

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
14 CVS 15027

RODNEY K. ADAMS, ELIZABETH I. ALLEN, )  
JOSEPH J. BATEMAN, GILBERT A. BREEDLOVE, )  
DEBRA D. CARSWELL, JASON GRAY CHEEK, )  
CHRISTOPHER E. DUCKWORTH, BRYAN G. )  
FARLEY, JAMES ROBERT FREEMAN, JOSHUA )  
PHILLIP GRANT, WANDA M. HAMMOCK, )  
MARLENE HAMMOND, THOMAS MURPHY )  
HARRIS, RONALD E. HODGES, THOMAS W. )  
HOLLAND, GARY H. LITTLETON, LINDA B. )  
LONG, PANSY K. MARTIN, SHARON S. )  
McLAURIN, BRUCE A. McPHERSON, THOMAS )  
G. MILLER, JEFFREY MITCHELL, JR., DONALD )  
D. PASCHALL, SR., ROBERT WARREN PEARCE, )  
CONNIE C. PEELE, JULIAN R. POTEAT, )  
MARGARET L. RATHBONE, RONALD )  
RAYMOND ROBERTS, JR., RAE RENEE )  
ROTHROCK, SUZANNE SHEEHAN, SUSAN B. )  
SMEVOG, KENNETH SPEARS, STEVEN R. )  
STORCH, CECIL LYNN WEBB, EMILY ALICIA )  
WESTOVER, WILLIAM ERIC WHITTEN, )  
WILLIAM T. WINSLOW, )  
WILLIAM PAUL BATEMAN, and MELISSA )  
FERRELL, individually and on behalf of a class )  
of similarly situated persons, )

Plaintiffs, )

v. )

The STATE OF NORTH CAROLINA, PATRICK L. )  
McCRORY, Governor of the State of North )  
Carolina, in his official capacity, JAMES )  
ARTHUR "ART" POPE, State Budget Director, )  
in his official capacity, and JAMES G. DOLAN, )  
Acting State Controller, in his official )  
capacity, )

Defendants. )

**ORDER ALLOWING MOTION FOR CLASS  
CERTIFICATION**

THIS MATTER came on for hearing before the undersigned Superior Court Judge on Plaintiffs' Motion for Class Certification. The Court has considered the arguments of counsel, the memoranda served by the parties, the authorities cited by the parties, the pleadings, and the discovery and other materials submitted by the parties. Plaintiffs gave notice of materials filed in support of their motion on Jan. 12, 2015. Defendants gave notice of material filed in support of their opposition to this motion on Jan. 21, 2015. All citations herein are to materials filed in support of the respective positions of the parties and are incorporated herein as part of this Order. By and with the consent of the parties, the Court issues this ruling after the January 26, 2015 term of court at which this matter was heard.

The Court makes the following:

I. FINDINGS OF FACT

1. There are 39 named Plaintiffs in this action.
2. Each of the named Plaintiffs served the State of North Carolina as a magistrate for all or a portion of the time from July 1, 2009 through June 30, 2014. Answer to Interrogatory # 1 of Plaintiffs Holland, Littleton, McPherson and Peele; Supplemental Answers to Interrogatory # 1 of all other named Plaintiffs.
3. At the time each of the named Plaintiffs was initially hired as a magistrate by the State of North Carolina, N.C.G.S § 7A-171.1 provided a stepped pay schedule. Answer to Interrogatory # 1 of Plaintiffs Holland, Littleton, McPherson and Peele; Supplemental Answers to Interrogatory # 1 of all other named Plaintiffs. N.C.G.S § 7A-171.1, 1981 Sess. Laws 914, § 1; 1983 Sess. Laws, 761, § 199; 1985 Sess. Laws 1014, § 36; 1989 Sess. Laws, 752, § 33; 1991 Sess.

Laws 742, § 14 (a); 1991 Sess. Laws, 900, §§ 41,43; 1993 Sess. Laws , 321, § 769; 1995 Sess. Laws,507, § 7.7 (a); 1996 Sess. Laws, 18, § 28.6 (a); 1999 Sess. Laws, 237, § 28.6 (a); 2000 Sess. Laws, 67, § 26.6; 2001 Sess. Laws 424, § 32.7; 2004 Sess. Laws, 124, §31.7; 2005 Sess. Laws, 276, § 29.7; 2006 Sess. Laws, 66 § 22.7 (a); 2007 Sess. Laws, 323, §28.7; 2008 Sess. Laws 107, § 26.7; 2014 Sess. Laws 100, § 35.3.

