’s compensation for his overtime work.

17. To date, however, the City has not compensated Mr. Austin for any of his regularly scheduled overtime work.

FIRST CAUSE OF ACTION
(Under the South Carolina Payment of Wages Laws)

18. Plaintiff incorporates by reference and restates all prior allegations of this Complaint.

19. The City was the “employer” of Mr. Austin as defined by the Act—specifically, under S.C. Code Ann. § 41-10-10(1).

20. The City owes Mr. Austin “wages” as defined by the Act—specifically, under S.C. Code Ann. § 41-10-10(2)—and currently owes him unpaid overtime compensation in the approximate amount of \$173,132.00.

21. The City has failed to pay Mr. Austin all wages due as required by the Act—specifically, as set forth in S.C. Code Ann. § 41-10-40 and § 41-10-50—and specifically has failed to make the overtime payment due to Mr. Austin in the approximate amount of \$173,132.00.

22. The City's failure to pay Mr. Austin all wages due is willful, without justification, and in violation of the duty of good faith and fair dealing.

23. Pursuant to the Act—specifically, as set forth in S.C. Code Ann. § 41-10-80(C)—Mr. Austin is entitled to recover in this action an amount equal to three times the full amount of his unpaid wages, plus pre-judgment interest in the amount to be determined at the rate of 8.75 percent, costs, and reasonable attorney's fees.

PRAYER FOR RELIEF

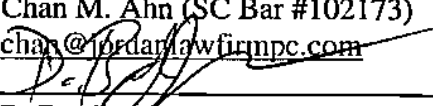
WHEREFORE, Plaintiff, James Jordan Austin, prays for judgment in an amount equal to three times the full amount of the unpaid wages, plus pre-judgment interest in the amount to be determined at the rate of 8.75 percent, costs, and reasonable attorney's fees pursuant to the South Carolina Payment of Wages Act and for such other legal and equitable relief to which he may be entitled.

JORDAN LAW FIRM, P.C.

By:


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Attorneys for the Plaintiff

March 20, 2017
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
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COUNTY OF YORK)
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Jordan Austin,)
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Plaintiff,)
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vs.)
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The City of York,)
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Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2017-CP-46-0081A

FILED-RECEIVED
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DAVID HAMPTON
C.C.J.P. & S.
YORK COUNTY, SC

VERIFICATION

I, James J. Austin, first being duly sworn, deposes and states that he has read the foregoing Complaint and that the same is true to his own knowledge, except as to those matters alleged therein upon information and belief, and as to those matters, he believes them to be true.

James J. Austin
Signature of the Verifier
James J. Austin
Printed Name of the Verifier

Sworn/affirmed to and subscribed before me
On this 20 day of March, 2017
Personally known [] or Produced identification []
Type of Identification produced:
J. Suzanne Miller
(Signature of Notary Public)
J. Suzanne Miller
(Printed name of Notary Public), Notary Public
York County, South Carolina
My commission expires: 5-2-2024 (Notary Seal)

