

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. \_\_:\_\_\_\_ - CV-\_\_\_\_-\_\_\_\_

PATRICIA HALL, individually,	)
and on behalf of others similarly situated,	)
	)
Plaintiffs,	)
	)
v.	)
	)
HIGHER ONE MACHINES, INC.,	)
HIGHER ONE, INC., and	)
HIGHER ONE HOLDINGS, INC.,	)
	)
Defendants.	)

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

Plaintiff, PATRICIA HALL, individually and on behalf of all others similarly situated, by and through her attorneys, hereby brings this Collective/Class Action Complaint against Defendants, HIGHER ONE MACHINES, INC., HIGHER ONE, INC., and HIGHER ONE HOLDINGS, INC., and states as follows:

**INTRODUCTION**

1. This is a collective and class action brought pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23 by Plaintiff, Patricia Hall, (“Plaintiff”), individually and on behalf of all similarly situated persons employed by Defendants, Higher One Machines, Inc., Higher One, Inc., and Higher One Holdings Inc. (hereinafter collectively referred to as “Higher One” or “Defendants”), arising from Defendants’ willful violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*, the North Carolina Wage and Hour Act

(“NCWHA”), N.C. Gen Stat. §§ 95-25.1, *et seq.*, and for breach of contract.

2. Higher One “is a leading company focused on creating cost-saving efficiencies for higher education institutions and providing high-value services to students. Higher One offers a wide array of technological services on campus, ranging from streamlining the institution’s performance analytics and financial aid refund processes to offering students innovative banking services, tuition payment plans, and the basics of financial management. Higher One works closely with colleges and universities to allocate resources more efficiently in order to provide a higher quality of service and education to students. Founded in 2000 on a college campus by students, Higher One now serves more than half of the higher education market, providing its services to over 1,900 campuses and 13 million students at distinguished public and private institutions nationwide.”<sup>1</sup>

3. Together, Defendants are leading providers of technology, data analytics, and payment services to the higher education industry. Defendants provide a comprehensive suite of disbursement and payment solutions specifically designed for higher education institutions and their students.<sup>2</sup>

4. In order to service their customers’ needs, Defendants have employed thousands of call center employees to receive and respond to customer calls from 8:00 a.m. until 11 p.m. (EST).<sup>3</sup> These employees, called home-based Customer Care Agents (“HBCCA”), are hourly, non-exempt employees who worked in home-based call center

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<sup>1</sup> See <http://phx.corporate-ir.net/phoenix.zhtml?c=235726&p=irol-homeProfile&t=&id=&> (last checked December 28, 2015.)

<sup>2</sup> See <http://www.sec.gov/Archives/edgar/data/1486800/000148680013000023/one10k2012.htm> (last checked December 28, 2015)

<sup>3</sup> See <https://www.higheroneaccount.com/m/easyhelp.do#easyhelp> (last checked December 28, 2015)

environments.

5. Defendants do not compensate the HBCCAs for all work performed; instead, Defendants only pay HBCCAs for the time they are on the telephone and available to accept calls. This policy results in HBCCAs not being paid for all time worked and for all of their overtime in violation of the FLSA, the NCWHA, and state contract law.

6. Defendants' HBCCAs use multiple computer programs, software programs, servers and applications, in the course of performing their responsibilities. These programs, servers and applications, are an integral and important part of their work as they cannot perform their job without them.

7. All of Defendants' HBCCAs perform the same basic job duties and are required to use the same computer programs, software programs, servers and applications.

8. Defendants' HBCCA jobs are non-exempt positions that typically pay a few dollars more than the federally mandated minimum wage.

9. The U.S. Department of Labor recognizes that call center jobs, like those held by Defendants' HBCCAs, are homogenous and it issued Fact Sheet #64 in July 2008 to alert call center employees to some of the abuses which are prevalent in the industry. One of those abuses, which occurred in this case, is an employer's refusal to pay for work "from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday." U.S. Department of Labor Fact Sheet #64 at p. 2, <http://www.dol.gov/whd/regs/compliance/whdfs64.htm> (last checked December 28, 2015.)

10. Plaintiff was employed by Defendants as HBCCA in Zebulon, NC.

11. In order to perform her job, Plaintiff was required to start-up and log-in to various, secure computer programs, software programs, servers and applications, in order to access information and software. The start-up and log-in process took substantial time on a daily basis with said time ranging from 10 to 15 minutes per day.

