

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

BRENT FORNEY, on behalf of himself and all persons similarly situated,	:	
	:	
Plaintiff,	:	Class and Collective Action
	:	
v.	:	Civil Action No.:
	:	
EUSTIS CABLE ENTERPRISES LTD	:	
	:	
Defendant.	:	
	:	

CLASS AND COLLECTIVE ACTION COMPLAINT

Brent Forney (“Plaintiff Forney”), by and through his undersigned counsel, on behalf of himself and all persons similarly situated,¹ hereby files this Class and Collective Action Complaint against Eustis Cable Enterprises LTD (“Defendant Eustis Cable”), seeking all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (“FLSA”) and Pennsylvania Minimum Wage Act of 1968, 43 P.S. §§ 333.101 *et seq.* (“PMWA”).

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiff Forney’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 appointed an agent for service of process in Harrisburg, PA. 42 Pa. C.S. § 5301.

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

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

PARTIES

3. Plaintiff Forney is an individual currently residing in Millersburg, Pennsylvania. He was employed as a Cable Installer by Defendant from approximately March 2024 through April 2024, and pursuant to 29 U.S.C. § 216(b) has consented in writing to being a plaintiff in this action. *See Ex. A.*

4. Defendant Eustis Cable Enterprises LTD is a Vermont business corporation headquartered at 355 East St., Brookfield, Vermont 05036.

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 Forney 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 Eustis 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 Forney brings Counts II of this lawsuit as a class action pursuant to FED. R. CIV. P. 23, on behalf of himself and the following class:

All current or former field workers employed by Defendant Eustis Cable who performed work in Pennsylvania and who were paid on a piece-rate basis in any workweek during the past three years (the “Pennsylvania Class”).

10. The FLSA Class and the Pennsylvania Class are together referred to as the “Classes.”

11. Plaintiff Forney reserves the right to redefine the Classes and to assert claims on behalf of other classes prior to notice or class certification, and thereafter, as necessary.

FACTS

12. Defendant Eustis Cable is a full-service communications contractor with specialties that include aerial & underground construction of communication networks, pole setting and removal, site work and tower construction, splicing, testing, troubleshooting, turn-up system as-built documenting, and ADSS Placement.

13. From approximately March 2024 through April 2024, Plaintiff Forney has been employed by Defendant as a Cable Installer at Reading and Danville Pennsylvania job sites.

14. Plaintiff Forney is a non-exempt employee, who was paid on a piece rate system, meaning he was compensated based on the amount of cable he installed on work projects.

15. During March and April 2024, Plaintiff Forney worked several workweeks in excess of forty hours. For example, during the week of March 11, 2024, Plaintiff worked at least 45.5 hours. As another non-exclusive example, during the week of April 15, 2024, Plaintiff worked at least 50.5 hours. In weeks in which Plaintiff worked more than forty hours, he received no overtime premium (e.g., time-and-a-half) for hours worked over forty.

Complaints/Willfulness

16. This is not the first time Defendant was sued for unpaid overtime under the FLSA. On October 18, 2017, a collective action complaint was filed against Defendant alleging employees of Defendant were not paid an overtime premium for hours worked over 40 in a work week. *Link v. Eustis Cable Enterprises, Ltd.*, No. 1:17-cv-2204 (N.D. Ohio).

17. Upon information and belief, Defendant has received other formal and informal complaints about uncompensated overtime work but have 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.

18. Defendant does not maintain accurate records of the actual hours that Plaintiff Forney and FLSA 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).

19. Defendant knew or should have known that Plaintiff Forney and FLSA Class Members were not exempt from the FLSA's overtime requirements.

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

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

COLLECTIVE ACTION ALLEGATIONS

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

23. Plaintiff Forney 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).

24. Plaintiff Forney and the FLSA 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 Forney and the FLSA 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 Forney and the FLSA Class to perform compensable work off the clock.

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

26. Defendant employs many FLSA 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.

CLASS ACTION ALLEGATIONS

27. Plaintiff Forney brings this action as class actions pursuant to FED. R. CIV. P. 23 on behalf of himself and the Pennsylvania Class defined above.

28. The members of the Pennsylvania Class are so numerous that joinder of all members is impracticable. Upon information and belief, there are well in excess of fifty (50) members of each the Pennsylvania Class.