4. In 2009, N.C.G.S § 7A-171.1 provided in pertinent part as follows:

“A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision.... Initial appointment shall be at the entry rate. A magistrate’s salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.”

5. Each of the named Plaintiffs allege that they were aware of the provisions of N.C.G.S § 7A-171.1 before accepting appointment as a magistrate. Plaintiffs’ Answers to Interrogatories #s 1 and 10, Plaintiffs’ supplemental answers to interrogatories #10.
6. At least eighteen (18) of the named Plaintiffs allege that they were told of the provisions of N.C.G.S § 7A-171.1 by the Clerk of Superior Court who interviewed them. Plaintiffs’ Answers to Interrogatories # 2 (J. Bateman, Breedlove, Cheek,

Duckworth, Farley, Ferrell, Freeman, Hammond, Harris, Long, Martin, Mitchell, Poteat, Rothrock, Spears, Westover, Winslow, Holland)

7. At least eight (8) of the named Plaintiffs allege they were told of the provisions of N.C.G.S § A-171.1 by the Superior Court Judge who interviewed them. Plaintiffs' Answers to Interrogatories # 2 (Allen, W. P. Bateman, Pearce, Rathbone, Smevog, Webb, Westover, Whitten).
8. At least fourteen (14) of the named Plaintiffs allege they were told of the provisions of N.C.G.S § 7A-171.1 by another magistrate. Plaintiffs' Answers to Interrogatories # 2 (Adams, J. Bateman, Grant, Martin, Miller, Paschall, Rathbone, Sheehan, Spears, Storch, Littleton, Holland, McPherson, Peele).
9. At least four (4) of the named Plaintiffs allege they read the provisions in N.C.G.S § 7A-171.1 before accepting employment as a magistrate. Plaintiffs' Answers to Interrogatories # 2 (Hammock, Hodges, Rothrock, Sheehan).
10. All of the named Plaintiffs contend that the step increases set forth in N.C.G.S § 7A-171.1 (hereinafter "Step Increases") were a material term of their employment contracts with the State. Plaintiffs' Answers to Interrogatories #s 1,4, and 10. Plaintiffs' Supplemental Answers to Interrogatories #s 1 and 10.
11. The named Plaintiffs seek to represent as a class all magistrates who were employed by the State of North Carolina at any time between June 30, 2009 and July 1, 2014, and who had not, as of June 30, 2009, reached Step 6 of the stepped pay schedule set out in N.C.G.S. §7A-171.1. (Referred to below as the "Class.") (Paragraph 108 (a), Second Amendment to Plaintiffs' Complaint).

12. A class exists as to the claims alleged in this action by the named Plaintiffs.
13. An issue of fact and/or law common to all named Plaintiffs and all members of the Class is whether the Step Increases set forth in N.C.G.S § 7A-171.1 were a material term of their employment contracts.
14. Between July 1, 2009 and July 1, 2014, none of the named Plaintiffs received any Step Increase as provided in N.C.G.S § 7A-171.1. (State's Response and Amended Response to Request for Admissions # 17).
15. The State contends that it lawfully suspended Step Increases for the magistrates between 2009 and 2014. (Defendants' Memorandum of Law in Opposition to Class Certification, pp 1 and 20).
16. Whether the State could suspend Step Increases for the magistrates between 2009 and 2014 without incurring liability is an issue of fact and/or law common to all named Plaintiffs and all members of the Class.
17. The State contends that magistrates hired before approximately 2004 have different potential arguments in favor of their position than magistrates hired after approximately 2004, and that this creates a conflict between some of the named Plaintiffs, and other of the named Plaintiffs, and members of the Class.
18. The common issues of fact and/or law predominate over individual issues.
19. Each named Plaintiff and each member of the Class has a direct compelling interest in the common issues of law and fact, which issues predominate over issues affecting individual members of the Class.