12. Plaintiff was not actually “clocked in” for her shifts until *after* the computer start-up and log-in process was complete and she logged into the applicable programs, servers and software applications, meaning that Plaintiff and all putative Class members worked at least 10 to 15 minutes each per shift that they were never compensated for. This off-the-clock time Plaintiff spent starting up and logging into each session directly benefitted Defendants and this process was an essential part of Plaintiff’s job responsibilities as a HBCCA.

13. Additionally, at periodic times throughout her work shifts Plaintiff was disconnected from Defendants’ software programs. During the disconnection period, Plaintiff was unable to take calls from Defendants’ customers. On many occasions it would take Plaintiff in excess of 30 minutes to reconnect to and gain access to Defendants’ computer programs such that she would be available to take calls and be compensated by Defendants for her work. Defendants did not pay Plaintiff for all the time she was disconnected from Defendants’ software programs due to mid-shift technical issues.

14. Defendants provided their HBCCAs with one unpaid 15-minute rest-break per shift.

15. At the end of each work shift, Plaintiff was required to log-out of the various, secure computer programs, software programs, servers and applications, she utilized in connection with performing her job services for Defendants. The log-out process took substantial time on a daily basis with said time ranging from 10 to 15 minutes per day.

16. Plaintiff was not actually “clocked in” for her shifts during the log-out process. Instead, Defendants instructed Plaintiff and the putative Class to clock out of Defendants’ time keeping system at the conclusion of their last call and *prior* to logging out of the computer programs, software programs, servers and applications. This off-the-clock time Plaintiff spent logging out of the programs, server and applications, at the end of each shift directly benefitted Defendants and this process was an essential part of Plaintiff’s job responsibilities as a HBCCA.

17. The Department of Labor’s Fact Sheet #64 specifically condemns an employer’s non-payment of an employee’s necessary pre-shift and post-shift activities: “An example of the first principal activity of the day for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications and work-related emails.” Additionally, the FLSA requires that “[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities must be kept.” *Id.*

18. Defendants know or could have easily determined how long it takes for their HBCCAs to complete the pre-shift start-up and log-in process, and the post-shift log-out process, and Defendants could have properly compensated Plaintiff and the Class for the off-the-clock work they performed, but did not.

19. Defendants know or could have easily determined the average daily time that their HBCCAs are disconnected from Defendant's software programs and could have paid the employees for this time, but did not.

20. Defendants know or could have easily provided Plaintiff and the Class with paid 15-minute rest-breaks, but did not.

21. Plaintiff brings this action on behalf of herself and all other similarly situated HBCCAs to obtain declaratory relief and recover unpaid wages and overtime, liquidated damages, penalties, fees and costs, pre- and post-judgment interest, and any other remedies to which they may be entitled.

### **JURISDICTION AND VENUE**

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

23. Additionally, this Court has jurisdiction over Plaintiff's collective action FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer . . . in any Federal or State court of competent jurisdiction."

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

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

26. A private party may also bring an action for damages for violations of the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen Stat. §§ 95-25.1, *et seq.* Plaintiff's state claims originate from the same facts that form the basis of her federal claims. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. §1367.

27. This Court has personal jurisdiction over Defendants because all Defendants do business within the state of North Carolina and are registered with the North Carolina Secretary of State.

28. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants employ HBCCAs this District, and a substantial portion of the events that give rise to the Plaintiffs' claims occurred in this District.

### **PARTIES**

29. Plaintiff, Patricia Hall, is a resident of Zebulon, North Carolina, who was jointly employed by Defendants as a HBCCA from July 2014 to July 2015. Ms. Hall signed a consent form to join this lawsuit, which is attached to this Complaint as *Exhibit A*.

30. Defendant Higher One Holdings, Inc. is incorporated in Delaware, maintains its headquarters in New Haven, Connecticut, and is licensed to do business in North Carolina. Defendant Higher One Holdings, Inc.'s registered agent for service of process in North Carolina is CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601-2957.

31. Defendant Higher One Holdings, Inc. has a wholly-owned and principal operating subsidiary, Defendant Higher One, Inc., which has its own wholly-owned subsidiary, Defendant Higher One Machines, Inc. Defendant Higher One, Inc.'s registered agent for service of process in North Carolina is CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601-2957. Upon information and belief, Defendant Higher One Machines, Inc.'s registered agent for service of process in North Carolina is CT Corporation System, 150 Fayetteville St., Box 1011, Raleigh, North Carolina 27601-2957.

