

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

| | | |
|-------------------------------------|---|---------------------|
| SINTIA CASTILLO-CACERES a/k/a |) | |
| SINTIA CASTILLO-CACERES, CARLOS |) | |
| ROBERTO SANCHEZ-ROMERO, on behalf |) | |
| of themselves and all other |) | |
| similarly situated persons, |) | |
| |) | <u>COMPLAINT</u> |
| Plaintiffs, |) | |
| |) | <u>CLASS ACTION</u> |
| v. |) | |
| |) | |
| SOUTHERN PRODUCE DISTRIBUTORS, |) | Civil Action No.: |
| INC., DAVID STEWART PRECYTHE, KELLY |) | |
| STEWART PRECYTHE, THE COASTAL |) | 7:15-cv-00149 |
| GROUP, INC. f/k/a COASTAL TEMPORARY |) | |
| SERVICES, INCORPORATED, SOUTHEAST |) | |
| FARM AND AGRICULTURE, LLC, and |) | |
| HOWARD FISACKERLY, |) | |
| |) | |
| Defendants. |) | |
| |) | |

I. PRELIMINARY STATEMENT

1. This is a statutory collective action pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act ("FLSA") by two former employees against a closely held farming and packing commercial enterprise, the President and Vice-President of that enterprise, one of the managers of the packing house operations of that enterprise, and the two temporary agencies that furnished those employees to that farming and packing commercial enterprise.

2. It is based upon the failure of the defendants to pay the overtime rate required by 29 U.S.C. § 207(a)(1) for

workweeks when the plaintiffs and other similarly situated employees were and are employed in excess of 40 hours in the same workweek to process agricultural commodities that were not produced by Southern Produce Distributors, Inc.

3. This is also a class action by those same former employees for unpaid promised wages when those wages were due at the rate that was disclosed to those employees by the defendants pursuant to the North Carolina Wage and Hour Act ("NCWHA"), N.C.Gen.Stat. §§95-25.6, 95-25.13(1)-(2), 95-25.22(a)-(a1), and 95-25.22(d).

4. Based upon their claims and the claims of the classes and collective actions under 29 U.S.C. §§ 207(a)(1) and 216(b), and N.C. Gen. Stat. §§ 95-25.6, 95-25.13(1)-(2), and 95-25.22, the plaintiffs and the members of the collective action and classes that they seek to represent seek payment of back wages, an equal amount of liquidated damages, statutory damages, attorney fees, and costs under 29 U.S.C. §§ 216(b), and N.C. Gen. Stat. §§ 95-25.22(a), (a1), and (d) against all defendants, jointly and severally.

II. JURISDICTION

5. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §§ 1331, 1337, and 1367(a), and 29 U.S.C. § 216(b). This Court has the power to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

III. VENUE

6. Venue over this action lies in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), and 29 U.S.C. § 216(b). At the time this action was filed against defendant Southern Produce Distributors, Inc. (hereinafter referred to as "Southern"), and against defendants David Stewart Precythe, Kelley Stewart Precythe, and Howard Fisackerly (hereinafter referred to as the "individual defendants"), Southern and, upon information and belief, all of the individual defendants resided in Duplin County, North Carolina.

7. At the time this action was filed against defendants The Coastal Group, Inc. (hereinafter "Coastal") and Southeast Farm and Agriculture, LLC (hereinafter "Southeast"), both Coastal and Southeast resided in Columbus County, North Carolina. Southern, Coastal, and Southeast were and are closely held, for profit, corporations or corporate entities organized under the laws of the State of North Carolina.

8. All defendants regularly engaged in substantial business activities in Duplin County, North Carolina at the time this action was commenced, and a substantial part of the events that gave rise to this action occurred in Duplin County, North Carolina and the other counties that are

listed in 28 U.S.C. § 113(a).

IV. NAMED PLAINTIFFS

9. Named plaintiffs Sintia Castillo-Caceres a/k/a Sinthia Castillo-Caceres and Carlos Roberto Sanchez-Romero were jointly and severally employed (as the term "employ" is defined by N.C. Gen. Stat. § 95-25.2(3) and 29 U.S.C. § 203(g)) by one or more of the individual defendants, defendant Southern, defendant Coastal, and defendant Southeast as part of the agricultural enterprise operated by Southern, and/or the business enterprise operated by Southern in Faison, North Carolina.

10. Excluding several weeks in April 2014, from in or about February 2014 through early August 2014, defendant Southern, the individual defendants, Southeast, and Coastal jointly and severally employed the named plaintiffs in a packing house located in Faison, North Carolina to pack and process peppers and other agricultural commodities that were and are produced solely by defendant Southern in the minority of workweeks in that same time period. For at least the month of June 2013, defendant Southern, the individual defendants, Southeast, and Coastal also jointly and severally employed plaintiff Sintia Castillo in that same packing house to pack and process peppers and other agricultural commodities that were and are produced solely by defendant

Southern in the minority of workweeks in that same time period.

