

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SAMUEL DUGGAN, on behalf of himself and all persons similarly situated,	:	
	:	
Plaintiff,	:	Collective Action
	:	
v.	:	Civil Action No.:
	:	
BUCKLEY CABLE CONSTRUCTION CO.	:	
	:	
Defendant.	:	
	:	

FIRST AMENDED COLLECTIVE ACTION COMPLAINT

Samuel Duggan (“Plaintiff Duggan”), by and through his undersigned counsel, on behalf of himself and all persons similarly situated,¹ hereby files this First Amended Collective Action Complaint against Buckley Cable Construction Co. (“Defendant”), seeking all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”).

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff Duggan’s FLSA claims is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. Defendant is registered to do business in Pennsylvania and has a registered office in Trainer, PA.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391. The events giving rise to Plaintiff Duggan’s claims arose within this District. Defendant conducts business in this District, and Plaintiff Duggan was employed by Defendant in this District.

¹ All allegations herein with respect to Plaintiff Duggan are made based upon his own personal knowledge and allegations with respect to others are made upon information and belief.

PARTIES

3. Plaintiff Duggan is an individual currently residing in Maple Glen, Pennsylvania. He was employed as a Construction Foreman by Defendant from approximately April 4, 2024 through approximately July 25, 2024, when Bill Buckley, CEO of Defendant, terminated Plaintiff's employment in retaliation for Plaintiff filing the original Collective Action Complaint in this matter, in violation of 29 U.S.C. § 215(a)(3). Pursuant to 29 U.S.C. § 216(b), Plaintiff has consented in writing to being a plaintiff in this action. *See Ex. A.*

4. Defendant Buckley Cable Construction Co. is a Pennsylvania business corporation headquartered at 3601 W. 9th Street, Trainer, PA 19061.

5. Defendant employs individuals engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person, as required by 29 U.S.C. §§ 206-207.

6. Defendant's annual gross volume of business exceeds \$500,000.

7. Defendant is an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the FLSA.

CLASS DEFINITIONS

8. Plaintiff Duggan brings Count I of this lawsuit pursuant to the FLSA, 29 U.S.C. § 216(b) as a collective action on behalf of himself and the following class of potential opt-in litigants:

All current or former field workers employed by Defendant Buckley Cable who were paid on a piece-rate basis in any workweek during the past three years (the "FLSA Class" or "Field Workers").

9. Plaintiff Duggan reserves the right to redefine the FLSA Class and to assert claims on behalf of other classes prior to notice or class certification, and thereafter, as necessary.

FACTS

10. Defendant Buckley Cable is a full-service communications contractor with specialties that include aerial & underground construction of communication networks, pole setting and removal, commercial and residential extensions, plant relocation, splicing, system removal, and natural disaster relief.

11. Starting approximately March 14, 2024, Plaintiff Duggan was employed by Defendant as a Construction Foreman in Eastern and North Central Pennsylvania job sites. Plaintiff also worked in Virginia and Delaware. From approximately April 4, 2024 through July 25, 2024, Plaintiff Duggan was paid on a piece-rate system meaning he was compensated based on the amount of cable he installed on work projects.

12. During Plaintiff Duggan's employment with Defendant, regularly worked approximately 55 to 70 hours per week. However, Plaintiff Duggan never received an overtime premium (time-and-a-half) for hours worked over forty in a workweek.

Complaints/Willfulness

13. In or about late 2023 or early 2024, Defendant's CEO Bill Buckley was informed by field supervisor Edward Boyle that Buckley's field workers should be receiving overtime compensation, but were not. Having full knowledge of its legal obligations, Defendant willfully disregarded these complaints as well as applicable wage requirements under the FLSA and state law, by continuing to fail to pay overtime premium to cable installers and other field workers.

14. Defendant does not maintain accurate records of the actual hours that Plaintiff Duggan and Class Members worked each workday and the total hours worked each workweek as required by the FLSA. *See* 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.2, 516.5(a), 516.6(a)(1).

15. Defendant knew or should have known that Plaintiff Duggan and Class Members

were not exempt from the FLSA's overtime requirements.

16. Defendant is a sophisticated national business with access to knowledgeable human resource specialists and competent labor and employment counsel.

17. Defendant has acted willfully and with reckless disregard of clearly applicable FLSA provisions by failing to pay Plaintiff Duggan and the Class for all overtime wages mandated by 29 U.S.C. § 207.

Unlawful Retaliation

18. During a phone conversation on July 25, 2024, Bill Buckley asked Plaintiff Duggan if he filed a lawsuit against Defendant.

19. Plaintiff Duggan responded in the affirmative, informing Buckley that the lawsuit was for failure to pay overtime and failure to properly track hours worked.

20. Bill Buckley then terminated Plaintiff Duggan's employment on the spot, telling Plaintiff Duggan to pack his bags and get out.

COLLECTIVE ACTION ALLEGATIONS

21. Plaintiff Duggan brings this lawsuit pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of the Class defined above.

22. Plaintiff Duggan desires to pursue his FLSA claims on behalf of himself and any individuals who opt-in to this action pursuant to 29 U.S.C. § 216(b).