32. At all relevant times, Defendants jointly employed Plaintiff, and all members of the putative Class, under the FLSA. As the joint employers of Plaintiff and all putative Class members, Defendants were responsible for compliance with all applicable FLSA provisions. 29 C.F.R. § 791.2(a) and (b).

33. At all relevant times, Defendants owned and operated a business enterprise engaged in interstate commerce utilizing goods moved in interstate commerce as defined in 29 U.S.C. § 203(s).

34. Defendants constitute an "enterprise" within the meaning of 29 U.S.C. § 203(r)(1), because they perform related activities through common control for a common



business purpose.

35. At all relevant times, Plaintiff and the Class members were engaged in commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

### **GENERAL ALLEGATIONS**

36. Plaintiff, Patricia Hall, served as a HBCCA for Defendants from July 2014 through July 2015. Ms. Hall was compensated at a rate of \$11.00 per hour.

37. In order to perform her job, Plaintiff was required to start-up and log-in to various, secure computer systems and servers in order to access Defendants' servers and software applications. The start-up and log-in process took substantial time on a daily basis with said time ranging from 10 to 15 minutes per day.

38. Plaintiff was not actually "clocked in" for her shifts until *after* the computer start-up and log-in process was complete and she logged into the applicable software programs, servers and applications, meaning that Plaintiff and all putative Class members worked at least 10 to 15 minutes each per shift they were never compensated for. This off-the-clock time Plaintiff spent starting up and logging into each session directly benefitted Defendants and this process was an essential part of Plaintiff's job responsibilities as a HBCCA.

39. Additionally, at periodic times throughout her work shifts Plaintiff was disconnected from Defendants' software programs. During the disconnection period, Plaintiff was unable to take calls from Defendants' customers. On many occasions it would take Plaintiff in excess of 30 minutes to reconnect to and gain access to Defendants' computer programs such that she would be available to take calls and be compensated by

Defendants for her work. Defendants did not pay Plaintiff for all the time she was disconnected from Defendants' software programs due to mid-shift technical issues.

40. Further, Defendants required their HBCCAs to take their 15-minute rest-breaks without pay.

41. At the end of each work shift, Plaintiff was required to log-out of the various, secure computer programs, software programs, servers and applications, she utilized in connection with performing her job services for Defendants. The log-out process took substantial time on a daily basis with said time ranging from 10 to 15 minutes per day.

42. Plaintiff was not actually "clocked in" for her shifts during the log-out process. Instead, Defendants instructed Plaintiff and the putative Class to clock out of Defendants' time keeping system at the conclusion of their last call and *prior* to logging out of the computer programs, software programs, servers and applications. This off-the-clock time Plaintiff spent logging out of the programs, server and applications, at the end of each shift directly benefitted Defendants and this process was an essential part of Plaintiff's job responsibilities as a HBCCA.

43. At an estimated 20 to 30 minutes per day of unpaid pre-shift computer start-up and log-in time and post-shift log-out time, plus several additional minutes attempting to reconnect to Defendants' software programs, and unpaid rest-break time, Plaintiff and the putative Class are owed substantial back pay prior to liquidation and interest.

44. Some examples of specific workweeks where Defendants failed to pay Plaintiff for hours worked in excess of 40 hours (as mandated by the FLSA and North

Carolina law) include the following:

a. Weeks of September 1, 2014 and September 8, 2014:

- Plaintiff was paid for 76.75 hours of regular time and 0.5 hours of overtime (Copy of Plaintiff's Pay Records Sept. 1-15, 2014 are attached as *Exhibit B*).
- With pre-shift and post-shift time of 20-30 minutes per shift, Plaintiff should have been paid an additional 100 to 150 minutes for the week in which Plaintiff was paid overtime. Thus, Plaintiff is entitled to overtime wages within a range of 100 to 150 minutes. Additionally, Plaintiff is entitled to overtime wages in association with any unpaid mid-shift connectivity/technical issues experienced during the workweek and in connection with the unpaid work she performed during her rest-break periods.

b. Weeks of September 16, 2014 and September 23, 2014:

- Plaintiff was paid for 84.75 hours of regular time, but should have been paid for 80 hours of regular time and 4.75 hours of overtime not including the below off-the-clock time that she was not compensated for (Copy of Plaintiff's Pay Records Sept. 16-30, 2014 are attached as *Exhibit C*).
- With pre-shift and post-shift time of 20-30 minutes per shift, Plaintiff should have been paid an additional 100 to 150 minutes for these weeks. Thus, Plaintiff is entitled to overtime wages within a range of 100 to 150 minutes for each of these weeks. Additionally, Plaintiff is entitled to overtime wages in association with any unpaid mid-shift connectivity/technical issues experienced during the workweeks and in connection with the unpaid work she performed during her rest-break periods.

