

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

Frederick Hankins and David Seegars,)
 individually and on behalf of all others)
 similarly situated,)

Plaintiffs,)

v.)

Electric-Rooterman and Handyman, Inc.)
 f/k/a The Electric-Rooterman, Inc.,)
 Drain Doctor-Electric Man, Inc. d/b/a)
 Rooter-Man, Raye Le Construction and)
 Services LLC, Raye Le Properties, Inc.)
 d/b/a Raye Le Property Management,)
 Raymond Fletcher, Glenna Fletcher, and)
 Jackie Knight,)

Defendants.)

COMPLAINT
Class/Collective Action
 (JURY TRIAL DEMANDED)

C.A. NO.:

Plaintiffs Frederick (“Ricky”) Hankins and David Seegars (collectively “Plaintiffs”), individually and on behalf of all similarly situated employees, bring this Class/Collective action lawsuit against Electric-Rooterman and Handyman, Inc. formerly known as The Electric-Rooterman, Inc.; Drain Doctor-Electric Man, Inc. currently doing business as Rooter-Man; Raye Le Construction and Services LLC; Raye Le Properties, Inc. doing business as Raye Le Property Management; Raymond Fletcher, Glenna Fletcher, and Jackie Knight (collectively “Defendants”), seeking to recover for Defendants’ violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, and the South Carolina Wages Act, S.C. Code Ann. §§ 41-10-10 to 110. Plaintiffs, on behalf of themselves and all others similarly situated, allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff Frederick (“Ricky”) Hankins is a resident of the State of South Carolina, County of Spartanburg.
2. Plaintiff David Seegars is a resident of the State of South Carolina, County of Spartanburg.
3. Pursuant to 29 U.S.C. § 216(b), Plaintiffs have consented in writing to be a party to the FLSA claims asserted in this action, and Plaintiffs’ signed consent forms are attached. (See Exhibits A & B - Plaintiffs’ Consent to Sue Forms).
4. Defendant Electric-Rooterman and Handyman, Inc. f/k/a The Electric-Rooterman, Inc. and Drain Doctor-Electric Man, Inc. are South Carolina Corporations operating in Spartanburg and do business under the franchise name Rooter-Man¹, (hereinafter collectively referred to as “Rooter-Man”).
5. Rooter-Man, at all times material to this action, has regulated the employment of all persons employed by Rooter-Man, acted directly and indirectly in Rooter-Man’s interest in relation to said employees, and was thus an employer of Plaintiffs within the meaning of section 203(d) of the FLSA.
6. Defendant Raye Le Construction and Services LLC (“Raye Le Construction”) is a South Carolina Limited Liability Company that owns and manages Rooter-Man along with several other franchised identities to include Total Handy Man and Drain Doctor, which perform similar services.

¹Rooter-Man is a national plumbing and drain cleaning franchise with over 400 locations in the United States and Canada.

7. Defendant Raye Le Properties, Inc. d/b/a Raye Le Property Management (“Raye Le Properties”) is a South Carolina Corporation operating out of the same location in Spartanburg as Rooter-Man.
8. Raye Le Properties owns and manages rental properties primarily located in Spartanburg, South Carolina.
9. Employees of Rooter-Man perform necessary auxiliary services for Raye Le Properties which include making repairs and providing general upkeep services for the rental properties managed by Raye Le Properties.
10. Defendant Raymond Fletcher is the owner and operator of Rooter-Man and Raye Construction and upon information and belief is a resident of South Carolina, County of Spartanburg.
11. Raymond Fletcher is an “employer” under the FLSA based upon his supervisory authority over all of Rooter-Man’s employees, the company’s daily operations, his ability to make hiring and firing decisions, and his authority over scheduling and directing the employees’ daily assignments.
12. Defendant Glenna Fletcher, wife of Raymond Fletcher, is the owner and operator of Raye Le Properties and upon information and belief is a resident of South Carolina, County of Spartanburg.
13. Glenna Fletcher is an “employer” under the FLSA based upon her supervisory authority over all of Rooter-Man’s employees, the company’s daily operations, her ability to make hiring and firing decisions, and her authority over scheduling and directing the employees’ daily assignments.

