

**IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
(Charleston Division)**

**ANGELA UNDERWOOD,**  
individually and on behalf of others  
similarly situated,

**Plaintiffs,**

**v.**

**Civil Action No. 2:17-cv-02522**

**KC TRANSPORT, INC., d/b/a KC  
TRANSPORT OF WEST VIRGINIA, INC.,**  
A West Virginia Corporation,  
**and KENNY COMPTON,**  
A West Virginia Resident.

**Defendants.**

**COMPLAINT**

NOW COMES Plaintiff Angela Underwood, by and through their undersigned counsel, and file this Complaint against Defendants KC Transport, Inc., d/b/a KC Transport of West Virginia, Inc., and Kenny Compton making claims to recover unpaid overtime wages under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*, individually and on behalf of others similarly situated as provided in 29 U.S.C § 216(b), stating as follows:

**PARTIES**

1. Plaintiff Angela Underwood (“Plaintiff Underwood”) is an individual residing in Delbarton, Mingo County, West Virginia.

2. Defendant KC Transport, Inc., d/b/a KC Transport of West Virginia, Inc. (“Defendant KC Transport”) has its headquarter office located at 8306 Wilderness Road, Bland, Virginia 24315; with a principal in-state operating address located at 150 Katie Lane, Cool Ridge, West Virginia 25825.

3. Defendant KC Transport is a coal hauling company.

4. The location of Plaintiff’s job during her entire employment with Defendants was located in or around Cabin Creek, Kanawha County, West Virginia.

5. Defendant KC Transport is a foreign for-profit corporation organized pursuant to the laws of the State of Virginia, and which is authorized to do business in the State of West Virginia.

6. Defendant Kenny Compton (“Plaintiff Compton”) is an individual who, based upon information and belief, is a resident of Bland, Virginia. Defendant Compton is the owner of Defendant KC Transport and is responsible for the business and operations of Defendant KC Transport’s Cool Ridge, West Virginia office, and at all relevant times has been the supervisor of Plaintiff Underwood and all similarly situated employees.

7. As the owner, Defendant Compton, at all relevant times, has had extensive managerial responsibilities and substantial control of the terms and conditions of the work of Plaintiff Underwood and all similarly situated employees.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over Plaintiffs’ claims under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”) pursuant to 28 U.S.C. § 1331 because this claim arises under the laws of the United States.

9. At all relevant times, Plaintiffs, and similarly situated employees, were employees of Defendants at Defendants' facilities located at 150 Katie Lane, Cool Ridge, West Virginia, 25825.

10. Venue is appropriate in the U.S. District Court for the Southern District of West Virginia pursuant to 28 U.S.C. § 1391(b) because Defendants KC Transport and Compton reside in this judicial district and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

### FACTS

11. Plaintiff Angela Underwood was hired by Defendant KC Transport in or around March of 2016 to work as a truck driver.

12. Upon being hired by Defendant KC Transport, Plaintiff began earning approximately \$15.00 per hour.

13. The Defendant was a contracted coal hauling company operating on several mine sites throughout West Virginia.

14. Plaintiff was not informed her position was classified as exempt or non-exempt from overtime wages under the FLSA.

15. Plaintiff Underwood's job duties included truck driving.

16. During Plaintiff's employment with KC Transport, Plaintiff would work at least forty hours each week, often working 60-70 hours per week, or more.

17. Plaintiff Underwood remained a truck driver throughout her employment by Defendants.

18. Plaintiff Underwood's job duties did not require her to cross state lines, nor did her job duties anticipate or expect her to cross state lines. Therefore, the FLSA motor carrier exemption is not applicable to this matter.

19. Plaintiff Underwood's actual job duties did not qualify her for any exemption from the overtime provisions of the FLSA and she was, therefore, at all relevant times a non-exempt employee entitled to overtime pay for each hour worked over forty hours in a workweek.

20. Despite failing to classify Plaintiff Underwood as an exempt employee, and despite the fact that Plaintiff Underwood's duties do not qualify her as an exempt employee, Defendants have, during the relevant time period, treated Plaintiff Underwood as an exempt employee, have paid her a salary, and have not paid her overtime pay to which she was entitled.

21. Plaintiff's pay stubs would often falsely reflect that they were reimbursement payments rather than pay checks, often stating, "Cost of Sales – Fuel."

22. On or about August 31, 2016, Defendants terminated Plaintiff Underwood's employment.

23. Defendants failed to keep accurate records of the hours worked by Plaintiff Underwood, and similarly situated employees. Defendants do, however, possess other types of documents, including time clock records or records from the mine site security building which Plaintiff was required to check in and out of at the start and end of each shift, which may be used to reconstruct the hours worked by Plaintiff Underwood, and similarly situated employees.

