

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

ADRIAN BERBER, on behalf of himself and)
all others similarly situated,)
Plaintiff,)

v.)

HUTCHISON TREE SERVICE,)
NORTHSTAR ENERGY SERVICES, INC.)
and PIEDMONT NATURAL GAS, INC.,)
AND CRAIG HUTCHINSON,)
Defendants)

**COLLECTIVE/CLASS ACTION
COMPLAINT**

Plaintiff, Adrian Berber, on behalf of himself and all others similarly situated, by and through undersigned counsel, hereby sets forth this collective action for violations of the Fair Labor Standards Act (“FLSA”) under § 216(b) against Defendants Hutchison Tree Service and Craig Hutchison (“Hutchison Defendants”), Northstar Energy Services Inc., (“Northstar”), and Piedmont Natural Gas, Inc (“Piedmont”), pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as follows:

PRELIMINARY STATEMENT

1. Plaintiff, on behalf of himself and all others similarly situated, brings this action against Defendants for unpaid overtime compensation, and related penalties and damages. It is Defendants’ practice and policy to willfully fail and refuse to properly pay all overtime compensation due and owing to Plaintiff, and all other similarly situated employees, and doing so is in direct violation of the FLSA, 29 U.S.C. § 201 *et seq.* In short, Defendants violated the FLSA by not compensating Plaintiff and all those similarly situated for all hours worked or any hours worked in excess of forty (40) per week as required by law.

2. Plaintiff also brings this action against Defendant for unpaid regular rate or straight time wages, overtime compensation, and related penalties and damages for Defendant's practice and policy of willfully failing and refusing to properly pay an employee's earned and accrued wages on their regular pay date, and illegally withholding wages in direct contravention of the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.1, *et seq.*

3. Defendant's pay practices and policies are in direct violation of the FLSA and the NCWHA; therefore, Plaintiff, on behalf of himself, and all others similarly situated, seeks unpaid regular rate or straight time compensation; overtime premiums for all overtime work required, suffered, or permitted by Defendants, compensation for wages wrongfully withheld; liquidated damages and/or other damages as permitted by applicable law; and attorneys' fees, costs, and expenses incurred in this action.

PARTIES

4. Plaintiff ("Berber") is an adult resident of the state of North Carolina. Plaintiff Berber is of Hispanic origin and speaks limited English.

5. Plaintiff worked as a laborer for Hutchinson Defendants and worked clearing pipelines routes in several areas of North Carolina.

6. The putative plaintiffs/class members are individuals who have worked or are working for all Defendants (either directly or as joint employers) as salary-paid laborers throughout various parts of North Carolina who were suffered or permitted to work while not being paid regular-rate or straight-time and overtime compensation for all hours worked ("Class Members" or "similarly situated employees").

7. Defendant Hutchison Tree Service is a Tennessee-based company which has been in business since 1998 that is neither registered in Tennessee nor North Carolina, with its

principal place of business in Tennessee. Craig Hutchison is listed as the owner of Hutchison Tree Services on its website. Defendant Hutchison provide tree services such as: tree pruning, tree removal, tree trimming, land clearing and stump grinding.

8. Defendant Craig Hutchison is an individual who may be served with process wherever he may be found. During the time relevant to this action, Defendant Hutchison was the owner of Hutchison Tree Services and held or implemented individual control over the day-to-day activities of Hutchison Tree Services.

9. Defendant Piedmont is a North Carolina domestic corporation, registered and in good standing in the State of North Carolina. Defendant Piedmont provides natural gas to residential and business customers. Defendant Piedmont can be served at 4720 Piedmont Row Dr., Charlotte, NC 28210.

10. Defendant Piedmont contracted Defendants Northstar and Defendants Hutchison to clear the pipelines from trees and shrubbery.

11. Defendant Northstar is a Texas incorporated business, registered to do business in the State of North Carolina, with its principal place of business in Houston, Texas. Daren E. Austin is listed as the President of the company. Defendant Northstar provides infrastructure construction and support services to owners and builders of energy, pipeline. Defendant Northstar provides individual project services, turnkey project management and comprehensive program management.

