

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BOBBY CAGLE, BRIAN MASSEY, :	
and RALPH “TREY” STEWART III, :	CIVIL ACTION FILE NO.
	:
Plaintiffs,	:
	:
v.	:
	:
NEWTON COUNTY, GEORGIA,	:
	JURY TRIAL DEMANDED
Defendant.	:

COMPLAINT

COME NOW Plaintiffs, by and through their attorneys, and assert their claims under the Fair Labor Standards Act (“FLSA”) for overtime compensation and other relief, on the grounds set forth below:

JURISDICTION AND VENUE

1.

The jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 with respect to Plaintiffs’ claims under the FLSA.

2.

Venue is appropriate in this Court as Defendant Newton County, Georgia is located within the Northern District of Georgia and has its principal place of business

within the Northern District of Georgia.

PARTIES

3.

Plaintiff Bobby Cagle (“Cagle”) is a natural person and citizen and resident of the State of Georgia and is entitled to bring actions of this kind and nature.

4.

Plaintiff Brian Massey (“Massey”) is a natural person and citizen and resident of the State of Georgia and is entitled to bring actions of this kind and nature.

5.

Plaintiff Ralph “Trey” Stewart III (“Stewart”) is a natural person and citizen and resident of the State of Georgia and is entitled to bring actions of this kind and nature.

6.

Defendant Newton County, Georgia is a County existing under the laws of the State of Georgia, with its principal place of business located in Newton County. Defendant Newton County may be served with process by serving its County Manager, Lloyd Kerr, at his business address of 1124 Clark Street, Covington, Georgia 30014.

NATURE OF THE CASE

7.

This is an action brought by three current employees of Defendant, who hold the positions and titles of Battalion Chiefs in the Newton County Fire Department, for violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 et seq. (“FLSA”), based upon Defendant’s misclassifying them as exempt from the FLSA’s overtime pay requirements.

8.

By classifying Battalion Chiefs as exempt from the overtime pay requirements of the FLSA, Plaintiffs have not been paid for all overtime hours worked as required by 29 U.S.C. § 207(k)(2), whereby employees engaged in fire protection activities are entitled to overtime pay for all hours worked in excess of 106 hours in any given fourteen (14) day work period.

9.

As a result of this improper classification, Defendant did not compensate Plaintiffs at all for hours worked in excess of 106 hours in any given fourteen (14) day work period from July 1, 2018 to date.

STATEMENT OF THE FACTS

10.

Plaintiff Cagle has been employed by Defendant for over 20 years in the Newton County Fire Department.

11.

During his 20+ year career, Plaintiff Cagle has held the positions, at various times, of Firefighter, Engineer, Fire Lieutenant and Battalion Chief.

12.

Plaintiff Massey has been employed by Defendant for over 21 years in the Newton County Fire Department.

13.

During his 21+ year career, Plaintiff Massey has held the positions, at various times, of Firefighter, Engineer, Captain and Battalion Chief.

14.

Plaintiff Stewart has been employed by Defendant for over 23 years in the Newton County Fire Department.

15.

During his 23+ year career, Plaintiff Stewart has held the positions, at various times, of Engineer, Captain and Battalion Chief.

16.

Prior to July 1, 2018, Defendant had classified Battalion Chiefs as non-exempt and entitled to overtime pay for all hours worked in excess of 106 in a fourteen (14) day work period.

17.

Effective July 1, 2018, Defendant reclassified each Plaintiff Battalion Chief as exempt from the FLSA's overtime pay requirements.

18.

Effective July 1, 2018, each Plaintiff Battalion Chief was paid on a salary basis as defined by 29 C.F.R. § 541.602.

19.

As a result of Defendant's reclassification of Plaintiff Battalion Chiefs as exempt from the FLSA's overtime pay requirements, each Plaintiff has suffered and will continue to suffer a substantial decrease in pay of several thousand dollars per year.

20.

Despite Defendant's reclassification of Plaintiff Battalion Chiefs as exempt from the FLSA's overtime pay requirements, the primary duties of each Plaintiff have remained unchanged from when they were each classified as non-exempt.

21.

The Newton County Fire and Rescue Department employs approximately 66 sworn firefighters of various rank and operates seven fire stations.

22.

The Newton County Fire Department employs three (3) Battalion Chiefs, with one (1) Battalion Chief on duty at any given time.