24. As of the filing of the instant Complaint, no representative of any Defendant has contacted Plaintiff regarding her entitlement to, or calculation of her unpaid overtime wages.

25. From approximately March 1, 2016 to approximately August 31, 2016, Plaintiff Underwood worked weekly shifts exceeding 40 hours. Plaintiff is not in possession of accurate hours worked, but that hours worked can be easily reconstructed from the mine site security logs.

**(Similarly Situated Employees)**

26. During the relevant time period, Defendants have employed approximately 50 employees similarly situated to Plaintiffs Underwood.

27. The similarly situated employees have had duties similar to the duties of Plaintiff Underwood, have worked under similar conditions and similar work schedules as Plaintiff Underwood, have been non-exempt employees entitled to overtime wages similar to Plaintiff Underwood, have been unlawfully treated by Defendants as exempt employees in a manner similar to Plaintiff Underwood, and have been unlawfully denied overtime wages by Defendants in a manner similar to Plaintiff Underwood.

**COUNT ONE: CLAIM FOR UNPAID OVERTIME WAGES UNDER THE FAIR  
LABOR STANDARDS ACT**

28. Plaintiffs incorporate by reference Paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Each Defendant is an “employer” as defined in the Fair Labor Standards Act of 1938 (“FLSA”) at 28 U.S.C. § 203.

30. Defendant KC Transport is an “enterprise engaged in commerce” as defined in the FLSA at 28 U.S.C. § 203.

31. Defendant Compton, at all relevant times, has been an owner for, and an agent of Defendant KC Trucking, has had extensive managerial responsibilities and substantial control of the terms and conditions of the work of Plaintiff Underwood, and all similarly situated employees, and consequently, is an “employer” under the FLSA.

32. Defendants were required to pay Plaintiff Underwood, and all similarly situated employees, overtime wages at a rate of one and one-half times Plaintiff’s and the similarly situated employees’ regular rates for all hours worked in excess of 40 hours in a work week pursuant to the FLSA, 28 U.S.C. § 207.

33. Defendants failed to pay Plaintiff Underwood, and all similarly situated employees all overtime wages due and owing to Plaintiff and the similarly situated employees in violation of the FLSA, 28 U.S.C. § 207.

34. Defendants’ failure to pay wages and overtime wages in violation of the FLSA was willful and deliberate, having failed to pay Plaintiff overtime wages from March of 2016 through the present. Additionally, based upon information and belief, Defendants are continuing to fail to pay overtime wages to similarly situated Plaintiffs.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of similarly situated employees, pray for the following relief:

- (a) That this Court certify this action as an FLSA collective action and certify a class of employees similarly situated to Plaintiff Underwood;
- (b) That Plaintiff Underwood be designated as the collective class representatives;

- (c) That they and the certified class may have a trial by jury;
- (d) That he and the certified class be awarded all damages provided by law, including but not limited to, unpaid overtime wages;
- (e) That he and the certified class be awarded liquidated damages as provided by the FLSA;
- (f) That he and the certified class be awarded attorneys' fees and costs; and
- (g) That he and the certified class be awarded such other relief as this Court may deem as just and equitable.

**A Trial by Jury is Demanded.**

**ANGELA UNDERWOOD,**  
By Counsel

/s Mark L. French

Mark L. French, Esq. (WVSB# 9061)  
THE LAW OFFICE OF MARK L. FRENCH, PLLC  
The Morrison Building  
815 Quarrier Street, Suite 208  
Charleston, WV 25301  
Telephone: 304.720.6220  
Facsimile: 304.720.6221  
[mark@marklfrench.com](mailto:mark@marklfrench.com)

JS 44 (Rev. 08/16)

### CIVIL COVER SHEET

The JS 44 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, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Angela Underwood

**DEFENDANTS**

KC Transport, Inc., d/b/a KC Transport of West Virginia, Inc., and  
Kenny Compton

(b) County of Residence of First Listed Plaintiff Mingo  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Bland  
(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, and Telephone Number)  
Mark L. French, 815 Quarrier St., Suite 208, Charleston, WV 25301  
(304) 720-6220

Attorneys (If Known)

**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)

- |   |                                       |                                       |   |                            |                                       |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. 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)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
29 U.S.C. § 201

Brief description of cause:  
Claim for unpaid overtime wages under the fair labor standards act

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
04/26/2017

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Truck Driver Claims KC Transport Misclassifies Employees](#)

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