12. Upon information an belief, during the time relevant to this action, each Defendant was an employer, joint employer, or member of an integrated, common enterprise, that employed Plaintiff and the putative class members, pursuant to the federal and state statutes, hereunder, in that each Defendant, or its agents, held or implemented the power, *inter alia*, to

control the work performance of Plaintiff and the class members by assigning tasks to Plaintiffs, opt-in, and putative plaintiffs, and each Defendant received the benefit of Plaintiffs' labor.

COVERAGE

13. At all times material to this action, all Defendants have acted, directly or indirectly, in the interest of an employer or joint employer with respect to Plaintiff, opt-in Plaintiffs and putative plaintiffs.

14. At all times material to this action, all Defendants have been employers as defined by Section 3(d) of 29 U.S.C. § 203(d) of the FLSA.

15. At all times material to this action, corporate Defendant Hutchison was an enterprise engaged in related activities performed through a unified operation or common control for a common business purpose as defined by Section 3(r) of 29 U.S.C. § 203(r)(1) of the FLSA.

16. At all times material to this action, corporate Defendant Northstar was an enterprise engaged in related activities performed through a unified operation or common control for a common business purpose as defined by Section 3(r) of 29 U.S.C. § 203(r)(1) of the FLSA.

17. At all times material to this action, corporate Defendant Piedmont was an enterprise engaged in related activities performed through a unified operation or common control for a common business purpose as defined by Section 3(r) of 29 U.S.C. § 203(r)(1) of the FLSA.

18. At all times material to this action, the corporate Defendants, Hutchison, Northstar, and Piedmont, jointly and severally, were joint employers pursuant to 29 CFR 791.2 by the FLSA.

19. At all times material to this action, Defendants Hutchison, Northstar, and Piedmont, individually, were enterprises engaged in commerce or in the production of goods for commerce as defined by Section 3(s) of 29 U.S.C. § 203(s)(1) of the FLSA, in that said enterprises have had employees engaged in commerce or in the production of goods for

commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and in that each enterprise, has had and have an annual gross volume of sales made or business done greatly exceeding \$500,000.00.

20. At all times material to this action, Plaintiff was an individual “employee” for Defendants Hutchison, Northstar and Piedmont, engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § §206-207.

21. The wage and overtime provisions of the FLSA, as set forth in §§ 206 and 207 of the Act, respectively, apply to all Defendants: Hutchison, Northstar and Piedmont, respectively.

JURISDICTION AND VENUE

22. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 for the claims brought under the FLSA, 29 U.S.C. § 201, *et seq.*

23. The United States District Court for the Eastern District of North Carolina has personal jurisdiction because Defendants Hutchison, Northstar and Piedmont, conduct business in Cumberland County, North Carolina which is located within this District.

24. Venue is proper in this judicial district because all Defendants performed substantial work in this district, because the named Plaintiff resides in Cumberland County, North Carolina and because some of the unlawful acts alleged herein occurred in Cumberland County, North Carolina.

25. The claims for violations of the NCWHA are based upon the statutory law of the State of North Carolina.

26. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367 for the pendent state claims because they arise out of the same nucleus of operative facts as the FLSA claim.

27. All of the alleged causes of action can be determined in this judicial proceeding and will provide judicial economy, fairness and convenience for the parties.

FACTUAL ALLEGATIONS

28. Plaintiff is a resident of Cumberland County, North Carolina, who worked for Defendants Hutchison, Northstar and Piedmont from approximately November 2013 through January 2015.

29. On or about November 2013, Hutchison Defendants offered to hire named Plaintiff Berber as a driver and offered to pay him a salary of \$700.00 per week. Plaintiff Berber accepted Hutchison's offer, forming an employment relationship.

30. On or about December 2013, Plaintiff was promoted to foreman. In June 2014, Plaintiff received a raise to \$800.00 per week. In September 2014 Plaintiff received another raise to \$850.00 per week. Plaintiff Berber did not have authority over the hiring and firing of other employees, nor could he effectively recommend the hiring, firing, advancement, promotion, or other change of status of other employees.

