





to conduct background checks of prospective employees and frequently relies on such information, in whole or in part, as a basis for adverse employment action, such as the failure to hire. While the use of consumer report information for employment purposes is not per se unlawful, it is subject to strict disclosure and authorization requirements under the FCRA. Defendant violated these disclosure and authorization requirements thereby systematically violating Plaintiff's rights and the rights of other FCRA class members.

3. Defendant violated the FCRA, 15 U.S.C. § 1681b(b)(3)(A) by procuring consumer reports on Plaintiff and other FCRA class members for employment purposes without first making proper disclosures in the format required by the statute. Under this subsection of the FCRA, Defendant is required to disclose to its prospective employees—in a document that consists solely of the disclosure—that it may obtain a consumer report on them for employment purposes, prior to obtaining a copy of their consumer report. *Id.* Defendant willfully violated this requirement by failing to provide Plaintiff and other FCRA class members with a copy of a document solely consisting of Defendant's disclosure that it may obtain a consumer report on any person for employment purposes, and also by failing to provide this disclosure prior to obtaining a copy of the person's consumer report. Specifically, Defendant included a liability release within its FCRA disclosure form, which reads as follows:

I, my heirs, assigns and legal representatives, hereby release and fully discharge the Company, its parent and affiliated companies and the respective officers, directors, shareholders, employees, agents of each, including subcontractors, from any and all claims, monetary or otherwise, that I may have against The Company, its parent, affiliates, or subcontractors, arising out of the making, or use of, either a consumer report and/or investigative report, including any errors or omissions contained or omitted from such report or investigations.



4. Furthermore, Defendant violated 15 U.S.C. § 1618b(b)(2)(A)(ii) by obtaining consumer reports on Plaintiff and other putative class members without proper authorization due to the fact that its disclosure forms fail to comply with the requirements of the FCRA.

5. On behalf of himself and the FCRA Class Members, Plaintiff seeks statutory damages, costs and attorneys' fees, equitable relief, and other appropriate relief under the FCRA.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under 29 U.S.C. § 1331 as this case involves question of federal law, specifically the FLSA and FRCA. This court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant because it is a North Carolina corporation.

8. Venue is proper in this District because a substantial portion of the events forming the basis of this suit occurred in this District, including many of the wrongs herein alleged.

### **PARTIES AND PERSONAL JURISDICTION**

9. Plaintiff Tyronn Ferebee is an individual residing in Pasquotank County, North Carolina. His written consent for the FLSA claims asserted in this case is attached hereto as Exhibit A.

10. Defendant Excel Staffing Company, Inc. is a domestic for profit corporation headquartered in Greensboro, North Carolina. Defendant may be served process through its registered agent David J. Tolin, 1202 East Wendover Avenue, Greensboro, North Carolina 27405, or wherever he may be found.

11. The FLSA Class Members are all nurses working for Defendant throughout the country who are misclassified as independent contractors.



12. The North Carolina Class Members are all nurses working for Defendant throughout North Carolina who were misclassified as independent contractors or otherwise not as employees.

13. The FCRA Class Members are all of Defendant's job applicants who were the subject of a consumer report that was procured by Defendant in the form attached hereto as Exhibit "B."

### **FLSA COVERAGE**

14. At all material times, Defendant has been an employer within the meaning of the FLSA. 29 U.S.C. § 203(d).

15. At all material times, Defendant has been an enterprise in commerce or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has had and continues to have employees engaged in commerce or 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.

16. At all material times, Defendant has had an annual gross business volume in excess of the statutory standard of \$500,000.

17. At all material times, Plaintiff and Class Member were/are employees engaged in commerce or the production of goods for commerce as required by 29 U.S.C. § 207.

### **FACTS**

18. Defendant is a staffing company that provides Registered Nurses ("RNs"), Licensed Practical Nurses ("LPNs"), and Certified Nursing Assistants ("CNAs") to medical care facilities in multiple states, including North Carolina, Texas, and Mississippi. Defendant contracts with these facilities to provide nursing personnel.