45. At all relevant times, Defendants were Plaintiff's "employer" and Defendants directed and directly benefited from the off-the-clock work Plaintiff performed.

46. At all relevant times, Defendants controlled Plaintiff's work schedules, duties, protocols, applications, assignments and employment conditions.

47. At all relevant times, Defendants were able to track the amount of time that Plaintiff spent starting up and logging in to and logging out of Defendants' computer systems; however, Defendants failed to document, track or pay Plaintiff for the off-the-clock work she performed in connection with each shift.

48. At all relevant times, Plaintiff and the Class members were non-exempt hourly employees, subject to the requirements of the FLSA.

49. At all relevant times, Defendants used their adherence and attendance policies against Plaintiff for her pre-shift, mid-shift, post-shift, and rest-break time worked and failed to pay for that time.

50. At all relevant times, Defendants' policies and practices deprived Plaintiff of wages owed for the pre-shift, mid-shift, post-shift, and rest-break time Plaintiff incurred.

51. Defendants are leaders in the field of call center services and knew or should have known that Plaintiff and other HBCCAs' time spent starting up, logging in to and logging out of Defendants' computer systems, servers and programs, dealing with mid-shift connectivity issues, on their rest breaks, is compensable under the FLSA, the NCWHA, and state contract law.

### **COLLECTIVE ACTION ALLEGATIONS**

52. Plaintiff brings this action pursuant to 29 U.S.C. § 216(b) of the FLSA on her own behalf and on behalf of:

*All current and former hourly home-based customer care agents who worked for Defendants at any time during the last three years.*

(hereinafter referred to as the “Class”). Plaintiff reserves the right to amend this definition if necessary

53. Excluded from the Class are all Defendants’ executives, administrative and professional employees, including computer professionals and outside sales persons.

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

55. The employment relationships between Defendants and every Class member is the same and differs only name, location, and rate of pay. The key issues – the amount of uncompensated pre-shift start-up and log-in time, mid-shift time associated with Defendants’ connectivity issues, and rest-break time owed to each employee – does not vary substantially from Class member to Class member.

56. The key legal issues are also the same for every Class member, to wit: whether the 10 to 15 minutes of pre-shift start-up and log-in time required to commence a session, the 10-15 minutes of post-shift log-out time, the mid-shift time spent associated with Defendants’ connectivity issues, and unpaid rest-break time are compensable under the FLSA.

57. Plaintiff estimates that the putative Class, including both current and former employees over the relevant period, includes several thousand members. The precise number of Class members should be readily available from a review of Defendants' personnel and payroll records.

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

58. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on her own behalf and on behalf of:

*All current and former hourly home-based customer care agents who worked for Defendants at any time during the last three years.*

(hereinafter referred to as the "Rule 23 North Carolina Class"). Plaintiff reserves the right to amend this definition if necessary.

59. The members of the Rule 23 North Carolina Class are so numerous that joinder of all Rule 23 North Carolina Class members in this case would be impractical. Plaintiff reasonably estimates there are hundreds of Rule 23 North Carolina Class members. Rule 23 North Carolina Class members should be easy to identify from Defendants' computer systems and electronic payroll and personnel records.

60. There is a well-defined community of interest among Rule 23 North Carolina Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 North Carolina Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the pre-shift time Rule 23 North Carolina Class members spend on start-up and log-in activities each session is compensable time;

- b. Whether the mid-shift time Rule 23 North Carolina Class members spend on Defendants' connectivity issues is compensable time;
- c. Whether the post-shift time Rule 23 North Carolina Class members spend on log-out activities is compensable time;
- d. Whether Rule 23 North Carolina Class members are owed wages (above the federally mandated minimum wage and overtime due under the FLSA) for time spent performing pre-shift, mid-shift or post-shift activities, and if so, the appropriate amount thereof; and
- e. Whether Defendants' non-payment of wages amount to a breach of contract.

61. Plaintiff's claims are typical of those of the Rule 23 North Carolina Class in that she and all other Rule 23 North Carolina Class members suffered damages as a direct and proximate result of the Defendants' common and systemic payroll policies and practices. Plaintiff's claims arise from the same Defendants' policies, practices, promises and course of conduct as all other Rule 23 North Carolina Class members' claims and her legal theories are based on the same legal theories as all other Rule 23 North Carolina Class members.