11. Excluding several weeks in April 2014, from in or about February 2014 through early August 2014, defendant Southern, the individual defendants, and Coastal jointly and severally employed the named plaintiffs in a packing house in Faison, North Carolina to pack and process peppers and other agricultural commodities that were and are produced persons and entities other than defendant Southern and the individual defendants in the majority of workweeks in that same time period. For at least the month of June 2013, defendant Southern, the individual defendants, and Coastal also jointly and severally employed plaintiff Sintia Castillo in that same packing house to pack and process peppers and other agricultural commodities that were and are produced by persons and entities other than defendant Southern and the individual defendants in the majority of workweeks in that same time period.

V. DEFENDANTS

12. At all times relevant to this complaint, defendant corporate entity Southern Produce Distributors, Inc. (hereinafter "Southern") is and has been a corporation that is organized under the laws of the state of North Carolina, for the purpose of, among others, producing, processing,

packing, and/or marketing peppers, sweet potatoes and other agricultural products within and without North Carolina. At all times relevant to this action, David Stewart Precythe, 111 N. Center Street West, Faison, North Carolina 28341, was and is the registered agent for service of process on Southern.

13. At all times relevant to this complaint, defendant corporate entity The Coastal Group, Inc. formerly known as Coastal Temporary Services Incorporated (hereinafter referred to as "Coastal") is and has been a corporation that is organized under the laws of the state of North Carolina, for the purpose of, among others, referring and supplying workers to various agricultural and non-agricultural employers in and around eastern North Carolina. At all times relevant to this action, the President of Coastal was Sandra L. Gore, and Coastal had its principal office at 2268 James B. White Hwy North, Whiteville, North Carolina. At all times relevant to this action, Sandra L. Gore, 2268 James B. White Highway North, Whiteville, North Carolina 28472, was and is the registered agent for service of process on Coastal.

13A. At all times relevant to this complaint, defendant corporate entity Southeast Farm and Agriculture, LLC (hereinafter referred to as "Southeast") is and has been a corporation that is organized under the laws of the state of

North Carolina, for the purpose of, among others, working with Coastal to refer and supply workers to various agricultural and non-agricultural employers in and around eastern North Carolina. At all times relevant to this action, the Manager of Southeast was Genia Gore, and Southeast had its principal office at 2268 James B. White Hwy North, Whiteville, North Carolina. At all times relevant to this action, Sandra L. Gore, 2268 James B. White Highway North, Whiteville, North Carolina 28472, was and is the registered agent for service of process on Southeast.

14. At all times relevant to this action, Southern and each of the individual defendants engaged in and continue to engage in related activities in the production, processing, packing, and marketing of various agricultural commodities through the common control of Southern exercised by, among others, David Stewart Precythe, Kelley Stewart Precythe, and Howard Fisackerly for the common business purpose of producing, processing, and/or selling sweet potatoes, peppers, and other agricultural commodities.

15. At all times relevant to this complaint, defendant David Stewart Precythe has been and continues to be a principal, part-owner, and co-operator of Southern's packing house facilities in Faison, North Carolina. During that same time period, upon information and belief, defendant David

Stewart Precythe has been and continues to be the President of Southern.

16. At all times relevant to this complaint, defendant Kelley Stewart Precythe has been and continues to be a principal, part-owner, and co-operator of Southern's packing house facilities in Faison, North Carolina. During that same time period, upon information and belief, defendant Kelley Stewart Precythe has been and continues to be the Vice-President of Southern.

17. At all times relevant to this complaint, defendant Howard Fisackerly has been and continues to be a day-to-day manager and co-operator of Southern's packing house operations in Faison, North Carolina.

18. Acting in cooperation with defendant Southern at all times relevant to this complaint, defendants Coastal and Southeast furnished the plaintiffs and the workers they seek to represent to Southern to work in a packing house operated by Southern in Faison, North Carolina, and provided recordkeeping and payroll writing services to Southern for those same workers.

19. Upon information and belief, at all times relevant to this action, defendant Southern was and is an enterprise that was and is engaged in interstate commerce within the meaning of 29 U.S.C. § 203(s)(1)(A) during calendar year

2014, and in the three calendar years immediately preceding 2014.

20. Upon information and belief, during each calendar year of 2011, 2012, 2013, and 2014, defendant Southern had an annual gross volume of sales made or business done of not less than \$500,000 exclusive of excise taxes at the retail level that were separately stated in each of those same calendar years.

21. During each calendar year falling in the four year time period immediately preceding the date on this action was filed, one or more employees of defendant Southern and one or more of the persons furnished to defendant Southern by Coastal and Southeast to work in Southern's Faison, North Carolina packing house handled goods or equipment that had moved in interstate commerce within the meaning of 29 U.S.C. § 203(s)(1)(A).