19. Plaintiff worked for Defendant as a CNA from April of 2014 to September 2015. During most of his time, Defendant assigned him to work at a nursing home in Nags Head, North Carolina.

20. As a CNA, Plaintiff's primary duties involved patient care, such as assisting patients eat, bathing patients, and moving patients around the facility.

21. For compensation, Defendant paid Plaintiff and its other nurses an hourly rate. However, Defendant did not pay Plaintiff and its other nurses overtime because it misclassified them as independent contractors.

22. Defendant maintains a level of control over its nurses that is indicative of an employer-employee relationship.

23. Defendant maintains and exercises the power to hire, fire, and discipline its nurses.

24. Defendant schedules the work of its nurses and requires its nurses adhere to that schedule.

25. Defendant's nurses must adhere to Defendant's policies in performing their work, including policies related to patient care, scheduling, and reporting time worked.

26. Plaintiff and other nurses make virtually no investment in Defendant's business operations and have no ability to control their profit or loss. Instead, like normal hourly employees, the only way Plaintiff and his fellow nurses could earn more money is to work more hours.

27. Furthermore, Defendant hired nurses for an open ended period of time with the expectation of steady work. Plaintiff for example worked for Defendant on a regular basis for approximately one year and a half.



28. As a matter of economic reality, Plaintiff and all similarly situated nurses are economically dependent upon Defendant to such an extent that they cannot plausibly be considered to be in business for themselves.

29. Plaintiff and Defendant's other nurses normally work in excess of forty hours per week. Plaintiff typically worked several double shifts each week for total weekly hours in excess of 60.

30. Although Plaintiff and other nurses worked more than 40 hours per week they were not compensated for that time at the rate of time and one half their regular rates of pay over 40 because they were misclassified as independent contractors.

31. No exemption excuses Defendant from paying overtime to the Plaintiff or the FLSA Class Members or the NCWHA Class Members.

32. Defendant has failed to make a good faith effort to comply with the FLSA. Instead, Defendant knowingly and willfully carried out this illegal pay practice of misclassifying its nurses. In fact, Defendant actually advertises the fact that it does not charge overtime to its clients as a selling point of its services. See <http://excelnursing.com/staffing.htm> (last visited November 6, 2015).

33. In addition to advertising itself as a low cost staffing option that does not pay overtime, Defendant's website also advertises the lengths it goes through to vet a job candidate:

The CNA's and Nurses' application process requires extensive skill and knowledge testing, validation of all required certifications and licenses, medical screening as required by your state board, along with all background (including CRIMINAL) and work history checks.

*Id.* (emphasis in original).

34. However, Defendant's efforts in conducting its pre-employment screening violate the FCRA.



35. Under the FCRA, it is unlawful to procure a consumer report or cause a consumer report to be procured for employment purposes, unless:

- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, *in a document that consists solely of the disclosure* that a consumer report may be obtained for employment purposes; and
- (ii) the consumer has authorized the procurement of the consumer report in writing (which authorization may be made on the document referred to in clause (i)).

15 U.S.C. §§ 1681b(b)(2)(A)(i)-(ii) (emphasis added).

36. Defendant failed to satisfy these disclosure and authorization requirements.

37. Defendant does not have a stand-alone FCRA disclosure or authorization form.

38. Instead of having a stand-alone FCRA disclosure or authorization form, Defendant's form attempts to impermissible waive liability for procuring a report by including the following language on its "Notification and Release:"

I, my heirs, assigns and legal representatives, hereby release and fully discharge The Company, its parent and affiliated companies and the respective officers, director, shareholders, employees, agents of each, including subcontractors, from any and all claims, monetary or otherwise, that I may have against The Company, its parent, affiliates or subcontractors, arising out of the making, or use of, either a consumer report and/or investigative report, including any errors or omissions contained or omitted from such reports or investigations. (Exhibit "B")

39. Plaintiff and other members of the FCRA class provided a "Notification and Release" form as part of their job application. This same form is currently available on Defendant's website. <http://www.excelnursing.com/pdfs/I-9%20&%20Release.pdf>.