29. Plaintiff Forney will fairly and adequately represent and protect the interests of the Pennsylvania Class because there is no conflict between the claims of Plaintiff Forney and those of the Pennsylvania Class, and Plaintiff Forney's claims are typical of the claims of the Pennsylvania Class. Plaintiff Forney's counsel are competent and experienced in litigating wage and hour and other complex labor matters, including class and collective actions like this one.

30. There are questions of law and fact common to the proposed Pennsylvania Class, which predominate over any questions affecting only individual Class members, including,

without limitation: whether Defendant has violated and continues to violate Pennsylvania law through its policies or practices of not paying overtime wages for hours worked over 40 in a workweek, as mandated by 34 Pa. Code § 231.41.

31. Plaintiff Forney's claims are typical of the claims of the Pennsylvania Class in the following ways, without limitation: (a) Plaintiff Forney is a member of the Pennsylvania Class; (b) Plaintiff Forney's claims arise out of the same policies, practices and course of conduct that form the basis of the claims of the Pennsylvania Class; (c) Plaintiff Forney's claims are based on the same legal and remedial theories as those of the Pennsylvania Class and involve similar factual circumstances; (d) there are no conflicts between the interests of Plaintiff Forney and the Pennsylvania Class Members; and (e) the injuries suffered by Plaintiff Forney are similar to the injuries suffered by the Pennsylvania Class members.

32. Class certification is appropriate under FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Pennsylvania Class predominate over any questions affecting only individual Class members.

33. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein because it will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. The Pennsylvania Class is readily identifiable from Defendant's own employment records. Prosecution of separate actions by individual members of the Pennsylvania Class would create the risk of inconsistent or varying adjudications with respect

to individual Philadelphia Class members that would establish incompatible standards of conduct for Defendant.

34. A class action is superior to other available methods for adjudication of this controversy because joinder of all members is impractical. Furthermore, the amounts at stake for many of the Pennsylvania Class members, while substantial, are not great enough to enable them to maintain separate suits against Defendant.

35. Without a class action, Defendant will retain the benefit of their wrongdoing, which will result in further damages to Plaintiff Forney and the Pennsylvania Class. Plaintiff Forney envisions no difficulty in the management of this action as a class action.

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

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

37. 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).

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

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

40. During all relevant times, Plaintiff Forney 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).

41. Plaintiff Forney and the FLSA Class are not exempt from the requirements of the

FLSA. Plaintiff Forney and the FLSA 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).

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

43. Defendant knowingly failed to compensate Plaintiff Forney 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).

44. Defendant also failed to make, keep, and preserve records with respect to Plaintiff Forney and the FLSA 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).

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

46. 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
Violation of the Pennsylvania Minimum Wage Act
(On Behalf of the Pennsylvania Class)

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

48. The Pennsylvania Minimum Wage Act of 1968 ("PMWA") requires that covered employees be compensated for all hours worked in excess of forty (40) hours per week at Overtime Rate. *See* 43 P.S. § 333.104(c) and 34 PA. CODE § 231.41.

49. Defendant is subject to the overtime requirements of the PMWA because Defendant is an employer under 43 P.S. § 333.103(g).

50. During all relevant times, Plaintiff Forney and the Pennsylvania Class were covered employees entitled to the above-described PMWA's protections. *See* 43 P.S. § 333.103(h).

51. Defendant failed to compensate Plaintiff Forney and the Pennsylvania Class at an Overtime Rate for hours worked in excess of forty (40) hours per week, in violation of 34 PA. CODE § 231.41.

52. Defendant is thus liable to Plaintiff and the Pennsylvania Class for the wages or expenses not paid, interest, court costs and attorneys' fees incurred in recovering the unpaid wages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Forney 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. An order permitting this litigation to proceed as a class action pursuant to FED. R. CIV. P. 23 on behalf of the Pennsylvania Class;
- d. Unpaid wages, unpaid overtime wages, and prejudgment interest to the fullest extent permitted under the law;
- e. Liquidated damages to the fullest extent permitted under the law;
- f. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and,
- g. Such other and further relief as this Court deems just and proper.

Dated: June 6, 2024

Respectfully Submitted,

GOODLEY MCCARTHY LLC

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