31. Plaintiff's primary duties did not include management of the business or a subdivision thereof. He did not evaluate or discipline other employees, set their hours of work or rates of pay, or direct their work. He did not have the authority to discipline anyone for coming in late, leaving early, or for misbehavior while on the job. While, Plaintiff oversaw the work of employees in his crew, he always reported directly to any of the three Defendants and/or their agents or supervisors, who had supervising authority over everyone, including Plaintiff Berber. He also maintained a record of the work performed by the employees in his crew.

32. Plaintiff and other similarly situated employees typically reported to Hutchinson Defendants' yard at approximately 5:00 a.m. On arriving at the yard, Plaintiff and other similarly situated employees loaded machinery and equipment (i.e., bobcats, buckets, harnesses, rakes, shovels and chainsaws) into Defendants' trailers. Plaintiff and those similarly

situated would take approximately 30 to 45 minutes in loading equipment before travelling to the jobsite.

33. Following the loading of machinery and equipment into Defendants' trailers, Plaintiff and those similarly situated would travel to an in-state jobsite and perform work at the jobsite from approximately 7:00 am until approximately 5:30 pm. This was Plaintiff's typical schedule Monday through Friday. When Plaintiff was required to work on Saturdays, he would usually work until noon at the jobsite. On average, Plaintiff and those similarly situated worked, on average, fifty five (55) hours at the jobsite.

34. After Plaintiff and other similarly situated employees returned to the yard (after working at the jobsite), they would unload and secure the equipment, tools, materials, and vehicles. On average the unloading time was between thirty (30) minutes and one (1) hour. Defendant Hutchison supplied Plaintiff with all of the specialized equipment to perform his work. Plaintiff was not required to provide all of his own tools.

35. During the time relevant to this action, Plaintiff and other similarly situated employees worked at various locations throughout North Carolina, exclusively on property owned by Defendant Piedmont, under exclusive contract with Defendants Hutchison and Northstar, and under the regular or daily supervision of managers of all Defendants, including Piedmont. From the yard location, and after starting work for the day, Plaintiff and other similarly situated employees would travel to the jobsite on Defendant Hutchison's vehicles. On average, the travel time would vary between thirty (30) minutes to two and a half (2.5) hours, depending on whether the jobsite was local or outside of the immediate areas based on the location of the gas pipelines.

36. Plaintiff's job duties included, loading and driving Defendant Hutchison's

trucks, operating machinery, transporting logs to a landfill, maintaining employee paperwork, keeping employees' hours on record, and transporting co-workers to as required by Defendant Hutchison, including from the yard to the worksites.

37. Defendants Hutchison and Northstar performed all work related to clearing the pipe lines, (i.e., removing trees, mulching tree trunks, transporting tree trunks to a landfill, planting grass, watering grass) for Defendant Piedmont.

38. At each worksite, supervisors employed by Defendants Piedmont and Northstar were present on a daily basis. Defendants' Piedmont and Northstar supervisors monitored Plaintiffs' work, gave orders to Plaintiff, signed Defendants' Hutchison's daily time sheets, and responded to any issues related to Plaintiff's work or the work of the putative class Members as necessary.

39. Defendants' supervisors employed by Defendant Hutchison, Northstar or Piedmont would instruct Plaintiff and the putative class members each day and directed each group regarding what areas needed to be worked on the next day. All Defendants would supervise the work each group performed during the day and would direct the work such as putting grass seeds down or watering the ground.

40. Defendant Piedmont's inspector's and Northstar's supervisors were responsible for supervising the work each group performed during the day and signed Plaintiff's and the putative class members' daily timesheets as well.

41. Defendant Hutchison allegedly paid Plaintiff and the putative class members a salary. However, during days when Plaintiff or the putative class members had to leave the jobsite early or arrive late, either due to weather or personal reasons, their wages were adjusted downward to account for the number of missing hours worked and then such wages

subsequently deducted from their salary; thus, treating Plaintiff and the putative class members as hourly employees rather than salaried employees.

42. When the Hutchison Defendants paid Plaintiff and the putative class members, it never paid overtime for hours worked over 40 per week despite being fully aware of the hours worked by Plaintiff and the putative class members.

