

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:14-CV-945

**KENNETH PRONTAUT**, individually )  
and on behalf of all similarly situated )  
individuals, )

Plaintiff, )

vs. )

Civil Action No. 1:14-CV-945

**RELIABLE REPORTS OF TEXAS,** )  
**INC.**, a Texas Corporation, )

Defendant. )

---

**CLASS ACTION / COLLECTIVE ACTION COMPLAINT  
AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. This is a class and collective action brought by Plaintiff, Kenneth Prontaut (“Plaintiff” or “Prontaut”), on behalf of himself and all similarly situated current and former employees of Reliable Reports of Texas, Inc. (“Reliable” or “Defendant”) to recover for Defendant’s willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, and the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen Stat. §§ 95-25.1, *et seq.*

2. “Reliable was founded in 1971 and has expanded to become the premier property and casualty insurance inspection and reporting company in the nation. Reliable enjoys a successful working relationships with 18 of the top 20 property and casualty insurance companies in the United States, as well as over 500 other insurance companies and agencies.” [www.reliablereports.com/aboutus.asp](http://www.reliablereports.com/aboutus.asp)

3. Reliable's services include "Personal Property Surveys" and "Commercial Inspections" which are performed by a staff of more than 500 full-time employees who are located in various parts the United States. *Id.* These employees, called Field Reporting Specialists (or "Field Reps"), are telecommuters who travel hundreds of miles per week to visit, inspect, take pictures of, and report on the condition of residential and commercial properties for Reliable's insurance industry clients. For each such visit, the Field Reps receive a flat rate of pay that averages from \$4.80 to \$8.00 per property. Other than a modest reimbursement for mileage and lodging along with a few fringe benefits, Field Reps receive no other compensation for their long, grueling days of driving, performing property investigations and filling out reports.

4. In a typical workweek, each Field Rep is assigned from 45 to 100 properties to inspect. At \$6.00 per inspection, it *might* be possible to earn the federally mandated minimum wage of \$290.00 per week (\$7.25 per hour x 40 hours), except that the properties are often located from 10 to 30 miles apart, and are often in urban areas where traffic and other unexpected delays are prevalent. Reliable also refuses to pay for the 30 to 60 minutes, and 30 to 60 miles, of drive time that employees incur at the beginning and end of each shift, travelling from their homes to their first appointment, and from their last appointment back to their homes.

5. Reliable understands the demands and financial risks of the job and it promises that Field Reps will earn at least \$13.32 per hour for their considerable efforts. In reality, however, Field Reps often earn less than minimum wage due to the perverse

nature of Reliable's pay policies and practices. These changes appear to have been implemented in or around August of 2010, as part of Reliable's new Field Reporting Specialist "Compensation Plan."

6. Plaintiff worked from about 8:00 a.m. until around midnight, Monday through Thursday, with about an hour break for dinner each day; he worked 2-3 more hours on Friday. Plaintiff worked on Saturdays if bad weather prevented him from completing the work during the week. Plaintiff had to work this type of schedule in order to complete his assigned inspections and reports within the time frame required by Reliable. Plaintiff also put hundreds of miles of wear and tear on his personal vehicle; often completed multiple overnight trips per month; performed massive amounts of unpaid off-the-clock work and overtime; and bore the entire cost of a variety of mandatory job-related expenses, including a home office, cell phone and cellular service, a GPS unit, an internet connection, mapping software and substantial vehicle related expenses, a dedicated computer, printer and supplies. Plaintiff's work schedule and unreimbursed business expenses is typical of that of Reliable's other Field Reps.

7. When these costs are deducted from the Field Reps' inspection wages, and when the Field Reps' paltry wages are divided into the massive number of hours actually worked each week, many Field Reps do not earn the federally mandated minimum wage.

8. Field Reps are also pressured to not record overtime or their actual work hours or miles, on threat of being assigned fewer inspections, being sent to locations even further away from home, or being replaced. These unpaid hours and overtime hours add up

to thousands of dollars per Class member. Defendant told Plaintiff not to record more than 40 hours of work per week.

### **JURISDICTION AND VENUE**

9. This Court has subject-matter jurisdiction over Plaintiff's FLSA claim pursuant to 28 U.S.C. § 1331 because Plaintiff's claim raises a federal question under 29 U.S.C. § 201, *et seq.*

10. This Court has jurisdiction over this FLSA Collective Action pursuant to 29 U.S.C. § 216(b), which provides that a suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction."

11. Reliable's annual sales exceed \$500,000 and it has more than two employees, so the FLSA applies in this case on an enterprise basis. Reliable's employees engage in interstate commerce and therefore they are also covered by the FLSA on an individual basis.

12. This Court has jurisdiction over Plaintiff's state law class claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). The aggregate claims of the individual Class members exceed the sum value of \$5,000,000 exclusive of interest and costs, there are believed to be in excess of 100 Class members, and this is a case in which more than two-thirds of the proposed Class members and Reliable are citizens of different states.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the actions and omissions giving rise to the claim pled in this Complaint substantially occurred

in this District.

### **PARTIES**

14. Plaintiff, Kenneth Prontaut, is an individual who resides in Reidsville, North Carolina. Plaintiff worked for Reliable as a Field Reporting Specialist (“Field Rep”) from approximately October 2013 through April 2014, and has executed his consent to sue form, which is attached as *Exhibit A*.

15. Reliable Reports of Texas, Inc. is headquartered at 1165 S. Stemmons Freeway, Suite 233, Lewisville, Texas 77802. Reliable Reports, Inc. is a registered d/b/a with the Texas Secretary of State by the Texas Corporation, Reliable Reports of Texas, Inc. (collectively, Reliable).

16. Reliable does business and employs Field Reps in most major U.S. cities. Reliable collects over 30 million data points from residential and commercial property inspections each year and it operates in 22 states.

17. Reliable is owned by The Adam Corporation, a \$1 billion private holding company located in Bryan, Texas. While little is known about these secretive, private companies, industry analysts estimate that Reliable likely employs between 400 and 600 full and part-time Field Reps who produce more than \$25 million of inspection-related service revenues per year.

18. At all relevant times, Reliable was Plaintiff’s “employer,” and the company was engaged in “interstate commerce” as defined in the FLSA.

## **COMMON ALLEGATIONS**

### **Field Rep Recruiting and Training**

19. Field Reps are recruited and hired by Reliable's Field Operations Managers, who each supervise a different region of the country.

20. New recruits spend their first week on the job receiving training and practice through Reliable's online teaching/coaching system. They learn how to login to Reliable's computer network, download addresses, keep time, log and report mileage, inspect properties and prepare and submit reports. They also receive a copy of Reliable's Employee Manual, business cards, an extendable ladder, a measuring tool, and a lanyard and identification card identifying them as a Reliable employee.

21. On the final day of training, recruits spend a half day performing property inspections with their supervisors. Besides this brief face-to-face meeting, Field Reps never meet other Reliable employees or visit company facilities. All of their work is performed over Reliable's online computer network or through emails, text messages, or phone calls.