40. This practice violates the plain language of the FCRA, and flies in the face of unambiguous case law and regulatory guidance from the FTC and is objectively unreasonable.



41. For more than fifteen years, the law has been clear that including waiver language violates the FCRA. As one FTC opinion letter provides:

While we believe that you may combine the disclosure and authorization. . . , we note that your draft disclosure includes a waiver by the consumer of his or her rights under the FCRA. The inclusion of such a waiver in a disclosure form will violate Section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist “solely” of the disclosure that a consumer report may be obtained for employment purposes. Moreover, it is a general principle of law that benefits provided to citizens by federal statute generally may not be waived by private agreement unless Congress intended such a result.

Letter from William Haynes, Attorney, Div. of Credit Practices, Fed. Trade Comm’n, to Richard W. Hauxwell, CEO, Accufax Div. (June 12, 1998), 1998 WL 34323756 (F.T.C.).

42. Other opinion letters further clarify that “[n]othing else may appear on the document that detracts from the disclosure required by [section 1681b(b)(2)(A)].” Letter from William Haynes, Attorney, Div. of Credit Practices, Fed. Trade Comm’n to Harold Hawkey, Employers Assoc. of N.J. (Dec. 18, 1997), 1997 WL 33791224 (F.T.C.). Additionally,

The reason for specifying a stand-alone disclosure was so that consumers will not be distracted by additional information at the time the disclosure is given. We believe that including an authorization in the same document with the disclosure. . . will not distract from the disclosure itself; to the contrary, a consumer who is required to authorize procurement of the report on the same document will be more likely to focus on the disclosure. *However, such a document should include nothing more than the disclosure and the authorization for obtaining a consumer report.*

Letter from Cynthia Lamb, Investigator, Div. of Credit Practices, Fed. Trade Comm’n, to Richard Steer, Jones Hirsch Connors & Bull, P.C. (Oct. 21, 1997), 1997 WL 33791227 (F.T.C.).

43. Courts analyzing the stand alone requirement have reached the same conclusion as the FTC: **including waiver language in the disclosure statement violates the FCRA.** *See Reardon v. CloseMaid Corp.*, 2:08-cv-01730, 2013 WL 6231606, at \*9 (W.D. Pa. Dec. 2, 2013)(“the authorization form simply does not comply with the FCRA’s express requirement



that the disclosure appear in a document that consists solely of the disclosure”); *Singleton v. Domino’s Pizza, LLC*, 11-cv-1823, 2012 WL 245965, at \*8 (D. Md. Jan. 25, 2012)(“the . . . form runs contrary to [the stand-alone] definition because, by containing a liability release, the form includes information that extends beyond the disclosure itself”).

44. Defendant willfully disregarded this case law and regulatory guidance, and willfully violated 15 U.S.C. § 1681b(b)(2)(A) by procuring consumer report information on employees without complying with the disclosure and authorization requirements of the FCRA.

45. Defendant knew the requirements under the FCRA but intentionally chose to disregard them.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

46. Plaintiff seeks to bring his claims under the FLSA on behalf of himself and all other similarly situated workers of Defendant who worked in any week as a nurse and were classified as an independent contractor in three years immediately preceding the date on which this action was filed and continuing thereafter through the date on which final judgment is entered. Those who file a written consent will be a party to this action pursuant to 29 U.S.C. § 216(b). (“FLSA Class Members”). Plaintiff seeks unpaid minimum wages, unpaid overtime, liquidated damages, court costs, and attorneys’ fees on behalf of the FLSA Class Members.

47. Plaintiff has actual knowledge that FLSA Class Members have also been denied overtime pay for hours worked over forty hours per workweek. That is, Plaintiff worked with other nurses staffed by Defendant and also treated as independent contractors. As such, he has first-hand personal knowledge of the same pay violations throughout Defendant’s operations.