23. Plaintiff Duggan and the Class are "similarly situated," as that term is used in 29 U.S.C. § 216(b), because, *inter alia*, all such individuals worked as Field Workers pursuant to Defendant's common pay practices and, as a result of those practices, Defendant failed to pay Plaintiff Duggan and the Class at 150% of their regular hourly rate for all hours worked in excess of 40 each workweek, as mandated by 29 U.S.C. § 207, by forcing Plaintiff Duggan and the Class

to perform compensable work off the clock.

24. The similarly situated employees are known to Defendant, are readily identifiable, and may be located through Defendant's business and human resource records.

25. Defendant employs many Class Members. These similarly situated employees may be readily notified of this action through direct U.S. mail and/or other appropriate means, and allowed to opt into it pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages (or, alternatively, interest), and attorneys' fees and costs under the FLSA.

COUNT I
Violations of the Fair Labor Standards Act
(On Behalf of the FLSA Class)

26. All previous paragraphs are incorporated as though fully set forth herein.

27. The FLSA requires that covered employees be compensated by their employers for all hours worked, and at 150% of their regular hourly rate for all hours worked in excess of 40 in any workweek ("Overtime Rate"). 29 U.S.C. § 207(a)(1).

28. Defendant is subject to the wage requirements of the FLSA because it is an "employer" under 29 U.S.C. § 203(d).

29. During all relevant times, Defendant was engaged in interstate commerce and/or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203.

30. During all relevant times, Plaintiff Duggan and the FLSA Class were covered employees of Defendant, and as such were entitled to the above-described FLSA's protections. *See* 29 U.S.C. § 203(e).

31. Plaintiff Duggan and the Class are not exempt from the requirements of the FLSA. Plaintiff Duggan and the Class are entitled to be paid at Overtime Rate for all hours worked over

forty (40) in a workweek pursuant to 29 U.S.C. § 207(a)(1).

32. Defendant failed to comply with 29 U.S.C. § 207(a)(1) by failing to compensate Plaintiff Duggan and the Class at Overtime Rate for all hours worked over forty (40) in a workweek.

33. Defendant knowingly failed to compensate Plaintiff Duggan and the FLSA Class at Overtime Rate for all hours worked in excess of forty (40) hours per workweek, in violation of 29 U.S.C. § 207(a)(1).

34. Defendant also failed to make, keep, and preserve records with respect to Plaintiff Duggan and the Class sufficient to determine their wages, hours, and other conditions of employment in violation of the FLSA. 29 U.S.C. § 211(c); 29 C.F.R. §§ 516.5(a), 516.6(a)(1), 516.2(a)(5).

35. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

36. Pursuant to 29 U.S.C. § 216(b), employers such as Defendant, who fail to pay employees' wages in conformance with the FLSA shall be liable to the employees for unpaid wages, liquidated damages, court costs and attorneys' fees incurred.

COUNT II - RETALIATION
Violation of the Fair Labor Standard Act
(Plaintiff v. Defendant)

37. All previous paragraphs are incorporated as though fully set forth herein.

38. The FLSA requires that employers pay their employees overtime compensation for hours worked over 40 hours in a workweek. 29 U.S.C. § 207(a)(1).

39. Additionally, the FLSA contains an antiretaliation provision that makes it unlawful “to discharge or in any other manner discriminate against any employee because such employee

has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter.” 29 U.S.C. § 215(a)(3).

40. Plaintiff reasonably and in good faith believed that he was misclassified as overtime exempt, and that he was entitled to overtime compensation for each hour worked over 40 in a workweek.

41. Plaintiff engaged in activity protected by the FLSA when he filed the original Complaint in this lawsuit.

42. Upon hearing that Plaintiff filed a lawsuit for unpaid overtime compensation, Defendant immediately terminated Plaintiff’s employment.

43. Defendant’s termination of Plaintiff’s employment was a direct consequence of him filing the instant lawsuit.

44. Plaintiff’s filing of this FLSA lawsuit for unpaid overtime was a direct and proximate cause of Defendants’ retaliatory termination of Plaintiff’s employment.

45. Employers such as Defendant, who violate the anti-retaliation provisions of the FLSA, may be held liable for back pay, front pay, liquidated damages, compensatory damages (including pain and suffering), punitive damages, and attorneys’ fees and costs. 29 U.S.C. § 216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Duggan seeks the following relief on behalf of himself and all others similarly situated:

- a. An order permitting this litigation to proceed as an FLSA collective action pursuant to 29 U.S.C. § 216(b);
- b. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all potential FLSA Class members;
- c. Unpaid wages, unpaid overtime wages, and prejudgment interest to the fullest extent permitted under the law;

- d. Back pay and front pay, related to the unlawful retaliation, to the fullest extent permitted under the law;
- e. Liquidated damages to the fullest extent permitted under the law (for both unpaid overtime and unlawful retaliation);
- f. Compensatory damages, related to the unlawful retaliation, to the fullest extent permitted under the law;
- g. Punitive damages, related the unlawful retaliation, to the fullest extent permitted under the law;
- h. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and,
- i. Such other and further relief as this Court deems just and proper.

Dated: August 9, 2024

Respectfully Submitted,

GOODLEY MCCARTHY LLC

by: /s/ James E. Goodley
James E. Goodley (PA 315331)
Ryan P. McCarthy (PA 323125)
1650 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 394-0541
james@gmlaborlaw.com
ryan@gmlaborlaw.com

Attorneys for Plaintiff and the FLSA Class