### **The "Requirements" of the Job**

22. The job of a Field Rep entails: (a) logging into Reliable's computer network over the internet; (b) downloading a list of property addresses to inspect; (c) making calls to set up inspection appointments; (d) preparing route maps to estimate the week's total travel miles and drive times; (e) loading coordinates into the Field Rep's personal GPS unit; (f) driving from the Field Rep's home to the first inspection ("commute time");

inspecting and taking pictures and notes of various types of residential and commercial properties, including climbing on roof tops and walking through and diagramming interior spaces; (g) making appointment calls and responding to calls and text messages from Reliable, insurance agents or property owners during the lunch break; (h) sitting in traffic and contending with other similar delays; (i) completing the last inspection of the day and either driving back to the Field Rep's home or to a local hotel (more commute time); (j) logging back into Reliable's computer network that night to enter the hours worked and miles travelled for the day; (k) responding to any emails or messages from Reliable or property owners; and (j) completing detailed online inspection reports for each property inspected with detailed diagrams and pictures.

23. Other than the company provided ladder and measuring tool, employees furnish everything else they need to perform their jobs. These items include: a reliable vehicle; insurance; a cell phone and cellular and data service; internet service; a home office or workspace; a digital camera, a GPS unit; a desktop or laptop computer; a printer and paper and supplies.<sup>1</sup> (Mind you, this is a non-exempt W-2 employee position, despite the fact that many independent contractor arrangements are not this demanding or financially risky.)

24. During the first 16 weeks of employment, Field Reps receive a "probationary wage" of \$13.32 per hour. Reliable promises that recruits will earn a great deal more once

---

<sup>1</sup> Field Reps must also adhere to a strict dress code, consisting of "clean and pressed" khaki pants and a collared shirt. Employee Manual Excerpts, *Exhibit B* at p. 47.

they are switched to Reliable's "piece rate" pay system.

25. Reliable's inspection services range from "Basic Residential" and "Commercial" property inspections, to "Premises Liability/Replacement Cost" inspections, to "High Value Property" inspections.<sup>2</sup> These services range in price from \$4.80 to \$90.00 per inspection, but a Field Rep's pay averages only \$5.00 to \$8.00 per visit.

26. While being assigned a \$90.00 inspection is possible, those inspections are extremely rare, while the \$4.80 inspections are commonplace.

27. The only offsets the Field Reps receive are a partial reimbursement for mileage and reimbursement for hotel stays and tolls.

#### **Reliable's Field Reps are Paid on a Piece Rate Basis**

28. 29 CFR § 778.108 explains the FLSA "regular rate" as follows:

The "regular rate" of pay under the Act cannot be left to a declaration by the parties as to that is to be treated as the regular rate for an employee; it must be drawn from what happens under the employment contract (*Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446). The Supreme Court has described it as the hourly rate actually paid the employee for the normal, non-overtime workweek for which he is employed -- an "actual fact" (*Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419). Section 7(e) of the Act requires inclusion in the "regular rate" of "all remuneration for employment paid to, or on behalf of, the employee" except payments specifically excluded by paragraphs (1) through (7) of that subsection. (These seven types of payments, which are set forth in § 778.200 and discussed in §§ 778.201 through 778.224, are hereafter referred to as "statutory exclusions.") As stated by the Supreme Court in the *Youngerman-Reynolds* case cited above: "Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical

---

<sup>2</sup> Reliable Reports' Non-Standard 80 Field Rep Fee Schedule as of February 7, 2011.



computation, the result of which is unaffected by any designation of a contrary ‘regular rate’ in the wage contracts.”

29. 29 CFR § 778.111 further provides in the case of “pieceworkers” that:

(a) *Piece rates and supplements generally.* When an employee is employed on a piece-rate basis, the regular hourly rate of pay is computed by adding together total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions). This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker’s “regular rate” for that week. For overtime work the pieceworker is entitled to be paid, in addition to the total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week.

30. Here, Reliable uses a piece rate system to calculate the pay owed to Field Reps like Plaintiff, but its calculations, as explained below, are inconsistent with the basic standards required by the Code.

31. For example, 29 CFR §§ 778.103 and 778.104 mandate that in determining an employee’s Regular Hourly Rate and concomitant overtime pay, each workweek must “stand alone.”

32. Reliable defines its regular workweek as “Monday (12:00:00 AM) through Sunday (11:59:99 PM) Central Standard Time.” *See* Compensation Plan at pg. 1.

33. Yet, in computing a Field Rep’s pay for a given two week pay period, Reliable looks at the *number of reports completed in that time period*, not the number of hours worked. Said another way, there is a temporal disconnect between the pay Field Reps like Plaintiff receive and the hours they actually work in a given week, because

Reliable does not require inspection reports to be submitted until 21 days after inspections are completed.

34. Reliable's Compensation Plan confirms this:

Reports completed and submitted during each of the two work weeks of a pay period will be paid on the second Friday after the pay period ends.

For example, Monday, January 4th, 2010 represents the beginning of a pay period. Work completed and submitted from Monday, January 4, 2010 through Sunday, January 17, 2010 will be processed for this pay period. The pay day for this pay period will be Friday, January 29, 2010.

***Please note that work is not considered complete until it passes the internal quality review verification process.***

*Id.*, at pg. 1 (emphasis added).

35. Under this standard, a Field Rep could work 100 hours in one week to complete 100 inspections but they could end up receiving no pay that pay period if their reports are delayed or those reports do not receive verification. This is absurd and entirely inconsistent with the FLSA's workweek principle. *Cf.* 29 CFR § 778.301 ("a workweek may be changed for an employee or for a group of employees if the change is intended to be permanent and is not designed to evade the overtime requirements of the Act.").

36. And, while the FLSA allows some delay in the payment of an employee's wages and overtime when the correct amount of the employee's wages cannot reasonably be determined until a later period of time, those payments "may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due and in no event may payment be delayed beyond the next payday after

such computation can be made.” 29 CFR § 778.106.

37. Under Reliable’s system, an inspection performed on Friday, January 15<sup>th</sup> might not even get submitted until 21 days later, on February 5<sup>th</sup>, and assuming the report was then immediately approved by “internal quality review verification process,” the payment for that inspection would not appear on the employee’s paycheck until two Fridays later, on February 19<sup>th</sup>. If the “next payday” after the January 15<sup>th</sup> inspection was January 29<sup>th</sup>, as Reliable’s example indicates, then waiting to pay the employee until the following payday on February 19<sup>th</sup> is a clear violation of § 778.106.

38. In another example, Reliable shows the following “sample calculation”:

Total production for the week	\$1,000
Total hours worked in that week	42 hours
$\$1000 / 42 =$ Regular rate of pay	\$23.81 per hour
Overtime rate	\$11.90 per OT hour
Paid for 42 hours @ regular rate and 2 hours @ OT rate	
This is a total of \$1023.81 for that sample week.	