20. The named Plaintiffs, as representatives of the Class, can and will fairly and adequately represent the interests of all members of the Class.
21. The latest beginning date of service as a magistrate for a named Plaintiff is February 27, 2012 for Linda Long. (Long Supplemental answers to Interrogatory #1).
22. Pursuant to the provisions of N.C.G.S § 7A-171.1, plaintiffs contend that Magistrate Long would have been due a step increase on February 27, 2014.
23. Pursuant to the provisions of N.C.G.S § 7A-171.1, plaintiffs contend that each of the named Plaintiffs would have been due at least one step increase between July 1, 2009 and July 1, 2014.
24. Plaintiffs contend that each of the named Plaintiffs has suffered actual damages as a result of the suspension of the N.C.G.S § 7A-171.1 Step Increases by the State.
25. Each named Plaintiff has a genuine personal interest in the action. Answer to Interrogatory # 1 of Plaintiffs Holland, Littleton, McPherson and Peele; Supplemental Answers to Interrogatory # 1 of all other named Plaintiffs.
26. There is no conflict of interest between the named Plaintiffs that would prohibit consideration of common issues of fact and/or law in this case. Each of the named Plaintiffs seeks damages resulting from the suspension of the N.C.G.S § 7A-171.1 Step Increases by the State.
27. There is no conflict of interest between the named representatives and the members of the Class that would prohibit consideration of common issues of

fact and/or law. Under the legal theory advanced by Plaintiffs, each of the named Plaintiffs and each member of the Class could potentially receive damages resulting from the failure to implement the Step Increases required by N.C.G.S § 7A-171.1, although the Court makes no findings or ruling on the issues of actual or nominal damages at this time, as these issues have not yet been heard by the Court.

28. The named Plaintiffs do not know of any members of the Class who reside outside of the jurisdiction.

29. In the event that there are any members of the Class who reside outside of the jurisdiction, the named Plaintiffs can adequately represent their interests, in that the relief sought is of the same type for all members of the Class.

30. Approximately 650 Magistrates have been hired by the State during the approximate time period of hiring for magistrates who had not yet reached Step 6 as of July 1, 2009. Defendants' Responses to Plaintiffs' First Set of Interrogatories, # 7, including Exhibit D.

31. Magistrates who separated from service before July 1, 2009 would not have a claim for Step Increases not received between July 1, 2009 and July 1, 2014.

32. The named Plaintiffs estimate that between July 1, 2009 and July 1, 2014 approximately 500 Magistrates who had not reached Step 6 were employed by the State. The State has not contested this estimate.

33. It would be difficult or inconvenient to join all of the members of the Class.

34. It would be impracticable to join all of the members of the Class.

35. The names and exact number of members of the Class are available to the State in records that it maintains.
36. The type relief sought by the named Plaintiffs for themselves and for the members of the Class is the same.
37. It is judicially more efficient to resolve the issues of this action affecting the named Plaintiffs and the members of the Class in a class action than in individual actions.
38. Trial of individual actions for all the named Plaintiffs and the members of the Class has the potential for inconsistent adjudications.
39. Trial of this matter as a class action will require administration, including but not limited to notice to class members.
40. Counsel for the named Plaintiffs are willing and able to provide administration of the Class.

Based on the foregoing Findings of Fact, the Court makes the following:

## II. CONCLUSIONS OF LAW

1. Each of the named Plaintiffs served the State of North Carolina as a magistrate for all or a portion of the time from July 1, 2009 through June 30, 2014.
2. At the time each of the named Plaintiffs was initially hired as a magistrate by the State of North Carolina, N.C.G.S § 7A-171.1 provided a stepped pay schedule.
3. In 2009, N.C.G.S § 7A-171.1 provided in pertinent part as follows:



“A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision.... Initial appointment shall be at the entry rate. A magistrate’s salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6.”

4. The named Plaintiffs seek to represent as a class all magistrates who were employed by the State of North Carolina at any time between June 30, 2009 and July 1, 2014, and who had not, as of June 30, 2009, reached Step 6 of the salary scale set out in N.C.G.S. §7A-171.1
5. A class exists as to the claims alleged by the named Plaintiffs.
6. The members of the Class are all magistrates who were employed by the State of North Carolina at any time between June 30, 2009 and July 1, 2014, and who had not, as of June 30, 2009, reached Step 6 of the stepped pay schedule set out in N.C.G.S. §7A-171.1.
7. Rule 23 of the North Carolina Rules of Civil Procedure should receive a liberal construction, and should not be loaded down with arbitrary and technical restrictions. English v. Holden Beach Realty Corp., 41 N.C.App. 1, 9 (1979).
8. An issue of fact and/or law common to all named Plaintiffs and all members of the Class is whether the Step Increases set forth in N.C.G.S § 7A-171.1 were a material term of their employment contracts.