14. Defendant Jackie Knight, daughter of Glenna and Raymond Fletcher, is a managerial employee of Rooter-Man and upon information and belief is resident of South Carolina, County of Spartanburg.
15. Jackie Knight is an “employer” under the FLSA based upon her supervisory authority over the employees and the daily operations of Rooter-man, her ability to enforce disciplinary actions against Rooter-Man employees, and her authority over scheduling and directing the employees’ daily assignments.
16. All the above named Defendants are a single enterprise under the FLSA because the entities perform related activities through unified operation and common control for a common business purpose.
17. All above named Defendants are a single and joint employer due to their high degree of interrelated and unified operations, the sharing of common officers with a common address and their managerial involvement in Plaintiffs’ day-to-day operations.
18. During the relevant time period, Defendants employed individuals who handled, sold, or otherwise worked on goods or materials that have been moved in, or produced for, commerce.
19. Plaintiffs themselves regularly engaged in interstate commerce by performing work on out of state jobs.
20. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).
21. Plaintiffs also assert a state law cause of action pursuant to South Carolina Wage Payment Act.

22. This Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367 because those claims derive from a common nucleus of operative facts.

23. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(ii) because a substantial part of the acts or omissions giving rise to these Plaintiffs' claims occurred within Spartanburg County, and Defendants are subject to personal jurisdiction in this district.

SUMMARY OF CLAIMS

24. Plaintiffs bring this action as a collective action to recover unpaid wages, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201 *et seq.* ("FLSA").

25. In particular, Plaintiffs bring this suit on behalf of the following similarly situated persons:

All current and former employees who have worked for Defendants in the capacity of a plumber or handyman within the statutory period covered by this Complaint, and who elect to opt-in to this action pursuant to FLSA, 29 U.S.C. § 216(b) ("Collective Class").

26. In addition, Plaintiffs also bring this action as a state class action to recover unpaid wages pursuant to South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 ("PWA").

27. Defendants have willfully committed widespread violations of the FLSA and South Carolina Wages Act by engaging in a pattern, practice, and policy of failing to pay employees minimum wage, overtime pay and making unlawful deductions from their employees' wages.

28. Specifically, Plaintiffs bring this suit on behalf of a class of similarly situated persons composed of:

All current and former employees who have worked for Defendants in the state of South Carolina during the statutory period covered by this Complaint ("SC Class").

29. Plaintiffs allege on behalf of the Collective Class and SC Class that Defendants violated Federal and South Carolina state laws by, *inter alia*:

- (i) failing to pay them the appropriate minimum wages for all hours worked;
- (ii) improperly making deductions from employee wages that resulted in payment less than minimum wage;
- (iii) improperly denying them overtime wages for all hours worked in excess of forty (40) hours in a workweek; and
- (iv) improperly denying to pay all wages that have become due and owed.

FACTUAL ALLEGATIONS

30. Plaintiffs were hired by the Defendants to perform plumbing, drain cleaning, and simple handyman tasks under the trade name Rooter-man.

31. Generally, Plaintiffs performed manual labor tasks involving repetitive operations with their hands, physical skill and energy.

32. As part of their daily assignments, Defendants required Plaintiffs to report to their shop at 7:30 a.m. each morning Monday through Friday to be briefed on their daily assignments and to be debriefed on the previous day's assignments.

33. The briefing and debriefing period usually lasted approximately thirty (30) minutes, none of which was counted by Defendants as compensable time.

34. At approximately 8:00 a.m., the Plaintiffs would leave the Defendants' shop in work vans supplied by the Defendant and set out to complete that day's work assignments which consisted of performing plumbing and odd job tasks.