Compensation Plan at p. 1.

39. This approach violates 29 CFR § 778.111(b) because it ignores Reliable’s “minimum hourly guarantee” of \$13.32 per hour:

(b) *Piece rates with minimum hourly guarantee.* In some cases an employee is hired on a piece-rate basis coupled with a minimum hourly guaranty. Where the total piece-rate earnings for the workweek fall short of the amount that would be earned for the total hours of work at the guaranteed rate, the employee is paid the difference. In such weeks the employee is in fact paid at an hourly rate and the minimum hourly guaranty which he was paid is his regular rate in that week. In the example just given, if the employee was guaranteed \$5.50 an hour for productive working time, he would be paid \$253 ( $46 \times$

\$5.50) for the 46 hours of productive work (instead of the \$245.50 earned at piece rates). In a week in which no waiting time was involved, he would be owed an additional \$2.75 (half time) for each of the 6 overtime hours worked, to bring his total compensation up to \$269.50 (46 hours at \$5.50 plus 6 hours at \$2.75 or 40 hours at \$5.50 plus 6 hours at \$8.25). If he is paid at a different rate for waiting time, his regular rate is the weighted average of the 2 hourly rates, as discussed in § 778.115.

40. Conversely, Reliable's example fails when realistic numbers are used, because the Regular Hourly Rate and overtime premium can never lawfully be lower than the minimum wage and one half of the minimum wage (\$7.25 and \$3.625, respectively). For example, the following calculation, which resembles Reliable's actual pay practices, is facially improper:

Total production for the week	\$400
Total hours reported in that week	40 hours
Total hours actually worked	60.5
$\$400 / 40 =$ Regular rate of pay	\$10.00 per hour
Overtime rate	\$5.00 per OT hour
Paid for 40 hours @ regular rate and 0 hours @ OT rate	
This is a total of \$400 for that sample week, <b><i>except that even at minimum wage the employee should have earned \$509.31</i></b> (60.5 hrs. x \$7.25 + 20.5 hrs. x \$3.625)	

41. A number of other corporate policies, explained below, also skew Reliable's math.

### **Field Reps Also Are Not Paid for Hundreds of Miles of "Commute Time"**

42. The Portal-to-Portal Act and 29 CFR §§ 785.33 to 785.35 are clear that an employee's regular daily commute to and from their office or place of work is not compensable work time. *See, e.g.*, 29 CFR § 785.35 ("Normal travel from home to work is not worktime"). However, 29 CFR §§ 785.38 to 785.41 is equally clear that the time

and miles spent by Field Reps like Plaintiff, who travel hundreds of miles away from their homes and communities each day to inspect properties as part of their principal work activities, *is compensable*.

43. 29 CFR § 785.38 (Travel that is all in the day's work), states as follows: "Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, ***must be counted as hours worked....***" (emphasis added).

44. 29 CFR § 785.39 (Travel away from home community), states as follows: "Travel away from home is clearly worktime when it cuts across the employee's workday...."

45. 29 CFR § 785.41 (Work performed while travelling), states as follows: "Any work which an employee is required to perform while travelling must, of course, be counted as hours worked."

46. The totally unreasonable nature of Reliable's commute time policy is demonstrated by the following passage from Reliable's Compensation Plan:

Question: What are the rules for reporting hours when performing field work?

Answer: Field Reporting Specialists will report the exact time worked from the moment they arrive at their first stop (inspection) to the moment they finish their last stop (inspection). Commute time to the first stop and from the last stop is not included when reporting field work time. However, if the "to" or "from" commute time ***exceeds two hours either way***, the Field Reporting Specialist may begin reporting hours once this two hour threshold has been reached.

For example, *if a Field Reporting Specialist drives 2 ½ hours to their first stop (inspection) the first two hours would be considered commute time and the last ½ hour would be “on the clock”*. Again, please note that the commute applies to each leg of the drive – up to two hours commuting to the first stop (inspection) and up to two hours commuting from the last stop (inspection) is not included when reporting work for field time....

*Id.*, at pg. 5 (emphasis added).

### **Field Reps Also Do Not Receive the Promised Mileage Reimbursement**

47. Reliable’s Employee Manual contains the following mileage reimbursement provision:

#### **Personal Automobiles**

Should it become necessary for an employee to drive their personal automobile on Reliable business, the following policies will apply.

1. Employees *will be compensated for personal mileage at the prevailing rate determined by the Internal Revenue Service* or the fee schedule as defined by job description.
2. The rate allowed by the IRS is deemed to be an amount adequate for the provision of personally provided automobile insurance in addition to the normal operating expense for the vehicle. Accidental damage to personal automobiles shall be handled by the employee and will not be the responsibility of Reliable.

Any traffic citations or fines received while operating either a Reliable or personal automobile will be the responsibility of the driver.

See Employee Manual Excerpts, *Exhibit B* at p. 14 (emphasis added).

48. The current IRS mileage rate for business travel is \$0.555 per mile.<sup>3</sup>

---

<sup>3</sup> The IRS business mileage rates for previous years range from \$0.485 in 2007 to \$0.510 in the first half of 2014. See <http://www.irs.gov/Tax-Professionals/Standard-Mileage-Rates>

49. Despite this clear and intuitive policy, Reliable no longer abides by it. Under the new Compensation Plan instituted in August 2010, Reliable now “caps” the Field Rep’s mileage reimbursement at 30% of their piece rate production pay.<sup>4</sup> See Compensation Plan at pg. 2.<sup>5</sup>

50. For Field Reps like Plaintiff who were already struggling to earn a fair day’s wages for a long, grueling day of work, this change in policy was devastating, especially given the high costs of gasoline.

51. The miles reported by Field Reps like Plaintiff are also unreasonably scrutinized. **Net of Expenses, Field Reps Do Not Earn Minimum Wage**

52. The 30% mileage cap also causes the Field Rep’s Regular Hourly Wage, and their corresponding Minimum Wage Supplements and Overtime Premiums to be significantly understated. Said another way, having to subsidize their own mileage and vehicle expenses acts like an unauthorized wage deduction that artificially depresses the Field Reps’ earnings.

53. For example, a Field Rep who earned the minimum weekly wage of \$290.00 (\$7.25 per hour x a 40 hour workweek) would be entitled to receive a mileage reimbursement from Reliable of only \$87 under the 30% cap (\$290 x 0.30). If that Field

---

<sup>4</sup> Upon information and belief, Reliable also collects a “gas surcharge” from selected customers at selected times, making the 30% employee mileage reimbursement cap all the more unreasonable.

<sup>5</sup> Notably, Reliable failed to mention the 30% cap in its 10/16/2012 version of the Employee Manual, even though the change was adopted in August of 2010. Who Reliable is attempting to hide this information from is not apparent, but Plaintiff suspects that it is the U.S. Department of Labor since they are the only entity capable of enjoining Reliable’s illegal wage practices.