22. Defendants David Stewart Precythe, Kelley Stewart Precythe, and Howard Fisackerly all participated in the day-to-day operation of Southern with respect to the supervision of the work in Faison, North Carolina performed by the plaintiffs and the workers that they seek to represent, and the wages that were paid to them.

23. Defendant Coastal and Southeast also participated in the day-to-day operation of Southern with respect to the

supervision of the work in Faison, North Carolina performed by the plaintiffs and the workers that they seek to represent, and the wages that were paid to them.

24. Either personally or through their personal agents and employees, and/or with the assistance of Coastal, Southeast, defendants David Stewart Precythe, Kelley Stewart Precythe, and Howard Fisackerly (hereinafter referred to as the "individual defendants") all directed, controlled, and supervised the work in Faison, North Carolina of the plaintiffs and the workers that the named plaintiffs seek to represent as part of their regular involvement in the day-to-day employment operations of Southern in Faison, North Carolina.

VI. FLSA COLLECTIVE ACTION ALLEGATIONS (§ 207(a))(FLSA)

25. Pursuant to the collective action procedure specified at 29 U.S.C. §216(b) and the Second Claim for Relief, all plaintiffs file this collective action for each similarly situated person employed in the packing house in Faison, North Carolina operated by Southern and one or more of the individual defendants under the joint supervision and control of Southern, the individual defendants, Coastal and Southeast for varying periods of time to pack and process peppers and other agricultural commodities that were and are produced by person(s) or entities other than

the named individual defendants and Southern in whatever form, enterprise, or combination at any time in the time period starting with the first date in the three (3) year time period immediately preceding the date on which such person files a Consent to Sue in this action pursuant to 29 U.S.C. §216(b), and ending with the date final judgment is entered in this action.

26. This FLSA collective action for the Second Claim for Relief is on behalf of those members of the FLSA collective action for all workweeks that occurred in whole or in part during the time periods described in ¶25 above in which the named plaintiffs and the members of this FLSA collective action in which the named plaintiffs and the members of this FLSA collective action were not or will not be paid at the hourly rate required by 29 U.S.C. § 207(a)(1) for the hours they performed or will perform work totaling in excess of 40 hours in the same workweek when all or some part of those hours worked were not and/or will not be performed in connection with the farming operations of Southern or any of the individual defendants.

27. During the time period described in ¶25 above, all defendants jointly or severally employed the named plaintiffs and in excess of at least fifty other employees to pack and process peppers and other agricultural

commodities in excess of 40 hours in the same workweek when all or some part of those hours worked were not and/or will not be performed in connection with the farming operations of defendant Southern or any of the individual defendants.

28. This collective action is based upon the willful failure of all defendants to pay the named plaintiffs and the members of this collective action wages free and clear on or before their regular payday for each workweek for the work in excess of 40 hours in those same workweeks that are described in ¶¶25-26 above at the overtime rate required by 29 U.S.C. § 207(a)(1) for each hour worked or part of an hour worked that all named plaintiffs and each member of this collective action worked in excess of 40 hours during each of those same workweeks.

VII. RULE 23(b)(3) CLASS ALLEGATIONS (NCWHA #1)

29. The First Claim for Relief is brought under the NCWHA by all named plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

30. In the First Claim for Relief based on the NCWHA, all named plaintiffs seek to represent a class consisting of all employees of all defendants who were and will not be paid all wages when due on their regular payday at the wage rate disclosed to them pursuant to N.C.Gen.Stat. §§ 95-

25.13(1)-(2) for the hours worked by the named plaintiffs and those workers in Southern's Faison, North Carolina packing house in those workweeks when all or some part of the hours worked were not and/or will not be performed in connection with the farming operations of all defendants when the total hours worked for all defendants were and/or will be in excess of 40 in the same workweek for any workweek that occurred in whole or in part at any time in the two (2) year time period immediately preceding the date on which this action was filed and continuing thereafter until the date on which final judgment is filed in this action.

31. The class alleged in ¶30 above is so numerous and so geographically dispersed as to make joinder impractical. The precise number of individuals in this class is known only to the defendants. However, the class is believed to include over fifty (50) individuals. This class is comprised of indigent workers many of whom maintain no permanent residence in the United States. Many of the class members in this class are not fluent in the English language and are unfamiliar with the American judicial system. The relatively small size of the individual claims and the indigence of the class members in this class make

the maintenance of separate actions by each class member of this class infeasible.

32. There are questions of law and fact common to each class alleged in ¶30 above. These common legal and factual questions are, among others:

(a) Pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 N.C.A.C. Tit. 12 § .0803, did and will one or more of all defendants disclose to any of the named plaintiffs and the members of the class defined in ¶30 above that one or more of all defendants would pay wages free and clear at one and one-half the regular hourly wage rate of the plaintiffs and the members of the class defined in ¶30 above for all hours worked in excess of 40 in the same workweek when no overtime wage exemption applied to that work?