9. Between July 1, 2009 and July 1, 2014, none of the named Plaintiffs received any Step Increase as provided in N.C.G.S § 7A-171.1.
10. Whether the State could suspend Step Increases for the magistrates between 2009 and 2014 without incurring liability is an issue of fact and/or law common to all members of the Class.
11. The common issues of fact and/or law predominate over individual issues.
12. The named representatives will fairly and adequately represent the interests of all members of the Class.
13. Each named Plaintiff has a genuine personal interest in the action.
14. There is no conflict of interest among the named Plaintiffs that would prohibit consideration of common issues of fact and/or law.
15. There is no conflict of interest between the named Plaintiffs and the members of the Class that would prohibit consideration of common issues of fact and/or law.
16. In the event that there are any members of the Class who reside outside of the jurisdiction, the named Plaintiffs can adequately represent their interests.
17. The members of the Class are so numerous that it would be difficult or inconvenient to join all of the members of the Class.
18. The members of the Class are so numerous that it would be impracticable to join all of the potential members of the Class.
19. The names and exact number of members of the Class are available to the State in records that it maintains.

20. The type relief sought by the named Plaintiffs is the same for all the members of the Class.

21. Rule 23 has as its objectives the efficient resolution of the claims or liabilities of many individuals in a single action and the elimination of repetitious litigation and possible inconsistent adjudications involving common questions, related events, or requests for similar relief. It is judicially more efficient to resolve the issues of this action affecting the named Plaintiffs and the members of the Class in a class action than in individual actions.

22. Trial of individual actions for all the named Plaintiffs and the members of the Class has the potential for inconsistent adjudications.

23. Trial as a class action will eliminate the potential for inconsistent adjudications.

24. A Class action is the superior method for adjudication of the claims of the named Plaintiffs and the members of the Class.

25. Appointment of a Class Administrator would be in the interest of justice.

26. Notice should be given to all potential class members, in a form approved by the Court.

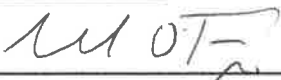
Based on the foregoing Findings of Fact and Conclusions of Law:

**III. IT IS ORDERED THAT:**

1. This action is certified as a class action, and the Class shall consist of all magistrates who were employed by the State of North Carolina at any time between June 30, 2009 and July 1, 2014, and who had not, as of June 30, 2009, reached Step 6 of the stepped pay schedule set out in N.C.G.S. §7A-171.1.

2. Subject to further order, the Court appoints as Class Counsel herein Frederick S. Barbour and W. Scott Jones, of Cloninger, Barbour, Searson & Jones, PLLC, 21 Battery Park Ave., Suite 201, Asheville, NC 28801 and David Wijewickrama , 95 Depot St., Waynesville, NC 28786 .
3. Subject to further order, the Court appoints as Class Administrators herein Frederick S. Barbour, W. Scott, Jones, of Cloninger, Barbour, Searson & Jones, PLLC, 21 Battery Park Ave., Suite 201, Asheville, NC 28801 and David Wijewickrama , 95 Depot St., Waynesville, NC 28786 .
4. The members of the Class shall be given the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort of the parties. The notice should include the following provisions: (a) the Court will exclude the member from the Class if the member so requests in writing by a specified date; (b) the judgment, whether favorable or not, will include and be binding upon and inure to the benefit of all members who do not request exclusion, and (c) any member who does not request exclusion may, if the member desires, enter an appearance through personal counsel.
5. Counsel are to meet and confer upon the exact terms of the proposed notice and method by which said notice is to be given, and to submit a proposed order to the Court by April 1, 2015. In the event that counsel are unable to reach agreement, counsel shall submit separate proposed orders to the Court for consideration by April 15, 2015.

This the 3 day of March, 2015.

  
\_\_\_\_\_  
Hon. Michael O'Foghludha,  
2.1 Judge by designation



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing document was served on the parties listed below by mailing and/or hand-delivering a copy thereof to each of said parties, addressed, postage prepaid as follows:

Marc Bernstein  
Special Deputy Attorney General  
NC Department of Justice  
PO Box 629  
Raleigh, NC 27602

Frederick Barbour  
Cloninger, Barbour, Searson & Jones, PLLC  
21 Battery Park Ave., Ste. 201  
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David Wijewickrama  
Law Offices of David Wijewickrama  
95 Depot St.  
Waynesville, NC 28786

This, the 3<sup>rd</sup> day of March, 2015.



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Terri Stewart  
Trial Court Coordinator  
Wake County Superior Court Judges' Offices