Rep drove a total of 500 miles to earn that \$290.00, then the Rep's real wage was only \$99.50 (\$290.00 minus 500 miles x \$0.555 per mile minus \$87), because 65% of their "wages" went to pay for the unreimbursed mileage and vehicle expenses.

54. 40 hours of work for \$99.50 works out to a pay rate of \$2.48 per hour, which is substantially below the federal minimum wage.

55. The results are even more skewed when hundreds of commute miles of dozens of unreported, off-the-clock commute and office hours are added into the equation each week.

#### **A Host of Other Unreimbursed Job-Related Expenses Has the Same Punitive Effect**

56. Like the 30% mileage cap, each Field Rep's Regular Hourly Rate and Overtime Premium should be significantly increased to offset for the out-of-pocket job-related expenses the Reps are forced to bear. These expenses include: including a home office space, the cost of a cell phone and cellular data service, a GPS unit, an internet connection, mapping software and substantial vehicle related expenses, a dedicated computer, printer and other supplies.

57. Thus, a person earning the minimum annual wage of \$15,080 (\$7.25 per hour x 40 hrs. per week x 52 weeks), is paying between 13% and 20% of their income to help boost Reliable's revenues and profits.

#### **Plaintiff's Experience at Reliable**

58. In October 2013, Plaintiff met with Mr. Ernie Brewington of Reliable for a job interview in Archdale, North Carolina. At the conclusion of the interview, Brewington



offered Plaintiff a job with Reliable as a Field Reporting Specialist.

59. Brewington told Plaintiff he would receive \$10 per inspection but \$13.32 per hour during the first 16 weeks of training.

60. Brewington told Plaintiff that, after 16 weeks, Plaintiff would be compensated on strict production and was guaranteed to earn at least minimum wage when on production.

61. Additionally, Brewington told Plaintiff he would receive a vehicle expense of .505 cents per mile, which was capped at a maximum of 30% of his wages.

62. Brewington was an area manager for a region that included North Carolina, and within which Plaintiff was assigned territories that included Rockingham, Caswell, and Alamance counties.

63. Plaintiff started working his 16-week training period for Reliable on or about November 4, 2014.

64. After Plaintiff's training period, he received documents from Reliable stating he would be paid \$13.32 an hour, or his production pay, whichever was greater.

65. After a few weeks, when Plaintiff became proficient at the job and was completing 65 or more reports per week but still only earning about \$530 per week, (as opposed to \$650). Between October and December 2013, Plaintiff's total W-2 compensation from Reliable totaled a dismal \$3,240.15.

66. When Plaintiff began to question Brewington about the lower than promised pay, Brewington told Plaintiff he had an outdated compensation plan that should not have

been sent to him.

67. Plaintiff questioned Brewington's honesty and sought to confirm the compensation plan with Ms. Kobi McDade, a member of Reliable's HR Department. On December 5 2013, Plaintiff sent McDade an e-mail explaining Brewington had represented Plaintiff would receive \$10 per inspection and that Plaintiff was receiving much less per inspection. Plaintiff's e-mail went unanswered.

68. Towards the end of February of 2014, Plaintiff pressed Brewington until he finally admitted that Plaintiff would not receive the promised \$10 per inspection.

69. On February 28, 2014, Plaintiff contacted Brewington's boss, Mr. Zeke Flatten, via e-mail. Flatten called Plaintiff back shortly thereafter and said he would see what he could do to fix the pay issue. On March 3, 2014, Flatten called Plaintiff back and offered him more money, from \$5.50 to \$9.60 depending on the zone. While this offer was still a long way from the promised \$10 per inspection, Plaintiff needed the job, and did not want to lose his health insurance, so he had no choice but to accept Reliable's unfair dealings.

70. With respect to reimbursement for vehicle expenses, Reliable never came close to paying the actual IRS allowable rate of \$0.56 per mile. For instance, if Plaintiff earned \$500 in a week, the maximum mileage reimbursement he could receive was \$150. Most weeks were at least 500 miles allowable mileage with at least 200 miles not counted because it was travel to the first and from the last stop, which Reliable refused to pay under any circumstances. So in this example, Plaintiff would drive 700 miles for which the full

IRS-rate reimbursement would be \$392, but Plaintiff would only receive the \$150.

71. When Plaintiff performed the calculations, it was apparent that with mileage, paper, printer, ink cartridges, high speed internet, etc., some weeks Plaintiff was not making enough to break even on the vehicle and earn two dollars an hour.

72. Plaintiff's last full two-week pay period with Reliable was April 7 through April 20, 2014. In this pay period, Plaintiff worked 80.5 hours and at least an additional 14 hours traveling to first stops and from last stops. See Plaintiff's Earnings Statements, *Exhibit C* at p. 12. During this time, Plaintiff spent two nights out of town, drove his vehicle a total of 1,284 "allowable" miles and there was a minimum of 500 miles "not allowable." See Mileage Screenshots, *Exhibit D*, pp. 5-6. Plaintiff was told that he would receive "a little extra" for all the travel but no amount was given at the time. After Plaintiff left the company, he was told the amount would be \$150.00.

73. If Plaintiff was reimbursed at the full IRS rate, he would have been paid \$994.04 for mileage during this period. The check for this period was \$992.14 gross for labor and \$324.10 for mileage reimbursement, for which the total gross compensation equaled \$1,316.24. After one subtracts the IRS rate of \$994.04, Plaintiff was with only \$322.20 for 80.5 hours of work in this two-week period. See *Exhibit C*, p. 12. That averages **\$3.94 per hour** for the period. If one factors in the 14 hours that Plaintiff was not compensated for travel to the first and last stops of each day, the hourly rate drops to **\$3.36 per hour**, and there is a corresponding loss of overtime pay as well. Nor does Plaintiff's pay for that period reflect Plaintiff's business expenses, such as his cell phone,

internet, paper, printers, ink, etc. It was clear at this point that working for Reliable was neither profitable nor legal.

74. On April 23, 2014, Plaintiff called Brewington to advise he could no longer afford to pay Reliable's operating expenses and that Plaintiff was, in fact, paying to work for Reliable. Brewington offered no solution and told Plaintiff that if he did not like it, to quit. Plaintiff told him he would have no choice but to resign. Plaintiff subsequently e-mailed Flatten and explained that he could no longer afford to work for Reliable—Flatten offered no solutions.

75. In sum, during Plaintiff's tenure with Reliable, it lied about Plaintiff's compensation, unilaterally changed Plaintiff's agreed upon work area, instructed Plaintiff not to record more than 40 hours of work per week on his timesheets, changed Plaintiff's work description, failed to provide adequate training, forced Plaintiff into the position of working for less than minimum wage, and failed to pay overtime as required by law.

76. Recognizing that its new Compensation Plan likely violated the federal minimum wage requirements, Reliable began paying a tiny "Minimum Wage Supplement" to Field Reps beginning in or around August of 2010.