(b) Did the defendants violate the wage payment provisions of N.C.Gen.Stat. § 95-25.6 of the North Carolina Wage and Hour Act ("NCWHA") applicable to all of the named plaintiffs and the class defined in ¶30 above by failing to pay wages free and clear at the rate that one or more of all defendants disclosed to them for all hours worked in excess of 40 in the same workweek?

33. The claim in the First Claim for Relief of all of the named Plaintiffs is typical of the claims of the members of the class defined in ¶30 above, and those typical, common

claims predominate over any questions affecting only individual class members. The named plaintiffs have the same interests as to other members of the class defined in ¶30 above and will vigorously prosecute these interests on behalf of the class defined in ¶30 above.

34. The named plaintiffs will fairly and adequately represent the interests of the class defined in ¶30 above.

35. The undersigned counsel Robert J. Willis of the Law Office of Robert J. Willis, P.A. for the named plaintiffs is an experienced litigator who has been named counsel for several class actions. Plaintiffs' counsel is prepared to advance litigation costs necessary to vigorously litigate this action and to provide notice to the members of the class defined in ¶30 above under Rule 23(b)(3).

36. A class action under Rule 23(b)(3) is superior to other available methods of adjudicating this controversy because, *inter alia*:

(a) The common issues of law and fact, as well as the relatively small size of the individual claims of each member of the class defined in ¶30 above, substantially diminish the interest of members of the class defined in ¶30 above in individually controlling the prosecution of separate actions;

(b) Many members of each of the class defined in ¶30 are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

(c) There has been no litigation already commenced against any individual defendant or corporate defendant named in this action by the members of the class defined in ¶30 above to determine the questions presented;

(d) It is desirable that the claims be heard in this forum because all defendants reside in this district and the cause of action arose in this district;

(e) A class action can be managed without undue difficulty because all defendants regularly committed the violations complained of herein, and were required to and did maintain detailed records concerning each member of the class defined in ¶30 above.

VIII. RULE 23(b)(3) CLASS ALLEGATIONS (NCWHA #2)

37. The Third Claim for Relief is brought under the NCWHA by all named plaintiffs on behalf of themselves and all other similarly situated persons pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

38. In the Third Claim for Relief based on the NCWHA, all named plaintiffs seek to represent a class consisting of all employees of all defendants who were and will not be paid all wages when due on their regular payday at the wage

rate disclosed to them pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) for the hours worked in those workweeks by the named plaintiffs and those workers in Southern's Faison, North Carolina packing house regardless of whether all or some part of the hours worked were not and/or will not be performed in connection with the farming operations of all defendants and regardless of the total hours worked for all defendants were and/or will be in excess of 40 in the same workweek for any workweek that occurred in whole or in part at any time in the two (2) year time period immediately preceding the date on which this action was filed and continuing thereafter until the date on which final judgment is filed in this action.

39. The class alleged in ¶38 above is so numerous and so geographically dispersed as to make joinder impractical. The precise number of individuals in this class is known only to the defendants. However, the class is believed to include over fifty (50) individuals. This class is comprised of indigent workers many of whom maintain no permanent residence in the United States. Many of the class members in this class are not fluent in the English language and are unfamiliar with the American judicial system. The relatively small size of the individual claims and the indigence of the class members in this class make

the maintenance of separate actions by each class member of this class infeasible.

40. There are questions of law and fact common to each class alleged in ¶38 above. These common legal and factual questions are, among others:

(a) Pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2) and 13 N.C.A.C. Tit. 12 § .0803, did and will one or more of all defendants disclose to any of the named plaintiffs and the members of the class defined in ¶38 above that one or more of all defendants would pay wages free and clear at the regular hourly wage rate of the plaintiffs and the members of the class defined in ¶38 above for all hours worked?

(b) Did the defendants violate the wage payment provisions of N.C.Gen.Stat. § 95-25.6 of the North Carolina Wage and Hour Act ("NCWHA") applicable to all of the named plaintiffs and the class defined in ¶38 above by failing to pay wages free and clear at the rate that one or more of all defendants disclosed to them for all hours worked?

41. The claim in the Third Claim for Relief of all of the named Plaintiffs is typical of the claims of the members of the class defined in ¶38 above, and those typical, common claims predominate over any questions affecting only individual class members. The named plaintiffs have the same interests as to other members of the class defined in ¶38

above and will vigorously prosecute these interests on behalf of the class defined in ¶38 above.