43. Named Plaintiff and those similarly situated, worked in excess of 40 hours per week. Hutchinson Defendants and Piedmont maintained payroll records which contain Named Plaintiff's and the putative class members' hours of work for work performed at the jobsite only. Such records, however, do not include Plaintiffs' and the putative class members' pre- and post-shift activities for loading, unloading and travel time to and from the jobsite which was part of the continuous workday.

44. On multiple occasions, Defendant Craig Hutchison, in his role as owner and policy-maker of Defendant Hutchison, informed Plaintiff and other similarly situated employees that he did not pay overtime compensation for work in excess of forty hours per week, and that if employees did not like it, they could leave.

45. Defendants Piedmont and Northstar being fully aware of named Plaintiff's and the putative class members' work hours, did not act to ensure that their subcontractor was paying their shared employees in compliance with the law, especially in light of the fact that Defendants' Piedmont or Northstar supervisors or foremen at the job sites on a daily or near-daily basis.

46. The Hutchison Defendants also provided housing to the Plaintiff and the putative class members. Yet, housing units, whether houses or apartments, were always overcrowded, often with two (2) or more individuals plus their families, per bedroom, and some

opt-in and putative plaintiffs forced to sleep in the living room or other common areas. Named Plaintiff and the putative class members were provided with an air mattress to sleep on.

47. Upon information and belief, though Hutchinson Defendants received a housing allowance pursuant to its contract with Defendant Piedmont to house Plaintiff and the putative class members. Hutchison Defendants provided substandard housing to these workers in order to retain as much of the housing allowance as possible.

48. All of the Defendants' wrongful acts described above were intentional and willful and were not the result of any dispute.

49. Each wrongful act alleged in this Complaint was undertaken by each of the Defendants either directly or through their agents, who had actual or apparent authority to undertake such acts.

50. Plaintiff is aware of other similarly situated persons who were subjected to the same unlawful wage and hour practices by all Defendants during the relevant period of time.

FLSA COLLECTIVE ACTION ALLEGATIONS

51. Pursuant to 29 U.S.C. § 216(b), Plaintiff brings this action on behalf of himself and the putative class members.

52. The putative class members/plaintiffs have been subject to the same unlawful practices alleged herein, and therefore, are similarly situated to Named Plaintiff named in this Complaint. The putative class member/plaintiffs, like named Plaintiff, worked in jobs for all Defendants as pipeline maintenance/clearing laborers performing tree cutting, tree trunk mulching, tree waste disposal, etc. These putative class members/plaintiffs, like Plaintiff, were required to work more than forty (40) hours each workweek without being paid at the legally required overtime rate of time and one-half their regular rates of pay. Putative class

members/plaintiffs, and named Plaintiff, therefore, should be permitted to pursue their claims collectively, pursuant to 29 U.S.C. § 216(b).

53. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of Named Plaintiff and the class members/plaintiffs of the proposed class.

54. Named Plaintiff Berber requests that he be permitted to serve as a representative of those who consent to participate in this action and that this action be granted collective action status pursuant to 29 U.S.C. § 216(b).

NCWHA ALLEGATIONS
NCWHA CLASS ACTION ALLEGATIONS

55. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of named Plaintiff Berber and the putative class members.

56. Pursuant to Rule 23(b) and 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiff, brings his second claim for relief to redress and remedy all Defendants' violations of the NCWHA, N.C. Gen. Stat. § 95-25.1, *et seq.*, on behalf of himself and the putative class members

57. Plaintiff and the putative class members assert that all Defendants violated the NCWHA by failing to pay their employees overtime wages of one and one-half times their regular rate of pay, which is part of the employees' accrued, earned, and promised wages and should have been paid when due, on the employees' regular payday; this requirement is not covered by the overtime provisions of the FLSA.

58. The Proposed Class: Named Plaintiff proposes the same class for purposes of certification under Rule 23 as under § 216(b) of the FLSA. The proposed class is easily

ascertainable. The number and identity of NCWHA class members are determinable from a list of all Defendants' employees and any other payroll records.