48. Other employees similarly situated to the Plaintiff work or have worked for Defendant, but were not paid overtime at the rate of one and one-half their regular rate when those hours exceeded forty hours per workweek.

49. Although Defendant permitted and/or required the FLSA Class Members to work in excess of forty hours per workweek, Defendant has denied them full compensation for their hours worked over forty.

50. The FLSA Class Members perform or have performed the same or similar work as the Plaintiff.

51. FLSA Class Members regularly work or have worked in excess of forty hours during a workweek.

52. Like Plaintiff, the FLSA Class Members were paid on an hourly rate for the hours they worked, without receiving overtime.

53. FLSA Class Members are not exempt from receiving overtime under the FLSA.

54. As such, FLSA Class Members are similar to Plaintiff in terms of job duties, pay structure, misclassification as independent contractors and/or the denial of overtime.

55. Defendant's failure to pay overtime compensation required by the FLSA results from generally applicable policies or practices, and does not depend on the personal circumstances of the FLSA Class Members.

56. The experiences of the Plaintiff, with respect to his pay, and lack thereof, is typical of the experiences of the FLSA Class Members.

57. The specific job titles or precise job responsibilities of each FLSA Class Member does not prevent collective treatment.



58. All FLSA Class Members, irrespective of their particular job requirements, are entitled to overtime compensation for hours worked in excess of forty during a workweek.

59. Although the exact amount of damages may vary among FLSA Class Members, the damages can be easily calculated by a simple formula. The claims of all FLSA Class Members arise from a common nucleus of facts. Liability is based on a systematic course of wrongful conduct by the Defendant that caused harm to all FLSA Class Members.

60. As such, the class of similarly situated workers is properly defined as follows:

**The Class Members are all of Defendant's current and former nurses classified as independent contractors any week during the three year period prior to the filing of the Complaint to the present.**

#### **CLASS ACTION ALLEGATIONS**

61. Plaintiff also seeks to represent two classes under Fed. R. Civ. P. 23(b)(3), one for back wages, interest and liquidated damages under N.C. Gen. Stat. § 95-25.22(a1) ("NCWHA Class Members") and a second under the FCRA, 15 U.S.C. § 1681b ("FCRA Class Members).

62. The NCWHA Class consists of all nurses classified as independent in North Carolina at any time during the two year period prior to the filing of this lawsuit to the present.

63. The FCRA Class consists of all of Defendant's job applicants who were the subject of a consumer report that was procured by Defendant in the form attached hereto as Exhibit "B" during the five year period prior to the filing of this lawsuit to the present.

64. The individuals in the Classes are so numerous that joinder of all individual members is impracticable. Although the precise number of such individuals is currently known to Defendant, Plaintiff believes that the number of individuals that worked for Defendant in



North Carolina in the last two years exceeds 40 and number of job applicants nationwide exceeds 300.

65. There are questions of law and fact common to the Class that predominate over any individual questions solely affect individual members, including, but not limited to:

NCWHA CLASS:

- A. Whether Defendant violated the NCWHA by classifying its nurses as independent contractors as opposed to employees;
- B. Whether Plaintiff and the Class Members are entitled to overtime pay;
- C. Whether Plaintiff and the Class Members are entitled to liquidated damages;

FCRA CLASS:

- D. Whether Defendant uses consumer report information to conduct background checks on employees and prospective employees;
- E. Whether Defendant's background check practices and/or procedures comply with the FCRA;
- F. Whether Defendant violated the FCRA by procuring consumer report information without making proper disclosures in the format required by the statute;
- G. Whether Defendant violated the FCRA by procuring consumer report information based on invalid authorizations;
- H. Whether Defendant's violations of the FCRA were willful; and
- I. The amount of damages, restitution, and/or other relief (including all applicable civil penalties, liquidated damages, and injunctive/equitable relief) Plaintiff and Class Members are entitled to.