77. How these supplements were calculated was never adequately explained to Plaintiff.

78. However, Reliable's Minimum Wage Supplement does not account for any of the unreported time or unreimbursed expenses outlined above. Once activities like commute time and off-the-clock time are added to the hours reported by each Field Rep,

and once expenses—like unreimbursed gasoline, mileage expenses, and cell phone charges are deducted from each Field Reps' regular hourly wage—it is inconceivable that Reliable's minimum wage supplements could have been accurate or adequate.

79. Likewise, once activities like commute time and off-the-clock time are added to the hours reported by each Field Rep, it is clear Reliable failed to pay Plaintiff the overtime compensation he was due.

80. Failing to accurately account for and pay for all of the time actually worked by its employees is a clear violation of the FLSA's record keeping requirements. *See* 29 USC § 211(c).

### **Prontaut Is Not Alone in Feeling that He Has Been Taken Advantage Of**

81. While not a lot is known about Reliable since The Adam Corporation purchased the company in 2003, there are several strong indications that Plaintiff's experience at Reliable is archetypal. In particular, teems of reviews posted on the job site Indeed® by current and former Reliable employees, corroborate virtually everything alleged in this Complaint:

#### **Terrible place to work!**

Field Representative (Former Employee), Various – May 5, 2011

I agree with everything the other reviewer said 100%. The more you worked the less you got paid. And the pay kept getting less and less. By the time I left I was working about 80 hours a week and not even making \$400. There was no way you could verify the pay because their system was so confusing. They are not very nice to their employees and nothing is ever good enough for them. I actually lost money working for them not to mention the astronomical number of miles I put on my truck. This is the worst company I have ever been associated with.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

### **Your Expenses Will Exceed Compensation**

Field Reporting Field Rep (Former Employee), Northern Michigan - February 12, 2013

Pros: none. Cons: poor pay, exceptionally bad mileage reimbursement.

Be cautious of their recruiting pitch. I was told that you can expect to earn up to \$60 per inspection. Multiple inspections can be done in an hour. You must also drive your personal vehicle and they pay mileage at the IRS approved rate or a maximum of 30% of your production. I was told "don't worry, you will make a very generous mileage reimbursement."

I worked for them for 4 weeks. The first week was training which was actually pretty good and I felt I was ready to go into the field. Your first 16 weeks you receive a "training wage" mine was \$13.32 an hour and I was hired as a part time employee at 30 hours per week. The hourly rate is a minimum you will make, you make whichever is greater, hourly rate or per inspection. After a 16 week probationary period, your hourly rate drops to the then current minimum wage.

Inspection payments. They promise you can earn up to \$60.00 per inspection. ALL but one of the inspections I conducted paid \$8.50.... While earning \$60 for an inspection is possible, it is a very rare exception. I believe I was mislead regarding this during my recruitment. Unfortunately this only gets worse because your mileage is based off of your production.

I did inspections for three weeks. I was assigned a 12 county rural area to cover. Due to the distances involved getting to the first inspection, and the distances between sites, I was only able to average 2 inspections per hour. Each days route typically exceeded 400 miles, they don't pay mileage from home to the first inspection or from the last inspection to home. That is considered your commute to and from work. My commute over 3 weeks averaged more than 150 miles per day and was not reimbursed. One route was 283 miles non reimbursable, 314 reimbursable. When I was paid, I averaged 2 inspections per hour or \$17.00 an hour which sounds good. But here's the catch, my daily production was \$17 x 8hrs. = \$136.00 x mileage cap of 30% = \$40.80 per day. Total days wages and expenses = \$176.80, (before taxes) miles driven averaged more than 400. The IRS mileage rate is

400 x \$.55 = \$220.00. A net loss of \$43.00. Additional miles just mean a greater loss for you. You will wear out your vehicle working for Reliable Reports at your expense.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

**KBLN - April 26, 2013**

I feel that I need to comment on this review for clarification. There was nothing inaccurate in the reviews that I've read. After the 4 month training period, Reliable switches their field reps to "production pay." This means that they get paid for each inspection they perform. They also require the reps to report the number of hours spent in field from the first inspection to the last inspection. If you do not make at least minimum wage, they will "front" you the additional wages so you are paid minimum wage for the pay period..... This is basically a LOAN... The money fronted to you WILL be deducted from [your pay](#) when/if you make more than minimum wage in future pay periods. As I stated in a previous review, I was mainly assigned to an area that required well over an hour's commute time to the first inspection and another hour or more back home from the last inspection. Inspections were often 40-60 minutes drive time apart from each other. At \$6.50-8.50 per inspection.... you do the math.... it's minimum wage and you beat your car to death earning it. It is very easy to find yourself losing money in this situation. The difference in pay rate has nothing to do with how far away the inspection is from your home. It's based on population density. My Regional Manager sent the work to me every Sunday evening. He did not live in my area and simply sent the work out and left it to me to plan the routes efficiently which is a simple matter with a mapping program. There is absolutely no way to increase the efficiency of a route when the inspections are so far apart. I enjoy the Field Rep job duties and have worked this industry for quite some time, I currently work for one of Reliable's competitors and it is a night-and-day difference in ethics, type of inspections, pay-rate and management accessibility.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

**Would be a good job if.....**

Field Inspector (Current Employee), US - January 30, 2013

I am a part-time field inspector and I have been with Reliable for a little less than a year. A typical week will have me in the field 2 full days a week and

at my computer for a few hours on one or two mornings. Reliable has a very complicated wage system. The field inspectors are paid a flat rate per inspection and then a mileage reimbursement is added to that. My mileage pay is just enough to cover fuel costs. It's nowhere near the federal rate. Even though I live in a high population area of my state I am sent to an area 4 counties away and I often report 200 miles or more per day, which does not include the 60-90 miles required to get to and from the work area.

Inspections are often spaced out far enough that it would only be possible to do one per hour. Since most inspections pay 7 to 9 dollars apiece I am making a little more than minimum wage and not getting any compensation for wear and tear to my vehicle.

Most inspections consist of a walk around the outside of a home to check and photograph construction details and any negative conditions. It normally takes about 5-10 minutes unless the home has many problems or is a farm. Inspections are unscheduled which sometimes causes problems with the homeowner. Dogs, locked gates and cautious homeowners can cause another visit or at least a delay.

Some home inspections require a walk on the roof. Some inspections are commercial in nature and require an in-person interview with the business owner. These are not normal inspections and they do pay more.

At first, this job was pretty good. I was able to schedule the inspection days around my other work. I am self-employed and must be able to schedule my own time, which drew me to this position at Reliable in the first place.

Recently, however, the manager has been nit-picking my routes and has even tried to map my routes and tell me which days I am supposed to do them. The comment posted above about being treated "like a child" is spot-on but, in my case, this treatment didn't start until about 6 months into the job. I have a hunch that the management is also being paid for the inspections that I complete.

I also lost an area that I was working that is much closer to home. This move made no sense to me since my manager is always stressing "efficiency."