59. Numerosity: The proposed class is so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. While the exact number of class members is unknown to Plaintiffs at this time, upon information and belief, the class comprises of at least one hundred (100) persons.

60. Common Questions Predominate: There is a well-defined commonality of interest in the questions of law and fact involving and affecting the proposed class in that named Plaintiff and all putative class members have been harmed by all Defendants' failure to pay earned wages. The common questions of law and fact include, but are not limited to the following:

- a. Whether all Defendants refused to pay named Plaintiff and the putative class members overtime wages for all hours worked over forty (40) per week on their regular payday as part of their earned and accrued wages in violation of NCWHA § 95-25.6;
- b. Whether all Defendants' refusal to pay such compensation is in violation of the NCWHA; and
- c. Whether all Defendants' refusal to pay for pre and post shift activities constitutes a violation pursuant to NCWHA and N.C. Gen. Stat. §95-25.6.

61. Typicality: The claims of named Plaintiff herein are typical of those claims which could be alleged by a putative class member, and the relief sought is typical of the relief which would be sought by each member of the class in separate actions. All class members were subject to the same compensation practices of all Defendants, as alleged herein, of refusing to pay overtime wages on the regular payday of the putative class Members. All of Defendants'

compensation policies and practices affected all putative class members similarly, and all Defendants benefitted from the same type of unfair and/or wrongful acts as to each putative class member. Named Plaintiff and the putative class members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

62. Adequacy of Representation: Named Plaintiff is able to fairly and adequately protect the interests of the putative class members, and there are no known conflicts of interest between Plaintiff and the putative class members. Named Plaintiff has retained counsel who is experienced and competent in both wage and hour law and complex class action litigation.

63. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual class members are small in the sense pertinent to the class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them.

On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantial and substantially more than if the claims are treated as a class action. Prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the class, establishing incompatible standards of conduct for all Defendants and

resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issue in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

64. Public Policy Considerations: All Defendants violate the NCWHA. Like current employees are often afraid to assert their rights out of fear of direct or indirect retaliation, former employees may also be fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the Complaint a degree of anonymity that allows for vindication of their rights while eliminating or reducing these risks.

COUNT I
FLSA –FAILURE TO PAY OVERTIME
(ALL DEFENDANTS)

65. Named Plaintiff, opt-in, and putative plaintiffs incorporate paragraphs 1-64 as set forth above, and state that all Defendants' actions complained of herein constitute a violation of 29 U.S.C. § 207, *et seq.* of the FLSA because all Defendants – at all times during Plaintiff and opt-in and putative plaintiffs' employment – failed and otherwise refused to compensate Plaintiff and the putative plaintiffs, for hours worked in excess of forty hours in a workweek at a rate of not less than one and one-half (1 ½) times their hourly rate per hour.

66. Plaintiff and members of the proposed class are or were employed or jointly employed by all Defendants on as allegedly salary-paid individuals to perform manual labor and/or other duties that do not satisfy the tests for exempt positions under the FLSA.

67. All Defendants have willfully failed to pay named Plaintiff and members of the proposed class at one and one-half times their regular rate for all hours worked in excess of forty (40) hours per week, in violation of the FLSA.

68. As a result of all Defendants' willful failure to pay Plaintiff and members of the proposed class as required by law, all Defendants owe Plaintiff and members of the proposed class overtime wages as well as liquidated damages in an amount equal to the amount of unpaid wages.

69. All Defendants have willfully engaged in such conduct in violation of the FLSA by engaging in a pattern or practice of permitting or requiring Plaintiff, and those similarly situated, to work without compensation at the applicable overtime rate for all hours worked over forty (40) per week.

70. Named Plaintiff and the putative class members each worked more than forty (40) hours in one or more workweeks within the applicable statutory period.

71. The foregoing conduct, as alleged above, constitutes willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a).

72. As set forth above, named Plaintiff and the putative class members have sustained losses in their compensation, a proximate result of all of Defendants' violations. Accordingly, named Plaintiff, on behalf of himself and the putative class members, seeks damages in the amount of their respective unpaid overtime compensation and liquidated damages, as provided by the FLSA, 29 U.S.C. § 216(b); and such other legal and equitable relief as the Court deems just and proper.