42. The named plaintiffs will fairly and adequately represent the interests of the class defined in ¶38 above.

43. The undersigned counsel Robert J. Willis of the Law Office of Robert J. Willis, P.A. for the named plaintiffs is an experienced litigator who has been named counsel for several class actions. Plaintiffs' counsel is prepared to advance litigation costs necessary to vigorously litigate this action and to provide notice to the members of the class defined in ¶38 above under Rule 23(b)(3).

44. A class action under Rule 23(b)(3) is superior to other available methods of adjudicating this controversy because, *inter alia*:

(a) The common issues of law and fact, as well as the relatively small size of the individual claims of each member of the class defined in ¶38 above, substantially diminish the interest of members of the class defined in ¶38 above in individually controlling the prosecution of separate actions;

(b) Many members of each of the class defined in ¶38 are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

(c) There has been no litigation already commenced against any individual defendant or corporate defendant named

in this action by the members of the class defined in ¶38 above to determine the questions presented;

(d) It is desirable that the claims be heard in this forum because all defendants reside in this district and the cause of action arose in this district;

(e) A class action can be managed without undue difficulty because all defendants regularly committed the violations complained of herein, and were required to and did maintain detailed records concerning each member of the class defined in ¶38 above.

IX. FACTUAL ALLEGATIONS

45. During pepper harvest and processing that occurred in at least the month of June 2013 and for the months of the pepper harvest and processing season that occurred in calendar year 2014 from in or about February 2014 through early August 2014, all defendants jointly and severally employed named plaintiff Sintia Castillo and, in 2014, named plaintiffs Castillo-Caceres and Sanchez-Romero and the members of the collective action and classes of workers defined in ¶¶25-26, 30, and 38 above that the named plaintiffs seek to represent to perform the processing of peppers in Southern's Faison, North Carolina packing house for all defendants.

46. During at least two of the workweeks described in ¶45 above that occurred in 2014, all defendants jointly and severally employed the named plaintiffs and the members of the collective action and classes of workers defined in ¶¶25-26 and 30 above that the named plaintiffs seek to represent to pack and process in that same packing house peppers and other agricultural commodities that were produced by persons and entities other than defendant Southern and the individual defendants.

47. During the pepper harvest and processing that occurred in the 3-year time period immediately preceding the date on which this action was filed during those workweeks in that same time period in which the defendants did not employ any of the named plaintiffs, all defendants jointly and severally employed the other members of the collective action and classes of workers defined in ¶¶25-26, 30, and 38 above that the named plaintiffs seek to represent to perform the processing of peppers in that same packing house for defendant Southern and the individual defendants.

48. During the pepper harvest and processing for defendant Southern that occurred in the 3-year time period immediately preceding the date on which this action was filed during those workweeks in that same time period in which the defendants did not employ any of the named plaintiffs, all

defendants jointly and severally employed in that same packing house those members of the collective action and classes of workers defined in ¶¶25-26 and 30 above other than the named plaintiffs that the named plaintiffs seek to represent for at least two workweeks to pack and process peppers and other agricultural commodities that were produced by persons and entities other than defendant Southern and the individual defendants in each of those same 3 years.

49. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each pepper processing season that occurred in 2014 and in the seasons after 2014, defendant Southern, the individual defendants, defendant Southeast, and/or defendant Coastal disclosed to the named plaintiffs and the members of the class defined in ¶30 above who worked or will work for the defendants in 2014 or in any year after 2014 by both written individual disclosure forms and posted statements that were, are and will be maintained in a place accessible to the named plaintiffs and the members of the class defined in ¶30 above who worked or will work for the defendants in 2014 or in any year after 2014 that one or more of all defendants would pay wages free and clear when those wages were or will be due at one and one-half the regular hourly wage rate of the named plaintiffs and the members of the class defined in ¶30 above who worked or will

work for the defendants in 2014 or in any year after 2014 for all hours worked in 2014 or in any year after 2014 that were or will be in excess of 40 in the same workweek when no overtime wage exemption applied to that work.

50. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each pepper processing season that occurred in 2013, defendant Southern, the individual defendants, defendant Southeast, and/or defendant Coastal disclosed to plaintiff Castillo and the members of the class defined in ¶30 above who worked for the defendants in 2013 by both written individual disclosure forms and posted statements that were maintained in a place accessible to named plaintiff Castillo and the members of the class defined in ¶30 above who worked for the defendants in 2013 that one or more of the defendants would pay wages free and clear when those wages were due at one and one-half the regular hourly wage rate of named plaintiff Castillo and the members of the class defined in ¶30 above who worked for the defendants in 2013 for all hours worked in 2013 that were in excess of 40 in the same workweek when no overtime wage exemption applied to that work.

51. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each pepper processing season that occurred in 2014 and in the seasons after 2014,

defendant Southern, the individual defendants, defendant Southeast, and/or defendant Coastal disclosed to the named plaintiffs and the members of the class defined in ¶38 above who worked or will work for the defendants in 2014 or in any year after 2014 by both written individual disclosure forms and posted statements that were, are and will be maintained in a place accessible to the named plaintiffs and the members of the class defined in ¶38 above who worked or will work for the defendants in 2014 or in any year after 2014 that one or more of all defendants would pay wages free and clear when those wages were or will be due at the regular hourly wage rate of the named plaintiffs and the members of the class defined in ¶38 above who worked or will work for the defendants in 2014 or in any year after 2014 for all hours worked in 2014 or in any year after 2014 as the term "hours worked" is defined by N.C.Gen.Stat. § 95-25.2(8).

52. Upon information and belief, pursuant to N.C.Gen.Stat. §§ 95-25.13(1)-(2), for each pepper processing season that occurred in 2013, defendant Southern, the individual defendants, defendant Southeast, and/or defendant Coastal disclosed to plaintiff Castillo and the members of the class defined in ¶38 above who worked for the defendants in 2013 by both written individual disclosure forms and posted statements that were maintained in a place accessible

to named plaintiff Castillo and the members of the class defined in ¶38 above who worked for the defendants in 2013 that one or more of all defendants would pay wages free and clear when those wages were due at the regular hourly wage rate of named plaintiff Castillo and the members of the class defined in ¶38 above who worked for the defendants in 2013 as the term "hours worked" is defined by N.C.Gen.Stat. § 95-25.2(8).

53. Based at least in part upon the disclosures described in ¶¶49 and 51 above, all of the named plaintiffs and all members of the classes defined in ¶¶30 and 38 above who were and/or will be jointly and severally employed by defendant Southern, defendant Southeast, defendant Coastal, and one or more of the individual defendants in 2014 or in any year after 2014 had and/or will have an agreement and working arrangement with all defendants to pay promised wages to all of the named plaintiffs and the members of the classes defined in ¶¶30 and 38 above pursuant to the terms of those same disclosures.

54. Based at least in part upon the disclosures described in ¶¶50 and 52 above, plaintiff Sintia Castillo and all members of the classes defined in ¶¶30 and 38 above who were and/or will be jointly and severally employed by defendant Southern, defendant Southeast, defendant Coastal,

and one or more of the individual defendants in 2013 had an agreement and working arrangement with all defendants to pay promised wages to named plaintiff Castillo and the members of the classes defined in ¶¶30 and 38 above pursuant to the terms of those same disclosures.

55. In the workweeks described in ¶¶11 and 46 above that occurred in the 3-year time period immediately preceding the date that this action was filed, defendant Southern, defendant Southeast, defendant Coastal, and one or more of the individual defendants employed the named plaintiffs to perform the work that is described in ¶¶11 and 46 above for in excess of 40 hours work in the same workweek for more than two workweeks.

56. In the workweeks described in ¶48 above that occurred in each year of the 3-year time period immediately preceding the date that this action was filed, defendant Southern, defendant Southeast, defendant Coastal, and one or more of the individual defendants employed the members of the collective action and class described in ¶48 above for those time periods described in ¶48 above for in excess of 40 hours work in the same workweek for more than two workweeks in each of those same three years.

57. All defendants did not accurately record the start and stop times or hours worked by the named plaintiffs and

members of the classes of workers defined in ¶¶25-26, 30, and 38 above.

58. As a result, all defendants did not pay all named plaintiffs and each member of that collective action and those classes of employees defined in ¶¶25-26, 30, and 38 all the wages they were due when they were due on their regular payday. In at least ten workweeks in each of the three years immediately preceding the date on which this action was filed, the named plaintiffs and each member of that same collective action and those classes were shorted at least one hour of pay at their regular hourly rate that they were due for each of those workweeks.

59. During a substantial number of the workweeks that are described in each of the time periods that are described in ¶¶11, 46, 48, and 55-56 above, upon information and belief, those persons and/or entities other than all defendants whose produce was packed or processed by defendant Southern included, but was not limited to, DL&B Enterprises, Inc., and other unknown growers of peppers and other agricultural commodities.

62. The plaintiffs' regular hourly wage rate set by all defendants was \$7.25.

63. For the work that is described in ¶¶46, 48-50, 53-58, 59, and 62 above, all defendants compensated the named

plaintiffs and the members of the collective action that is defined in ¶¶25-26 above and the members of the class action that is defined in ¶30 above at a straight regular hourly rate, and not at the overtime rate required by 29 U.S.C. § 207(a).

64. For the work that is described in ¶¶46, 48-50, 53-58, 59, and 62 above, all defendants violated their working arrangement described in ¶¶49-50 and 53-54 above with all named plaintiffs and the members of the class defined in ¶30 by paying those workers at a straight regular hourly rate, and not at one and one-half the regular hourly rate of the named plaintiffs and those workers that all defendants had disclosed to them as part of their working arrangement pursuant N.C.Gen.Stat. §§ 95-25.13(1)-(2).