35. Plaintiffs were required to work the assigned schedule that day or risk being written up.

36. At the end of each week, Defendants required Plaintiffs to record all of their work hours on timesheets that were later approved by Defendants.
37. Any dispute concerning the amount of time worked resulted in Defendants compensating Plaintiffs for what they believed was fair even if it was clearly less than the actual hours worked.
38. Throughout the entire duration of Plaintiffs' employment, the Defendants did not pay Plaintiffs at a rate of time and one-half their regular rates for hours worked over forty (40) hours a week. (See Exhibit C – pay stub).
39. Defendants impermissibly shifted operating costs to Plaintiffs by deducting sums from Plaintiffs' wages, thereby reducing their hourly compensation amount below minimum wage. (See Exhibit D – deductions).
40. Defendants' actions were not in good faith or based upon a reasonable belief that they were not violating applicable laws.
41. The Department of Labor has definitively stated that manual laborers or other “blue collar” workers who perform work as a plumber or handyman are never salaried exempt under the FLSA no matter how highly paid they may be².
42. At no time did Plaintiffs ever perform any executive, administrative, or professional duties that would weigh in favor of an exempt salaried employee.
43. Nor could Plaintiffs be classified as independent contractors; and therefore, they are not subject to the FLSA's minimum wage and overtime requirements.

² U.S. Department of Labor, Wage and Hour Division, Fact Sheet 17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA). http://www.dol.gov/whd/regs/compliance/fairpay/fs17a_overview.htm

44. The Plaintiffs worked for Defendants on a full time and continuing basis; Plaintiffs did not sell or advertise their services to the general public or work as contractors for anyone other than the above named Defendants.
45. Plaintiffs had no control over the manner and method by which they were paid.
46. Defendants retained the right to discharge Plaintiffs without cause.
47. Plaintiffs had no opportunity for profit and no risk of loss.
48. Plaintiffs are clearly not exempt from the FLSA's minimum wage and overtime requirements.

FIRST CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT MINIMUM WAGE VIOLATIONS
(Collective Class)

49. Plaintiffs, on behalf of themselves and the Collective Class, re-allege and incorporate by reference the paragraphs above as if they were set forth herein.
50. At all relevant times, Defendants have had gross revenues in excess of \$500,000.00.
51. At all relevant times, Defendants have been, and continue to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).
52. At all relevant times, Defendants have employed, and/or continue to employ, each of the Collective Class members within the meaning of FLSA.
53. By customarily making deductions from Plaintiffs' wages, at times Plaintiffs were paid less than minimum wage or even zero dollars for an entire week's worth of work. (See Exhibit D – deductions).
54. Pursuant to the FLSA, an Employee shall not be required to pay reimbursement costs to an employer for damages to the employer's property if, by doing so, the employee's

wages would be reduced below the required minimum wage. This is true even if the economic loss suffered by the employer is due to the employee's own negligence.

55. Further, the Defendants failed to pay any wages to Plaintiffs for the time spent each morning briefing and debriefing the work assignments.

56. The briefing and debriefing sessions were a principal activity of Plaintiffs' employment in that they were an integral and indispensable part of employment and not simply preliminary to the work performed. Plaintiffs had to obtain certain vital knowledge concerning the work they were asked to perform. As such, this time was compensable, and Plaintiffs were deprived of minimum wage for this time.

57. Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

58. Due to Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the members of the Collective Class, are entitled to recover from the Defendants compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

SECOND CLAIM FOR RELIEF
FAIR LABOR STANDARDS ACT OVERTIME WAGE VIOLATIONS
(Collective Class)

59. Plaintiffs, on behalf of themselves and the Collective Class, re-allege and incorporate by reference the paragraphs above as if they were set forth herein.