23.

As a Battalion Chief, each Plaintiff is stationed at and is assigned to a fire station (Station 1).

24.

As a Battalion Chief, each Plaintiff works a shift of twenty-four (24) hours, followed by forty-eight (48) hours of being off-duty, which is the same work schedule as all other firefighters.

25.

As a Battalion Chief, each Plaintiff regularly is scheduled to work, and does in fact work in excess of 106 hours in any given fourteen (14) day work period.

26.

Defendant classified each Plaintiff Battalion Chief as wholly exempt from the FLSA's overtime pay requirements effective July 1, 2018 and has not paid each Plaintiff for hours worked in excess of 106 hours in any given fourteen (14) day work period since July 1, 2018.

27.

As a Battalion Chief, each Plaintiff was trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, is employed by a fire department of a County and is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

28.

As a Battalion Chief, each Plaintiff's primary duty is to fight fires, rescue fire and accident victims and minimize property damage from accidents and fires.

29.

Defendant has adopted policies which set forth, among other things, the types of calls that Plaintiffs, as Battalion Chiefs, are required to respond.

30.

As Battalion Chiefs, each Plaintiff is required to respond to the following types of emergency calls: all fire, all car accidents with injuries, all rescue calls, all stabbing and shooting victim calls, all hazardous material calls, all water rescue calls, all bomb threat calls, all drowning calls, all hazmat level 2 calls, all hazmat level 3 calls, all motor vehicle accident commercial, all motor vehicle accident with entrapment calls, all motor vehicle on interstate with entrapment calls, all aircraft down calls, all technical rescue calls, all train derailment and all train engine or car fire calls.

31.

While each Plaintiff would direct the work of other firefighters and rescue personnel at the scene of the calls to which he responded, each Plaintiff also performed the work of fire extinguishment and rescue of accident victims.

32.

Defendant is an employer within the meaning of the FLSA, 29 U.S.C. § 203(d) and is a “public agency” within the meaning of 29 U.S.C. § 203(x).

33.

Defendant is and was “an enterprise engaged in commerce or in the production of goods for commerce” within the meaning of 29 U.S.C. § 203(s)(1)(C).

34.

Each Plaintiff was engaged in commerce, *i.e.* working as a Battalion Chief for a County, and is expressly covered under the overtime provisions of the FLSA pursuant to 29 U.S.C. §§ 203(y), 207(k) and 29 C.F.R. § 541.3(b)(1). Each Plaintiff is thus subject to individual coverage of the FLSA pursuant to 29 U.S.C. § 207(a)(1).

35.

As a Battalion Chief, each Plaintiff is expressly defined as ineligible for exempt employee status pursuant to 29 C.F.R. § 541.3(b), known as the “First Responder Regulation”.

36.

Each Plaintiff also regularly performed work while not on shift and for which Defendant did not maintain accurate time records. Such work includes, but is not limited to attending training and meetings on days which they were not otherwise scheduled to work.

37.

Other regular work performed by each Plaintiff on days each was not scheduled to work and for which Defendant did not maintain accurate time records included finding replacement firefighters and other personnel to fill-in for employees who called in sick or to address other manpower shortages.

38.

Defendant has failed to meet the requirements of any exemption from the overtime pay requirements of the FLSA for any Plaintiff from July 1, 2018 to date.

39.

As A Battalion Chief, each Plaintiff is required to be compensated at a rate of one and one half times his regular hourly rate for each hour worked in excess of 106 in any given 14-day work period.

40.

Defendant knew or should have known that the FLSA applied to each Plaintiff and that no exemption from the overtime pay requirements of the FLSA existed.

41.

Upon information and belief, in failing or refusing to pay each Plaintiff overtime wages as required by the FLSA, Defendant has not relied on any letter ruling from the Department of Labor indicating that Plaintiffs, as Battalion Chiefs whose primary duty was that of a first responder, was subject to any exemption from the overtime pay provisions of the FLSA.

42.

Upon information and belief, in failing or refusing to pay each Plaintiff overtime wages as required by the FLSA, Defendant has not relied on any legal advice indicating that each Plaintiff, as a Battalion Chief, was subject to any exemption from the overtime pay provisions of the FLSA.

43.