65. During each agricultural season that occurred in the 3-year time period immediately preceding the date on which this action was filed and continuing, on information and belief, through the date that final judgment is entered in this action, all defendants intentionally did not and will not keep or maintain any accurate records as to the number of hours worked and total pay period earnings for the work that the named plaintiffs and the employees they seek to represent performed for defendant Southern, defendant Coastal, defendant Southeast, and one or more of

the individual defendants.

66. Upon information and belief, as experienced employers who have participated in more than one session to educate them as to their obligations under the FLSA and the NCWHA, all defendants were on notice of their obligations under the FLSA and the NCWHA, and acted in reckless disregard of those obligations in 2012, 2013, 2014, and 2015 to date.

X. FIRST CLAIM FOR RELIEF (NCWHA #1)

67. Paragraphs 5 through 24, 29-36, and 45-66, inclusive, above are realleged and incorporated herein by reference by all named plaintiffs and each member of the class defined in ¶30 of this complaint that all named plaintiffs seek to represent pursuant to Rule 23(b)(3), Fed.R.Civ.P., against all defendants under the North Carolina Wage and Hour Act, N.C.Gen.Stat. §§ 95-25.1 *et seq.*

68. As alleged in ¶¶46, 48-50, 53-59, and 62 above, all defendants violated their duty to all named plaintiffs and the class defined in ¶30 above to pay all wages under N.C.Gen.Stat. § 95-25.6 when those wages were due pursuant to the terms of the agreement and disclosures that are described in ¶¶49-50 and 53-54 above that all defendants made to and has and had with all named plaintiffs and the members of the class defined in ¶30.

69. As a result of the actions or omissions of all

defendants that are described or referred to in ¶¶29-36 and 45-66 above of this complaint, all named plaintiffs and each person who is a member of the class defined in ¶30 above of this complaint have suffered damages in the form of unpaid wages and liquidated damages that may be recovered under N.C.Gen.Stat. §§ 95-25.6, 95-25.22(a), and 95-25.22(a1).

XI. SECOND CLAIM FOR RELIEF (FLSA)

70. Paragraphs 5 through 28 and 45-66, inclusive, above are realleged and incorporated herein by reference by all named plaintiffs and each member of the collective action defined in ¶¶25-26 above of this complaint that the named plaintiffs seek to represent pursuant to 29 U.S.C. § 216(b) against all defendants under §§ 207(a)(1) and 216(b) of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*

71. As alleged in ¶¶55-59 and 62 above, all defendants violated their duty to all named plaintiffs and the members of the collective action defined in ¶¶25-26 above to pay wages at the overtime rate required by 29 U.S.C. § 207(a)(1) for the work described in ¶¶46, 48-50, and 53-54 above that all named plaintiffs and the members of the collective action defined in ¶¶25-26 above performed for all defendants.

72. As a result of the willful actions or omissions of all defendants that are described or referred to in ¶¶63-66 inclusive, above of this complaint, all named plaintiffs and

each person who is a member of the collective action defined in ¶¶25-26 above of this complaint have suffered damages in the form of underpayment of wages and liquidated damages that may be recovered under 29 U.S.C. §§ 207(a)(1) and 216(b).

XII. THIRD CLAIM FOR RELIEF (NCWHA #2)

73. Paragraphs 5 through 24 and 37-66, inclusive, above are realleged and incorporated herein by reference by all named plaintiffs and each member of the class defined in ¶38 of this complaint that all named plaintiffs seek to represent pursuant to Rule 23(b)(3), Fed.R.Civ.P., against all defendants under the North Carolina Wage and Hour Act, N.C.Gen.Stat. §§ 95-25.1 *et seq.*

74. As alleged in ¶¶45, 47, 51-54, and 57-58 above, all defendants violated their duty to all named plaintiffs and the class defined in ¶38 above to pay all wages under N.C.Gen.Stat. § 95-25.6 when those wages were due pursuant to the terms of the agreement and disclosures that are described in ¶¶51-54 above that all defendants made to and has and had with all named plaintiffs and the members of the class defined in ¶38.

75. As a result of the actions or omissions of all defendants that are described or referred to in ¶¶37-66 above of this complaint, all named plaintiffs and each person who is a member of the class defined in ¶38 above of this

complaint have suffered damages in the form of unpaid wages and liquidated damages that may be recovered under N.C.Gen.Stat. §§ 95-25.6, 95-25.22(a), and 95-25.22(a1).

XIII. CLAIM FOR DECLARATORY RELIEF

76. Paragraphs 3 through 75 above are realleged and incorporated herein by reference by all named plaintiffs, the classes and of persons defined in ¶¶30 and 38 above, and the members of the collective action defined in ¶¶25-226 above that all named plaintiffs seek to represent against all defendants.

