

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

Trevin Grubbs, individually and on behalf of
similarly-situated individuals,

Plaintiffs,

v.

Advance Stores Company, Inc., d/b/a Advance
Auto Parts,

Defendant.

Civil Action No.: _____

**COMPLAINT
(Jury Trial Demanded)**

Plaintiff Trevin Grubbs, individually and on behalf of similarly-situated individuals, by and through his undersigned counsel, alleges and shows 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. Plaintiff also includes a cause of action under South Carolina law for 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, Trevin Grubbs, is a citizen and resident of Horry County, South

Carolina.

4. Defendant, Advance Stores Company, Inc., d/b/a Advance Auto Parts (hereinafter “Defendant Advance Auto”), is corporation organized and existing under the laws of the one of the states and having multiple retail outlets in South Carolina, including the outlet at which Plaintiff Grubbbs worked located at 1370 3rd Avenue, South in Myrtle Beach, South Carolina. The wrongful acts alleged in the present case primarily occurred in Horry County, South Carolina.

5. Plaintiff brings 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 Advance Auto as delivery drivers and/or other employees who worked 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 and/or who were required to work more time than was actually included in their compensable time.

6. Plaintiff also brings 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 Advance Auto 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.

7. 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. Plaintiff's claims are typical of the claims of the proposed Plaintiff class; and
- d. Plaintiff will fairly and adequately protect the interests of the class.

8. 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.

9. 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.

10. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff's pendent claims, which are brought pursuant to the statutory law of the State of South Carolina, because those claims arise out of the same transaction or occurrence as the federal claims alleged herein.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant Advance Auto owns and/or operates retail outlets in the Florence Judicial Division and the unlawful labor practices giving rise to Plaintiff's claims were committed in the Florence Judicial Division.

III. FACTS

12. Plaintiff worked as a part-time delivery driver for Defendant Advance Auto from October 26, 2016, through March 7, 2017.

13. At all times relevant to this Complaint, Plaintiff was a non-exempt employee for purposes of the Fair Labor Standards Act.

14. That at various times during his employment, Plaintiff and others whose jobs were substantially similar to Plaintiff, worked in excess of forty (40) hours per week, but Defendant Advance Auto did not pay Plaintiff overtime pay as required by the FLSA.

15. Further, Plaintiff and others whose jobs were substantially similar to Plaintiff, was not paid regular compensation for some hours he worked as required by the South Carolina Payment of Wages Act. In addition, Defendant Advance Auto did not provide Plaintiff or others whose jobs were substantially similar to Plaintiff with an itemized statement showing gross pay and the deductions from gross pay for each pay period, as required by the South Carolina Payment of Wages Act.

16. At all times relevant to this Complaint, Plaintiff was a good and faithful employee of Defendant and consistently performed all of the essential functions of his job in an acceptable and competent manner.

17. Plaintiff and, upon understanding and belief others, expressed concern about pay to members of Defendant Advance Auto's management and to its corporate Human Resources office, but Defendant refused to pay overtime as required and refused and failed to correct other issues related to Plaintiff's and others' compensation.

FOR A FIRST CAUSE OF ACTION
(Fair Labor Standards Act-Failure to Pay Overtime Wages)

18. Plaintiffs repeat and reallege each and every allegation of the preceding Paragraphs as if restated herein verbatim.

19. Defendant Advance Auto is an "employer" for purposes of the Fair Labor Standards Act, 29 U.S.C. § 203(d).

20. Plaintiff and others whose jobs were substantially similar were employees of Defendant for purposes of the Fair Labor Standards Act during times relevant to this Complaint.

21. Defendant failed to pay Plaintiff at the rate of one-and-one half times the regular rate of at which she was compensated 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).

22. Defendant Advance Auto also failed to pay Plaintiff and others whose jobs were substantially similar for all compensable time for which Plaintiff provided work for the benefit of Defendant.

23. Plaintiff 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 they were compensated 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).

24. Plaintiff 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 Advance Auto, which was wrongfully excluded by Defendant in calculating compensable time.

25. Defendant's failure to compensate Plaintiff and members of the Plaintiff class for overtime work as required by the FLSA was knowing, willful, intentional, and done in bad faith.

26. Plaintiff and 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).

27. Defendant Advance Auto possesses the Plaintiffs' work and pay records 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 Court specifically directing Defendant to preserve such records during the pendency of this action.

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

FOR A SECOND CAUSE OF ACTION
(South Carolina Payment of Wages Act)

29. Plaintiffs repeat and reallege each and every allegation of the preceding Paragraphs as if restated herein verbatim.

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

31. Defendant Advance Auto employed Plaintiff and others whose jobs were substantially similar to Plaintiff's within the State of South Carolina.

32. Defendant owes Plaintiffs "wages" as defined in Section 41-10-10(2) of the Act,

to compensate them for labor rendered to Defendant, as promised to Plaintiff and as required by law, including overtime pay required by the FLSA.

33. Defendant Advance Auto did not pay Plaintiff and others with jobs substantially similar to his for all services rendered for the benefit of Defendant.

34. Defendant Advance Auto has failed to pay Plaintiff and others with jobs substantially similar to his for all wages due, as required by Sections 41-10-40 and -50 of the Act. Additionally, Defendant has failed to provide Plaintiff and others with a statement of gross pay and all deductions from pay, as required by Section 41-10-30 of the Act.

35. Defendant's failure to pay all wages due is willful, without justification, and in violation of applicable statutory mandates.

36. Pursuant to Section 41-10-80(C) of the Act, Plaintiff and those with jobs substantially similar to his are entitled to recover in this action an amount equal to three times the full amount of unpaid wages, or wrongfully deducted wages, plus costs and reasonable attorney's fees.

WHEREFORE, having fully set forth her allegations against Defendant Advance Auto, Plaintiff and those with jobs substantially similar to his respectfully request that the Court enter judgment for the following relief:

- a. A declaratory judgment that Defendant Advance Auto has willfully and in bad faith violated the overtime compensation provisions of the FLSA, and has deprived Plaintiff and others of the rights to such compensation;
- b. An order requiring Defendant Advance Auto to provide a complete and accurate accounting of all the overtime compensation and other compensation to which

Plaintiff and others with jobs substantially similar to him are entitled;

- c. An award of monetary damages to Plaintiff and others with jobs substantially similar to him in the form of back pay for overtime compensation and other compensation due, together with liquidated damages in an equal amount;
- d. Injunctive relief ordering Defendant Advance Auto to amend its wage and hour policies to comply with applicable laws;
- e. Pre-judgment interest;
- f. Treble damages pursuant to the South Carolina Payment of Wages Act and/or FLSA;
- g. Attorney's fees and costs; and
- h. Such further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

s/ Amy L. Gaffney

Amy L. Gaffney

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October 2, 2017
Columbia, South Carolina.