---

The pay for the last two months has been approx. \$9.50/hr average. But keep in mind that this did not include the ridiculously long drive times to get to and from my assigned areas. The mileage reimbursement paid just enough to



cover fuel (Fuel has been costing around \$3.20 to \$3.50 a gallon).

This job requires proficiency in computer use. Inspectors are required to download and install some of Reliable's proprietary programs and learning to use them quickly is required. Inspectors are also required to have an adequate vehicle w/insurance, a printer, paper and ink to print maps and work assignments, DSL or better internet access, a good digital camera and a cell phone. Inspectors are also required to access roofs and interact professionally with homeowners and business owners.

This is much to ask from someone that is getting less than \$10 per hour.

This job seems to be exploitative in nature. I get the feeling that Reliable would rather replace inspectors instead of listening to and working with the inspectors they already have.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

### **Not the greatest.**

Field Inspector (Former Employee), US - October 5, 2012

Worked for them for 5 years went from an ok inspection service to treating the inspector like a child. Part of the great thing about being a field inspector is the autonomy and they have moved away from it, you end [up] absolutely wasting your time doing menial data entry when more time could be spent writing up work or in the field.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

### **Terrible place to work**

Field Representative (Former Employee), South - July 18, 2012

Pros: nothing Cons: every aspect of the company and how they conduct business

They are mean to their employees. You have no idea what you are being paid because there is no way to calculate how much you are owed. They start you out at a certain amount then the pay keeps shrinking. They expect you to complete unbelievable amounts of work in under 40 hours. They belittle their employees and everyone in the corporate office is allowed to make demands

of the field representatives and treat them like they are worthless. The only time I enjoyed working there was the day I quit.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

**Not a good company to work for.**

Field Representative (Former Employee), Southern State - February 3, 2012

After you are hired they keep adding more and more to your duties and expect unrealistic goals to be met in 40 hours. They also expect the Field Reps to conduct inspections in manners that could put them at high risk of dangerous situations.

**Myrna – June 9, 2012**

I read your comments and unfortunately for me I have just gotten hired to work for them. I am now worried that I am gonna get screwed. What do you mean by high risk and dangerous situations? I was told I would have to get on top of roofs but I didn't bother asking more questions. I guess I was just thrilled to have the job. They did mention going out of town. I live in El Paso, and would have to drive to Marfa and Pecos. Can you tell me about how much you would get paid per inspection? and when you went out of town did you get paid to make the trip worthwhile? I hope to hear from you I am thinking of turning down this job before its too late for me. Thanks

**B.Jones – September 15, 2012**

RRI does not notify the insured that you are coming to perform the inspection. The underwriter is suppose[d] to do that, but 90% of the time the home owners have no idea you're coming out. If you're working in a rural area where people are not used to getting visitors don't be shocked if a[n] upset home owner comes out with a weapon. You will be required to perform inspections in the drug and gang infested areas. Yes, you will be putting yourself in some situations that could be dangerous.

**Harmon – February 3, 2013**

Watch your pay cause starting out when you are in training they pay decent than after that it tanks fast. I ended up finding out in the end I was losing money in a sense I was paying to do the work for them. At that moment I decided to leave. I contacted their corporate owner

which at the time was called the Adams [C]orporation I believe. I guess they thought I was going to sue them so they sent me like a 6K check. They do not pay mileage correctly and the territories are nowhere close to where you live as they promise from the start. Also if you travel for them to like other states expect to pay for it first or like my manager did once he put me up in a very bad part of town in a very bad hotel, like one you pay for by the hour. All cons for this company.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

**Not a good company to work for.**

Pros: no pros Cons: all cons

Poor management, the company is very dis-organized, pay is decent when you are in the training of 6 months but after that watch your pay cause it will drop drastic. Miles are not fully reimbursed as stated when hired. Poor training offered.

<http://www.indeed.com/cmp/Reliable-Reports/reviews>

82. Reliable has also been named in several previous FLSA collective actions, including:

- *Walzer v. Reliable Reports*, Case No. 3:11-CV-379 (W.D. Va.) (FLSA collective action seeking unpaid wages and overtime wages for a class Field Reps in Virginia that settled for an undisclosed amount).
- *Hansen v. Reliable Reports*, Case No: 6:07-CV-01068 (M.D. Fla.) (FLSA collective action seeking unpaid wages and overtime wages for a class of Field Reps in Florida that settled for an undisclosed amount).
- *Howard v. Reliable Reports*, Case No: 3:10-CV-885 (N.D. Tex.) (FLSA collective action seeking wages for a class of Field Reps in Texas that settled for an undisclosed amount).

83. The theme of all of these cases seems to be to settle before the courts can reach the merits of the claims.

## **Reliable's Compensation Plan Is So Self-Serving That its Only Purpose Appears To Be To Circumvent the Requirements of the FLSA**

84. As detailed herein, Reliable's pay practices are unnecessarily complex and all appear to be designed to benefit Reliable at their employees' expense. The Supreme Court and the U.S. Department of Labor have condemned plans like this before, concluding that such plans are devices to evade the "full penalty of the FLSA."

CFR § 778.500 defines these types of plans as follows:

(a) Since the term *regular rate* is defined to include all remuneration for employment (except statutory exclusions) whether derived from hourly rates, piece rates, production bonuses or other sources, the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means. The established hourly rate is the "regular rate" to an employee only if the hourly earnings are the sole source of his compensation. Payment for overtime on the basis of an artificial "regular" rate will not result in compliance with the overtime provisions of the Act.

(b) It may be helpful to describe a few schemes that have been attempted and to indicate the pitfalls inherent in the adoption of such schemes. The device of the varying rate which decreases as the length of the workweek increases has already been discussed in §§ 778.321 through 778.329. It might be well, however, to re-emphasize that the hourly rate paid for the identical work during the hours in excess of the applicable maximum hours standard cannot be lower than the rate paid for the non-overtime hours nor can the hourly rate vary from week to week inversely with the length of the workweek. It has been pointed out that, except in limited situations under contracts which qualify under section 7(f), it is not possible for an employer lawfully to agree with his employees that they will receive the same total sum, comprising both straight time and overtime compensation, in all weeks without regard to the number of overtime hours (if any) worked in any workweek. The result cannot be achieved by the payment of a fixed salary or by the payment of a lump sum for overtime or by any other method or device.

(c) Where the employee is hired at a low hourly rate supplemented by facilities furnished by the employer, bonuses (other than those excluded under section 7(e)), commissions, pay ostensibly (but not actually) made for

idle hours, or the like, his regular rate is not the hourly rate but is the rate determined by dividing his total compensation from all these sources in any workweek by the number of hours worked in the week. Payment of overtime compensation based on the hourly rate alone in such a situation would not meet the overtime requirements of the Act.