62. Plaintiff will fully and adequately protect the interests of the Rule 23 North Carolina Class and she has retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 North Carolina Class.

63. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 North Carolina Class members to prosecute individual actions of their own given the

relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer. Prosecution of this case as a Rule 23 Class action will also eliminate the possibility of duplicative lawsuits being filed in state and federal courts throughout the nation.

64. This case will be manageable as a Rule 23 Class action. Plaintiff and her counsel know of no unusual difficulties in this case and Defendants and its corporate clients all have advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

65. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

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

#### **RULE 23 NATIONWIDE CLASS ACTION ALLEGATIONS**

67. Plaintiff brings this action pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on her own behalf and on behalf of:

*All current and former hourly home-based customer care agents who worked for Defendants at any time during the last three years.*



(hereinafter referred to as the “Rule 23 Nationwide Class”). Plaintiff reserves the right to amend this definition if necessary.

68. The members of the Rule 23 Nationwide Class are so numerous that joinder of all Rule 23 Nationwide Class members in this case would be impractical. Plaintiff reasonably estimates there are thousands of Rule 23 Nationwide Class members. Rule 23 Nationwide Class members should be easy to identify from Defendants’ computer systems and electronic payroll and personnel records.

69. There is a well-defined community of interest among Rule 23 Nationwide members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Nationwide Class. These common legal and factual questions, include, but are not limited to, the following:

- a. Whether the pre-shift time Rule 23 Nationwide Class members spend on start-up and log- in activities each session is compensable time;
- b. Whether the mid-shift time Rule 23 Nationwide Class members spend on Defendants’ connectivity issues is compensable time;
- c. Whether the post-shift time Rule 23 Nationwide members spend on log-out activities is compensable time; and
- d. Whether Defendants’ non-payment of wages for all compensable time amounted to a breach of contract.

70. Plaintiff’s claims are typical of those of the Rule 23 Nationwide Class in that they and all other Rule 23 Nationwide Class members suffered damages as a direct and proximate result of the Defendants’ common and systemic payroll policies and practices. Plaintiff’s claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Nationwide Class members’ claims and their legal theories are

based on the same legal theories as all other Rule 23 Nationwide Class members.

71. Plaintiff will fully and adequately protect the interests of the Rule 23 Nationwide Class and she retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff nor her counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Nationwide Class.

72. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Nationwide Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer. Prosecution of this case as a Rule 23 Class action will also eliminate the possibility of duplicative lawsuits being filed in state and federal courts throughout the nation.

73. This case will be manageable as a Rule 23 Class action. Plaintiff and her counsel know of no unusual difficulties in this case and Defendants and its corporate clients all have advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

74. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) (“[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action”).

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

**COUNT I**  
**(29 U.S.C. § 216(b) Collective Action)**

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

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

77. At all times relevant to this action, Defendants were joint employers under 29 U.S.C. § 203(d) of the FLSA, subject to the provisions of 29 U.S.C. § 201, *et seq.* See also 29 C.F.R. § 791.2(b).

79. Defendants are engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

80. At all times relevant to this action, Plaintiff was an “employee” of Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

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

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

83. At all times relevant to this action, Defendants required Plaintiff and all similarly situated current and former Class members to perform 20 to 30 minutes of pre-shift computer start-up/log-in time and post-shift log-out time per session, but failed to pay these employees the federally mandated overtime compensation for all services performed.

84. At all times relevant to this action, Defendants failed to pay Plaintiff and all similarly situated current and former Class members daily mid-shift work they performed related to technical issues associated with being disconnected from Defendants' computer programs and software.

85. At all times relevant to this action, Defendants failed to provide their HBCCAs with unpaid rest breaks as required under the FLSA. 29 CFR § 785.18.

86. The pre-shift, mid-shift, rest-break, and post-shift off-the-clock work performed by Plaintiff and all similarly situated Class members every session is an essential part of their jobs and these activities and the time associated with these activities is not *de minimis*.

87. In workweeks where Plaintiff and other Class members worked 40 hours or more, the uncompensated pre-shift start-up and log-in time, the uncompensated mid-shift and rest-break time, and the uncompensated post-shift log-out time, and all other overtime should have been paid at the federally mandated rate of 1.5 times each employee's regularly hourly wage. 29 U.S.C. § 207.

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

89. Defendants' violations of the FLSA were knowing and willful. Defendants know or could have determined how long it takes for HBCCAs to perform the off-the-clock work they performed including the work they performed pre-shift, mid-shift, post-shift, and in connection with rest-break periods. Further, Defendant could have properly compensated Plaintiff and the Class for these activities, but did not.