Defendant's conduct constitute willful violations of §§ 207 and 215 of the FLSA, entitling each Plaintiff to all relief afforded under the FLSA, including the award of liquidated damages and reasonable costs of litigation and attorneys' fees.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF 29 U.S.C. §§ 207 AND 215
(Overtime Violations)

44.

Paragraphs 1 through 43 are incorporated herein by this reference.

45.

Defendant's failure to compensate each Plaintiff for time worked in excess of 106 hours in any given 14-day work period on the basis of one and one half times the regular hourly rate of pay from July 1, 2018 to date is a violation of §§ 207 and 215 of the Fair Labor Standards Act of 1938, as amended.

46.

Defendant's violation of the FLSA was intentional and willful. Said violation gives rise to a claim for relief under the FLSA for Plaintiff for unpaid overtime compensation from July 1, 2018 through the date of trial, liquidated damages in an amount equal to the unpaid compensation, and reasonable attorneys' fees and expenses of litigation, pursuant to 29 U.S.C. § 215.

WHEREFORE, Plaintiffs respectfully demand that this Court:

- (a) Take jurisdiction of this matter;
- (b) Issue an Order holding Defendant to be an “employer” as that term is defined under the FLSA;
- (c) Grant a trial by jury as to all matters properly triable to a jury;
- (d) Issue a judgment declaring that each Plaintiff was covered by the provisions of the FLSA and not subject to any exemptions from the overtime pay provisions of the FLSA;
- (e) Issue a judgment that Defendant has failed to comply with the requirements of the FLSA;
- (f) Award each Plaintiff payment for each overtime hour worked from July 1, 2018 through the date of trial calculated at one and one-half times each Plaintiff’s regular hourly rate, plus liquidated damages equaling 100% of overtime pay due to each Plaintiff, as required by the FLSA;
- (g) Award each Plaintiff prejudgment interest on all amounts owed;
- (h) Award each Plaintiff nominal damages;
- (i) Award each Plaintiff his reasonable attorney’s fees and costs pursuant to 29 U.S.C. § 216(b);

- (j) Award any and such other further relief this Court deems just, equitable and proper.

Respectfully submitted, this 27th day of November, 2019.

/s Mitchell D. Benjamin

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(770) 859-0754 Facsimile

ATTORNEYS FOR PLAINTIFFS

JS44 (Rev. 1/13 NDGA)

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

BOBBY CAGLE, BRIAN MASSEY,
and RALPH "TREY" STEWART III

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Newton County
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT(S)

NEWTON COUNTY, GEORGIA

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

Mitchell D. Benjamin and Charles R. Bridgers
DeLong Caldwell Bridgers Fitzpatrick & Benjamin, LLC
3100 Centennial Tower
101 Marietta Street, NW
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benjamin@dcbflegal.com
charlesbridgers@dcbflegal.com

ATTORNEYS (IF KNOWN)

Megan N. Martin
Jarrard & Davis, LLP
222 Webb Street
Cumming, GA 30040
(678) 455-7150
Mmartin@Jarrard-Martin.com

II. BASIS OF JURISDICTION
(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
- 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
- 2 U.S. GOVERNMENT DEFENDANT
- 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)
(FOR DIVERSITY CASES ONLY)

- | | | | | | |
|----------------------------|----------------------------|---|----------------------------|----------------------------|---|
| PLF | DEF | | PLF | DEF | |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | CITIZEN OF THIS STATE | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | CITIZEN OF ANOTHER STATE | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | CITIZEN OR SUBJECT OF A FOREIGN COUNTRY | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | FOREIGN NATION |

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
- 2 REMOVED FROM STATE COURT
- 3 REMANDED FROM APPELLATE COURT
- 4 REINSTATED OR REOPENED
- 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
- 6 MULTIDISTRICT LITIGATION
- 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Fair Labor Standards Act of 1938 (as amended) (29 U.S.C. § 201 et.seq.)

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
- 2. Unusually large number of claims or defenses.
- 3. Factual issues are exceptionally complex
- 4. Greater than normal volume of evidence.
- 5. Extended discovery period is needed.
- 6. Problems locating or preserving evidence
- 7. Pending parallel investigations or actions by government.
- 8. Multiple use of experts.
- 9. Need for discovery outside United States boundaries.
- 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ (Referral)	NATURE OF SUIT _____	CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS - Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____
 JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD 

11/27/2019

DATE