60. At all relevant times, Defendants have had gross revenues in excess of \$500,000.00.

61. At all relevant times, Defendants have been, and continue to be, an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

62. At all relevant times, Defendants have employed, and/or continue to employ each of the Collective Class members within the meaning of FLSA.
63. At all relevant times in the period encompassed by this Complaint, Defendants had and maintain a willful policy and practice of refusing to pay overtime compensation for all hours worked in excess of forty (40) hours per workweek.
64. Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§ 201 *et seq.* The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).
65. Due to Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the members of the Collective Class, are entitled to recover from the Defendants compensation for unpaid wages; an additional equal amount as liquidated damages; and reasonable attorneys' fees and costs of this action pursuant to 29 U.S.C. § 216(b).

THIRD CLAIM FOR RELIEF
SOUTH CAROLINA PAYMENT OF WAGES ACT
(SC Class)

66. Plaintiffs, on behalf of themselves and the members of the SC Class, re-allege and incorporate by reference the paragraphs above as if they were set forth again herein.
67. At all relevant times, Defendants have employed, and/or continue to employ, Plaintiffs and each of the SC Class Members within the meaning of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10 to 110 ("PWA"). Plaintiffs and the SC Class members are "employees" and are not free from the control and direction of Defendants.
68. Plaintiffs and the SC Class worked for Defendants with the clear understanding and agreement by Defendants that their compensation would be consistent with all applicable laws, including federal and state wage and hour laws.

69. Pursuant to the PWA, “[a]n employer shall not withhold or divert any portion of the employee’s wages unless the employer is required or permitted to do so by state or federal law. . . .” S.C. Code Ann. § 41-10-40(C).
70. Further, “any changes [to] the terms [of wages] must be made in writing at least seven calendar days before they become effective.” S.C. Code Ann. § 41-10-30(A).
71. Accordingly, Plaintiffs and the members of the SC Class are entitled to receive all compensation due and owing to them.
72. As a result of Defendants’ unlawful policies and practices as set forth above Plaintiffs and the members of the SC Class have been deprived of compensation due and owing which Defendants promised to pay in their commitment to abide by applicable wage and hour laws and in violation of the PWA’s mandate that no wages be withheld or diverted unless required or permitted under applicable law.
73. Defendants have set and withheld wages of the Plaintiffs and SC Class members without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.
74. As a direct and proximate result of Defendants’ conduct, Plaintiffs and the SC Class have suffered substantial losses and have been deprived of compensation to which they are entitled, including monetary damages in the amount of three (3) times the unpaid wages as well as costs and reasonable attorney’s fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of themselves and all other similarly situated members of the Collective Class and members of the SC Class, pray that the Court grant the following relief:

- A. Designation of this action as a collective action on behalf of the Collective Class, and prompt issuance of notice pursuant to 29 U.S.C. § 216(b), apprising class members of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to 29 U.S.C. § 216(b);
- B. Designation of the action as a class action under Fed. R. Civ. P. 23 on behalf of the SC Class;
- C. Appointment of the undersigned as Class Counsel;
- D. Find that Defendants' FLSA violations were willful;
- E. A declaratory judgment that the Defendants misclassified their employees as independent contractors instead of employees and therefore committed practices that are unlawful under the FLSA and the PWA;
- F. An injunction against Defendant and its officers, agents, successors, employees, representative and any and all persons acting in concert with it, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein in the future;
- G. For *disgorgement* of revenues, profits and money unjustly earned from the unlawful practices;
- H. An award of unpaid minimum wages to Plaintiffs and the members of the Classes;
- I. An award of unpaid overtime wages to Plaintiffs and the members of the Classes;
- J. Restitution of wages and gratuities improperly retained by Defendant;
- K. An award of liquidated damages to Plaintiffs and members of the Classes;

- L. An award of treble damages to Plaintiffs and members of the Classes to the extent permitted by S.C. Code Ann. § 41-10-80(C);
- M. An award of costs and expenses of this action together with reasonable attorneys' fees; and
- N. Such other and further relief as this Court deems just and proper.

Respectfully Submitted,

S/ John G. Reckenbeil
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Spartanburg, South Carolina