73. Plaintiff, on behalf of himself and the putative class members, seeks recovery of his attorneys' fees and costs to be paid by all Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

**THE THREE-YEAR STATUTE OF LIMITATIONS SHOULD APPLY TO
THIS CASE BECAUSE THE NON-PAYMENT OF OVERTIME IN VIOLATION
OF 29 U.S.C. § 207(a)(1) WAS WILLFUL
(ALL DEFENDANTS)**

74. Plaintiff incorporates paragraphs 1-73 as set forth above, and states that that the three year provision of 29 U.S.C. § 255(a) should apply in this case because the violation of 29 U.S.C. § 207(a)(1) was willful. All Defendants required Plaintiff and all those similarly situated to work substantial hours in excess of forty (40) per week. When named Plaintiff asked about his overtime compensation for hours worked in excess of forty (40) per week, Defendant Hutchison's CEO, Craig Hutchison, indicated that if Plaintiff did not like the pay that he could go somewhere else. Upon information and belief, all Defendants routinely communicated such pretext for failing to pay the Named Plaintiff and the putative class members all of their overtime wages for hours worked in excess of forty (40) per week.

COUNT II
**VIOLATIONS PURSUANT TO THE NCWHA FOR FAILURE TO PAY ALL EARNED
AND ACCRUED WAGES ON EMPLOYEE'S REGULAR PAY DAY**

75. Plaintiff incorporates by reference all preceding paragraphs as if the same were set forth again fully at this point.

76. The class period for this cause of action is at least two years from the date of the filing of this Complaint.

77. It is unlawful under North Carolina law for an employer to “suffer or permit” an employee to work without paying promised and earned wages for all hours worked in violation of N.C. Gen. Stat. § 95-25.6.

78. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, all Defendants were required to pay Plaintiff and putative class members all wages, when due, for all hours of work at the federal minimum wage rate on their regular pay date.

79. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, all Defendants were required to pay Plaintiff and putative class members all wages, when due, for all overtime wages of one and one-half times the federal minimum wage rate which is a part of all the employees’ accrued and earned wages, and which should have been paid when due on the employees’ regular payday; this requirement is not covered by the overtime provision under the FLSA.

80. All Defendants intentionally refused to pay all wages due as set forth in the preceding paragraphs of this Complaint to named Plaintiff and the putative class members in violation of the NCWHA.

81. The foregoing conduct, as alleged, constitutes willful violations of the NCWHA, N.C. Gen. Stat. § 95-25.6,

82. As set forth above, named Plaintiff and members of the proposed class have sustained losses and lost compensation as a proximate result of all of Defendants’ violations. Accordingly, Plaintiff, on behalf of himself and all those similarly situated, seeks damages in the amount of their unpaid earned compensation, liquidated damages, plus interest at the legal rate set for in N.C. Gen. Stat. § 95-25.22(a) and (a)(1).

83. Plaintiff, on behalf of himself and all those similarly situated, seeks recovery of his attorney’s fees as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all those similarly situated, prays that this Honorable Court:

1. Issue an Order certifying this action as a collective action under the FLSA and designate the above Plaintiff as a representative of all those similarly situated under the FLSA collective action;

2. Issue an Order certifying this action as a class action under the NCWHA and designate the above Plaintiff as a representative on behalf of all those similarly situated of the NCWHA classes;

3. Award Plaintiff and all those similarly situated actual damages for unpaid wages and liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs and the class as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(al) and pursuant to the FLSA, U.S.C. § 216(b);

4. Award Plaintiff and all those similarly situated their attorneys' fees, costs, and disbursements as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(d) and pursuant to the FLSA, 29 U.S.C. § 216(b);

5. Award Plaintiff and all those similarly situated pre- and post-judgment interest at the statutory rate as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(a) and pursuant to the FLSA, 29 U.S.C. § 216(b);

6. Grant Plaintiff and all those similarly situated any additional relief that the Court deems appropriate and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted this 3rd day of April, 2015.

/s/Gilda Adriana Hernandez

Gilda A. Hernandez, (NCSB No. 36812)

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