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

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

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

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

92. At all times relevant to the action, Defendants were employers covered by the overtime mandates of the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen Stat. §§ 95-25.1, *et seq.*, and Plaintiff and the Rule 23 Class employees are employees entitled to the NCWHA's protections.

93. The NCWHA entitles employees to compensation for every hour worked in a workweek. *See* N.C.G.S. § 95-25.3.

94. The NCWHA entitles employees to overtime compensation "not less than time and one-half of the regular rate of pay of the employee for those hours in excess of 40

hours per week.” *See* N.C.G.S.A. § 95-25.4.

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

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

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

**Count III**  
**(Rule 23 Nationwide Class Action)**  
**BREACH OF CONTRACT**

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

100. At all times relevant to this action, Defendants had a contract with Plaintiff and every other Rule 23 Nationwide Class member to pay each employee for each hour they worked at a pre-established (contractual) regularly hourly rate.

101. Each Rule 23 Nationwide Class member’s contractual hourly rate is identified in paystubs and other records that Defendants prepare as part of their regular business activities.

102. Upon information and belief, each Rule 23 Nationwide Class member, including Plaintiff, has an hourly rate between \$8.00 and \$11.00 per hour.

103. Plaintiff and every other Rule 23 Nationwide Class member performed under the contract by doing their jobs and carrying out the pre-shift, mid-shift, rest-break period, and post-shift activities that Defendants required or accepted.

104. By not paying Plaintiff and every other Rule 23 Nationwide Class member the agreed upon hourly wage for the off-the-clock work they performed including the work they performed pre-shift, mid-shift, post-shift, and in connection with rest-break periods, Defendants systematically breached their contracts with Plaintiff and each member of the Rule 23 Nationwide Class.

105. Plaintiff's and the Rule 23 Nationwide Class members' remedies under the FLSA are inadequate in this case to the extent Defendants paid them more than the federally mandated minimum wage of \$7.25 per hour but less than 40 hours per week (i.e., pure "gap time" claims).

108. Defendants also breached their duty of good faith and fair dealing by failing to keep track of the time Plaintiff and other Rule 23 Nationwide Class members spent performing the off-the-clock activities, which is a fundamental part of an "employer's job."

109. The contract and contractual obligations in question are not employment contracts in that they do not relate to or guarantee that any services will be performed in the future.

110. As a direct and proximate result of Defendants' breaches of the contracts alleged herein, Plaintiff and every other member of the Rule 23 Nationwide Class has been

damaged, in an amount to be determined at trial.

111. These claims are appropriate for nationwide class certification under Rules 23(b)(2) and (b)(3) because the law of contracts is substantially the same throughout the United States.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs requests the following relief:

- a. Certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);
- b. Certifying this action as a class action (for the Rule 23 North Carolina Class) pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's state law claim (Count II);
- c. Certifying this action as a class action (for the Rule 23 Nationwide Class) pursuant to Rule 23(b)(2) and (b)(3) with respect to Plaintiff's breach of contract claim (Count III);
- d. Ordering Defendants to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all collective action Class members and Rule 23 Class members, and permitting Plaintiff to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the class members of their rights by law to join and participate in this lawsuit;
- e. Designating Plaintiff as the representative of the FLSA collective action Class, the North Carolina Rule 23 Class, and the Rule 23 Nationwide Class and undersigned counsel as Class counsel for the same;
- f. Declaring Defendants violated the FLSA and the Department of Labor's attendant regulations as cited herein;
- g. Declaring Defendants' violation of the FLSA was willful;



- h. Declaring Defendants breached their contracts with Plaintiff and the members of the Rule 23 Nationwide Class by failing to pay them for each hour they worked at a pre-established (contractual) regularly hourly rate;
- i. Granting judgment in favor of Plaintiff and against Defendants and awarding Plaintiff and the collective action Class, the Rule 23 North Carolina Class, and the Rule 23 Nationwide Class, the full amount of damages and liquidated damages available by law;
- j. Awarding reasonable attorneys' fees and costs incurred by Plaintiff in filing this action as provided by statute;
- k. Awarding pre- and post-judgment interest to Plaintiff on these damages; and
- l. Awarding such other and further relief as this Court deems appropriate.

**JURY DEMAND**

Plaintiff, Patricia Hall, individually and on behalf of all others similarly situated, by and through her attorneys, hereby demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

This, the 28<sup>th</sup> day of December 2015.

/s/Kevin J. Stoops  
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