77. The parties named in this action and members of the classes and collective actions that all of the named plaintiffs seek to represent are in dispute as to their respective rights, privileges, obligations, and liabilities under the Fair Labor Standards Act and the North Carolina Wage and Hour Act, and require declaratory relief as to what those respective rights, privileges, obligations, and liabilities are.

WHEREFORE Plaintiffs Sintia Castillo-Caceres a/k/a Sinthia Castillo-Caceres and Carlos Roberto Sanchez-Romero respectfully request that the Court:

- (a) Grant a jury trial on all issues so triable;
- (b) Pursuant to Rule 23(b)(3), Fed.R.Civ.P., certify named Plaintiffs Sintia Castillo-Caceres a/k/a Sinthia

Castillo-Caceres and Carlos Roberto Sanchez-Romero as representatives of the classes alleged in ¶¶30 and 38 above with respect to the First and Third Claims for Relief based upon the factors alleged in ¶¶29-44, inclusive, above of this Complaint;

(c) Pursuant to 29 U.S.C. § 216(b), certify both named plaintiffs as the representatives of the collective action alleged in ¶¶25-26 above with respect to the Second Claim for Relief;

(d) Enter judgment against defendants Southern Produce Distributors, Inc., David Steward Precythe, Kelley Stewart Precythe, The Coastal Group, Inc. f/k/a Coastal Temporary Services, Inc., Southeast Farm and Agriculture, LLC, and each of the individual defendants, jointly and severally, and in favor of the named plaintiffs named Plaintiffs Sintia Castillo-Caceres a/k/a Sinthia Castillo-Caceres, Carlos Roberto Sanchez-Romero, and each member of the classes defined in ¶¶30 and 38 above for unpaid back wages, liquidated damages where allowed by law, plus pre- and post-judgment interest at the full amount allowed by law under the First and Third Claims for Relief;

(e) Enter judgment against Southern Produce Distributors, Inc., David Steward Precythe, Kelley Stewart Precythe, The Coastal Group, Inc. f/k/a Coastal Temporary

Services, Inc., Southeast Farm and Agriculture, LLC, and each of the individual defendants, jointly and severally, and in favor of named plaintiffs Sintia Castillo-Caceres a/k/a Sinthia Castillo-Caceres, Carlos Roberto Sanchez-Romero, and each member of the collective action defined in ¶¶25-26 above for unpaid back wages, liquidated damages where allowed by law, plus pre- and post-judgment interest at the full amount allowed by law under the Second Claim for Relief;

(f) Enter judgment against defendants Southern Produce Distributors, Inc., David Stewart Precythe, Kelley Stewart Precythe, The Coastal Group, Inc. f/k/a Coastal Temporary Services, Inc., Southeast Farm and Agriculture, LLC, and each of the individual defendants, jointly and severally, and in favor of each of the named plaintiffs Sintia Castillo-Caceres a/k/a Sinthia Castillo-Caceres, Carlos Roberto Sanchez-Romero, and each member of the classes and collective action defined in ¶¶25-26, 30, and 38 above for costs and a reasonable attorney's fee pursuant to 29 U.S.C. § 216(b) and N.C.Gen.Stat. § 95-25.22(d);

(g) Grant the named plaintiffs and the members of the collective action and classes that they seek to represent declaratory relief that defendants Southern Produce Distributors, Inc., David Stewart Precythe, Kelley Stewart Precythe, The Coastal Group, Inc. f/k/a Coastal Temporary

Services, Inc., Southeast Farm and Agriculture, LLC, and each of the individual defendants, jointly and severally, have violated the rights of the named plaintiffs and those other employees under the FLSA;

(h) Award such other relief as may be just and proper in this action.

Respectfully submitted, this the 17th day of July 2015.

LAW OFFICE OF ROBERT J. WILLIS, P.A.

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CONSENT TO SUE

I, Sintia Castillo Caceres, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Sintia Castillo Caceres
SIGNATURE

9 June 2015
DATE

CONSENT TO SUE

I, Carlos Roberto Sanchez Romero, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Carlos Roberto SR
SIGNATURE

6/30/15
DATE

CONSENT TO SUE

I, Lester Naun Lopez Lizardo, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

X Lester Naun Lopez Lizardo
SIGNATURE

6/30/15
DATE

CONSENT TO SUE

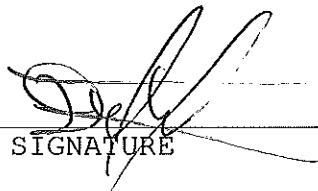
I, Iris Lopez, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.

Iris Lopez
SIGNATURE

6/30/15
DATE

CONSENT TO SUE

I, Lino Alamo Rosa, hereby consent to be a party under 29 U.S.C. §216(b) to this lawsuit to assert my right to the lawful wage required by the Fair Labor Standards Act.



SIGNATURE

6/30/15

DATE