66. Plaintiff's overtime claims are typical of those of the NCWHA Class. Plaintiff, like other members of this Class, was misclassified as an independent contractor and denied his right to overtime wages and under the NCWHA. The misclassification of Plaintiff resulted from



the implementation of a pay policy which affected all NCWHA Class Members in a similar way. Plaintiff challenges Defendant's practice under legal theories common to all NCWHA Class Members.

67. Likewise, Plaintiff's FCRA claims are typical of those of the FCRA Class. Like the FCRA Class Members, Defendant subjected Plaintiff to a pre-employment background check that violates the FCRA.

68. Plaintiff and the undersigned counsel are adequate representatives of the Class. Given Plaintiff's loss, Plaintiff has the incentive and is committed to the prosecution of this action for the benefit of the Classes. Plaintiff has no interests that are antagonistic to those of the Class or that would cause him to act adversely to the best interests of the Class. Plaintiff has retained counsel experienced in class action litigation and wage and hour disputes.

69. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(1), 23(b)(2), and 23(c)(4) because the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards for Defendant and similar companies.

70. This action is maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the Class predominate over any questions affecting only individuals members of the Class and because a class action is superior to other methods for the fair and efficient adjudication of this action.

### **FIRST CAUSE OF ACTION**

#### **Violation of the FLSA—Collective Action (Failure to Pay Overtime)**

71. Plaintiff incorporates all allegations contained in the foregoing paragraphs.



72. 29 U.S.C. § 216(b) allows Plaintiff to assert FLSA claims on behalf of himself and all other employees similarly situated. Plaintiff asserts this claim on behalf of himself and all similarly situated employees in the FLSA Class defined above, who worked for Defendant at any time from the date three years prior to the date the Complaint was originally filed continuing through the present. All requirements for a collective action are met.

73. 29 U.S.C. § 207 requires Defendant to pay all employees for each hour worked in excess of 40 at a rate equal to one and one half times the regular rate of pay.

74. Defendant failed to pay Plaintiff and the FLSA Class Members overtime because it misclassified them as independent contractors.

75. Based on the foregoing, Plaintiff and the FLSA Class Members are entitled to the full statutory overtime as set forth in 29 U.S.C. § 207 for all periods in which they worked for Defendant.

76. Defendant's conduct in misclassifying nurses like Plaintiff and the Class Members was willful and done to avoid paying them overtime and other benefits that they were legally entitled to.

77. The Plaintiff and FLSA Class Members are not exempt from the overtime requirements under the FLSA.

78. The FLSA provides that a private civil action may be brought for the payment of federal minimum wages and overtime together with an equal amount in liquidated damages. Moreover, Plaintiff and FLSA Class Members are entitled to recover attorneys' fees and costs incurred in enforcing their rights pursuant to 29 U.S.C. § 216(b).

79. 29 U.S.C. § 211(c) provides in relevant part:

Every employer subject to any provision of this chapter or of any order issued under this chapter shall make, keep, and preserve such records of



the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation or order as necessary or appropriate for the enforcement of the provisions of this chapter or the regulations or orders thereunder.

80. 29 C.F.R. § 516.2 further requires that every employer shall maintain and preserve payroll or other records containing, without limitation, the total hours worked by each employee each workday and total hours worked by each employee during the workweek.

81. To the extent Defendant failed to maintain all records required by the aforementioned statute and regulations, and failed to furnish to Plaintiff and the FLSA Class Members comprehensive statements showing the hours they worked during the relevant time period, it also violated the law.

82. When an employer fails to keep accurate records of hours worked by its employees, the rule in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687-688 is controlling. That rule states:

[W]here the employer's records are inaccurate or inadequate. . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence. If the employer failed to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.

83. The Supreme Court set forth the above standard to avoid allowing the employer to benefit by failing to maintain proper records. Where damages are awarded pursuant to the standard in *Mt. Clemens*, “[t]he employer cannot be heard to complain that the damages lack the



exactness and precision of measurement that would be possible had he kept records in accordance with. . .the Act.” *Id.*

84. Based on the foregoing, on behalf of the FLA Class, Plaintiff seeks unpaid overtime at the required legal rates for all their work during the relevant time period, back pay, restitution, damages, liquidated damages, attorneys’ fees and costs, and any other relief allowed by law.