(d) One scheme to evade the full penalty of the Act was that of setting an arbitrary low hourly rate upon which overtime compensation at time and one-half would be computed for all hours worked in excess of the applicable maximum hours standard; coupled with this arrangement was a guarantee that if the employee's straight time and overtime compensation, based on this rate, fell short, in any week, of the compensation that would be due on a piece-rate basis of x cents per piece, the employee would be paid on the piece-rate basis instead. The hourly rate was set so low that it never (or seldom) was operative. This scheme was found by the Supreme Court to be violative of the overtime provisions of the Act in the case of *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 427. The regular rate of the employee involved was found to be the quotient of total piece-rate earnings paid in any week divided by the total hours worked in such week.

(e) The scheme is no better if the employer agrees to pay straight time and overtime compensation on the arbitrary hourly rates and to make up the difference between this total sum and the piece-rate total in the form of a bonus to each employee. (For further discussion of the refinements of this plan, see §§ 778.502 and 778.503.)

85. The design and willfulness of Reliable's pay policies and practices is amply demonstrated throughout this Complaint and the adoption of Reliable's revised Compensation Plan in 2010 clearly came from the highest levels of the organization:

When we do not [get reports done in 21 days or less], and our competition does. We will eventually lose out business with this client. So you as a rep need to make the decision if you can supply 21 day time service to us. If you can fantastic, if not, then please do us both a favor... when you think about it, this really should be easy to do. Trust me, I have worked in the field as a rep for 5 years, then managed this business for another 10. It is not that hard and yes it may take some extra mile of driving to get that one report, or it make take some extra time putting in the report at night when it is old, but really this job is pretty good. It is very flexible and the job itself is not that stressful unless you make it stressful.

May 15, 2011 email from Reliable's Director of Field Operations to all field employees.

86. Such knowing and willful disregard of the law by one of the nation's leading providers of insurance inspection services can no longer be countenanced.

### **COLLECTIVE ACTION ALLEGATIONS**

87. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on his own behalf and on behalf of all similarly situated current and former Field Reps who were employed by Reliable any time during last three years (the "Class").

88. Excluded from the Class are all Reliable executives, administrative and professional employees, including computer professionals and outside sales persons.

89. With respect to the claims set forth in this action, a collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiff under 29 U.S.C. § 216(b). The class of employees on behalf of whom Plaintiff brings this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are subject to the same or similar unlawful practices, policies, and Compensation Plan; and (c) their claims are based upon the same factual and legal theories.

90. The employment relationship between Reliable and every Class member is exactly the same and differs only name, location and rate of pay. The key issue -- whether Reliable's piece rate Compensation Plan complies with the FLSA -- does not vary substantially from Class member to Class member.

91. The key legal issues are also the same for every Class member, *to wit*: (1)

whether Field Reps' commute time is compensable; (2) whether Reliable is complying with the federal minimum wage law; (3) whether Reliable is complying with the federal overtime law; and (4) whether Reliable's FLSA violations were willful.

92. Plaintiff estimates that the Class, including both current and former employees over the relevant period, will include several hundred members. The precise number of Class members should be readily available from a review of Reliable's personnel and payroll records.

### **RULE 23 NORTH CAROLINA CLASS ACTION ALLEGATIONS**

93. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3) on his own behalf and on behalf of all similarly situated current and former Field Reps who were employed by Reliable any time since October 2011 (the "Class").

94. The members of the Class are so numerous that joinder of all Class members in this case would be impractical. Although the precise number of Rule 23 North Carolina Class members is presently unknown, it should be easy to identify from Defendant's computer systems, payroll and personnel records.

95. There is a well-defined community of interest among Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Class. These common legal and factual questions, include, but are not limited to, the following:

Whether Plaintiff and the Class are owed wages (above the federally mandated minimum wage and overtime due under the FLSA) under

the wage and hour laws of North Carolina, and if so, the appropriate amount thereof.

96. Plaintiff's claims are typical of those of the Class in that Plaintiff and all other Class members suffered damages as a direct and proximate result of the Reliable's Compensation Plan and its systemic payroll policies and practices. Plaintiff's claims arise from the same policies, practices and courses of conduct as all other Class members' claims and Plaintiff's legal theories are based on the same legal theories as all other Class members.

97. Plaintiff will adequately and fully protect the interests of the Class and Plaintiff has retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour and breach of contract class actions. Neither Plaintiff nor his counsel have interests that are contrary to, or conflicting with, the interests of the Class.

98. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by Reliable. Prosecution of this case as a class action will also eliminate the possibility of duplicative lawsuits being filed in state and federal courts throughout North Carolina.

99. This case will be manageable as a class action. Plaintiff and his counsel know of no unusual difficulties in this case and Reliable has advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.



100. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

101. Because Reliable has acted and refused to act on grounds that apply generally to the Class and declaratory relief is appropriate in this case with respect to the Class as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

**COUNT I**  
**(Collective Action)**

**VIOLATION OF THE FAIR LABOR STANDARDS ACT,  
29 U.S.C. § 201, *et seq.* FAILURE TO PAY MINIMUM WAGE  
AND OVERTIME**

102. Plaintiff re-alleges and incorporates all previous paragraphs herein and further alleges as follows.

103. At all times relevant to this action, Reliable was an “employer” under 29 U.S.C. § 203(d) of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.*

104. Reliable is engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

105. At all times relevant to this action, Plaintiff was a non-exempt “employee” of Reliable within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

106. Plaintiff either (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) was employed in an enterprise engaged in commerce or in the production of goods for commerce.

107. At all times relevant to this action, Reliable “suffered or permitted” Plaintiff and all similarly situated current and former employees to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

108. At all relevant times, Reliable’s policies and practices deprived Plaintiff and Class members of wages that were owed for work performed during a given continuous workday and workweek. In workweeks where Plaintiff and Class members worked 40 hours or more, Reliable’s policies and practices also deprived Plaintiff and the Class of overtime pay at a rate of 1.5 times their regular rates of pay.

109. At all times relevant to this action, Reliable required Plaintiff and all similarly situated current and former Class members to perform massive amounts of off-the-clock work that benefitted Reliable, but Reliable failed to pay these employees the federally mandated minimum wage and/or overtime compensation for any of these off-the-clock activities.

110. The hours of off-the-clock work performed by Plaintiff and similarly situated Class members are an essential part of the Field Reps’ jobs and these activities and the time associated with these activities is not *de minimis*.

111. At all times relevant to this action, Reliable refused to pay Plaintiff and the Class for hours of “commute time” that should have been compensated as part of the Field Reps’ workday and principal activities.

112. At all relevant times to this Action, Reliable failed to keep accurate records and actively prevented Field Reps from reporting their actual work hours.

113. At all relevant times to this Action, Reliable deducted amounts from Field Reps' pay that reduced their Regular Hourly Rates below the minimum wage.

114. In workweeks where Plaintiff and other Class members worked 40 hours or more, Field Reps' uncompensated off-the-clock work should have been paid at the federally mandated rate of 1.5 times each employee's regularly hourly wage. 29 U.S.C. § 207.

115. Plaintiff and other Class members, by virtue of their job duties and activities actually performed, are all non-exempt employees.

116. Reliable's violations of the FLSA were knowing and willful. Reliable knows or could have determined how long it took Field Reps to complete the trips, inspections and office work Reliable assigned, and it could have properly compensated Plaintiff and the Class for these activities, but it did not.

117. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid wages (and unpaid overtime if applicable) plus liquidated (double) damages, reasonable attorneys' fees, and litigation expenses.

**COUNT II**  
**(Rule 23 North Carolina Class Action)**

**VIOLATIONS OF THE NORTH CAROLINA WAGE AND HOUR ACT,  
N.C. GEN. STAT. §§ 95-25.1, et seq.**

118. Plaintiff, re-alleges and incorporates all previous paragraphs herein and further alleges as follows.

119. At all times relevant to the action, Defendant was an “employer” covered by the minimum wage and overtime mandates of the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen Stat. §§ 95-25.1, *et seq.*, and Plaintiff and the Rule 23 Class were “employees” entitled to the NCWHA’s protections.

120. The NCWHA entitles employees to compensation for every hour worked in a workweek. *See* N.C. Gen. Stat. § 95-25.3. The NCWHA also requires employees to be paid at least \$7.25 per hour. *See* N.C. Gen. Stat. § 95-25.3(a).

121. The NCWHA entitles employees to overtime compensation “not less than time and one-half of the regular rate of pay of the employee for those hours in excess of 40 hours per week.” *See* N.C. Gen. Stat. § 95-25.4.

122. Defendant, Plaintiff, and the Rule 23 North Carolina Class members are “employers” and “employees” for the purposes of the NCWHA.

123. Defendant violated the NCWHA by regularly and repeatedly failing to properly compensate Plaintiff and the Rule 23 North Carolina Class for the time spent on the work activities described in this Complaint.

124. As a result, Plaintiff and the Rule 23 North Carolina Class have and will continue to suffer loss of income and other damages. Accordingly, Plaintiff and the Rule 23 North Carolina Class are entitled to recover unpaid wages owed, plus attorneys’ fees, costs, and other appropriate relief under the NCWHA at an amount to be proven at trial. *See* N.C. Gen. Stat. § 95-25.22.

WHEREFORE, Plaintiff requests the following relief:

- a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);
- b. Certifying this action as a class action pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's state law claims (Count II);
- c. Ordering Reliable to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all Class members, and permitting Plaintiff to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the Class of their rights by law to join and participate in this lawsuit;
- d. Designating Plaintiff as the representative of the Class and undersigned counsel as Class counsel;
- e. Declaring that Reliable violated the FLSA and the Department of Labor's attendant regulations as cited herein;
- f. Declaring that Reliable's violations of the FLSA were willful;
- g. Granting judgment in favor of Plaintiff and against Reliable and awarding Plaintiff and the Class the full amount of damages and liquidated damages available by law;
- h. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as provided by statute;
- i. Awarding pre- and post-judgment interest to Plaintiff on these damages; and
- j. Awarding such other and further relief as this Court deems appropriate.

Dated: November 11, 2014

/s/ Edward B. Davis

Edward B. Davis, NC Bar No. 27546

/s/ Andrew A. Freeman

Andrew A. Freeman, NC Bar No 41248

BELL DAVIS & PITT, P.A.

227 W. Trade Street, Suite 2160  
Charlotte, North Carolina 28202  
Email: [ward.davis@belldavispitt.com](mailto:ward.davis@belldavispitt.com)  
[afreeman@belldavispitt.com](mailto:afreeman@belldavispitt.com)  
P: (704) 227-0129  
*Local Counsel for Plaintiff*

Lance C. Young  
(*Pending Admission Pro Hac Vice*)  
MI Bar No. P51254  
Jesse L. Young  
(*Pending Admission Pro Hac Vice*)  
MI Bar No. P72614  
SOMMERS SCHWARTZ, P.C.  
One Towne Square, Suite 1700  
Southfield, Michigan 48076  
248-355-0300  
[lyoung@sommerspc.com](mailto:lyoung@sommerspc.com)  
[jyoung@sommerspc.com](mailto:jyoung@sommerspc.com)

Timothy J. Becker  
(*Pending Admission Pro Hac Vice*)  
MN Bar No. 256663  
Jacob R. Rusch  
(*Pending Admission Pro Hac Vice*)  
MN Bar No. 391892  
JOHNSON BECKER, PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, Minnesota 55402  
Telephone: (612) 436-1800  
Facsimile: (612) 436-1801  
[tbecker@johnsonbecker.com](mailto:tbecker@johnsonbecker.com)  
[jrusch@johnsonbecker.com](mailto:jrusch@johnsonbecker.com)

*Trial Counsel for Plaintiff*

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. 1:14-CV-945

**KENNETH PRONTAUT**, individually )  
and on behalf of all similarly situated )  
individuals, )

Plaintiff, )

vs. )

Civil Action No. 1:14-CV-945

**RELIABLE REPORTS OF TEXAS,** )  
**INC.**, a Texas Corporation, )

Defendant. )

---

**JURY DEMAND**

NOW COMES Plaintiff, Kenneth Prontaut, by and through his undersigned counsel,  
hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure  
and the court rules and statutes made and provided with respect to the above entitled cause.

Dated: November 11, 2014

/s/ Edward B. Davis

Edward B. Davis, NC Bar No. 27546

/s/ Andrew A. Freeman

Andrew A. Freeman, NC Bar No 41248

BELL DAVIS PITT, P.A.

227 W. Trade Street, Suite 2160

Charlotte, North Carolina 28202

Email: ward.davis@belldavispitt.com

P: (704) 227-0129

*Local Counsel for Plaintiff*

Lance C. Young

*(Pending Admission Pro Hac Vice)*

MI Bar No. P51254

Jesse L. Young

*(Pending Admission Pro Hac Vice)*

MI Bar No. P72614  
SOMMERS SCHWARTZ, P.C.  
One Towne Square, Suite 1700  
Southfield, Michigan 48076  
248-355-0300  
[lyoung@sommerspc.com](mailto:lyoung@sommerspc.com)  
[jyoung@sommerspc.com](mailto:jyoung@sommerspc.com)

Timothy J. Becker  
(*Pending Admission Pro Hac Vice*)  
MN Bar No. 256663  
Jacob R. Rusch  
(*Pending Admission Pro Hac Vice*)  
MN Bar No. 391892  
JOHNSON BECKER, PLLC  
33 South Sixth Street, Suite 4530  
Minneapolis, Minnesota 55402  
Telephone: (612) 436-1800  
Facsimile: (612) 436-1801  
[tbecker@johnsonbecker.com](mailto:tbecker@johnsonbecker.com)  
[jrusch@johnsonbecker.com](mailto:jrusch@johnsonbecker.com)

*Trial Counsel for Plaintiff*