**SECOND CAUSE OF ACTION**  
**Violation of the North Carolina Wage and Hour Act**  
**Failure to Pay Overtime**

85. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

86. North Carolina law requires an employer to pay its employees on all wages accruing to the employee. N.C. Gen. Stat. § 95-25.6.

87. Defendant is required to pay each employee that worked more than 40 hours per workweek at a rate of not less than time and one half of the regular rate of pay for each hour worked 40 per week. N.C. Gen. Stat. § 95-25.4.

88. Defendant intentionally refused to pay all wages due as set forth in the preceding paragraphs to Plaintiff and the NCWHA Class Members in violation of the North Carolina Wage and Hour Act.

89. The Plaintiff and NCWHA Class Members are not exempt from the overtime requirements under the North Carolina Wage and Hour Act.

90. Accordingly, Plaintiff, on behalf of himself and the NCWHA Class Members, seeks damages in the amount equal to the amount of unpaid earned compensation, liquidated damages, interests, costs, and attorneys’ fees. N.C. Gen. Stat. § 95-25.22.



**THIRD CAUSE OF ACTION**  
**Violation of the Fair Credit Reporting Act**  
**Failure to Make Proper Disclosure**

91. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

92. In violation of the FCRA, the background check the Defendant required Plaintiff and the FCRA Class Members to complete as a condition of their employment with Defendant does not satisfy the disclosure requirements of 15 U.S.C. § 1681b(b)(2)(A)(i) because Defendant failed to provide a stand-alone document pertaining to how the consumer report information would be obtained and utilized.

93. Defendant violated the FCRA by procuring consumer reports on Plaintiff and the FCRA Class Members without first making proper disclosures in the format required by 15 U.S.C. § 1681b(b)(2)(A)(i). Namely, these disclosures had to be made: (1) before Defendant actually procured consumer reports, and (2) in a stand-alone document, clearly informing Plaintiff and the FCRA Class Members that Defendant might procure a consumer report on each of them for purposes of employment.

94. The foregoing violations were willful. Defendant knew that it was required to provide a stand-alone form prior to obtaining and then utilizing a consumer report on any of the FCRA Class Members. By failing to do so, Defendant acted in deliberate or reckless disregard of its obligations and the rights of Plaintiff and other FCRA Class Members under 15 U.S.C. § 1681b(b)(2)(A)(i). Defendant knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendant obtained, or had available to it, substantial written materials that appraised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA's mandates.



95. Plaintiff and the FCRA Class Members are entitled to statutory damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).

96. Plaintiff and the FCRA Class Members are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

**FOURTH CAUSE OF ACTION**  
**Violation of the Fair Credit Reporting Act**  
**Failure to Obtain Proper Authorization**

97. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

98. Defendant violated the FCRA by procuring consumer reports relating to Plaintiff and the FCRA Class Members without proper authorization. *See* 15 U.S.C. § 1681b(b)(2)(A)(ii).

99. The foregoing violations were willful. Defendant acted with deliberate or reckless disregard of its obligations and the rights of Plaintiff and other FCRA Class Members under 15 U.S.C. § 1681(b)(2)(A)(ii). Defendant knew or should have known of its legal obligations under the FCRA. These obligations are well established in both the plain language of the FCRA and in the promulgations of the Federal Trade Commission. Defendant obtained, or had available to it, substantial written materials that appraised it of its duties under the FCRA. Any reasonable employer would know of, or could easily discover, the FCRA's mandates.

100. Plaintiff and the FCRA Class Members are entitled to statutory damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1000) for each and every one of these violations under 15 U.S.C. § 1681n(a)(1)(A), in addition to punitive damages under 15 U.S.C. § 1681n(a)(2).



101. Plaintiff and the FCRA Class Members are further entitled to recover their costs and attorneys' fees, in accordance with 15 U.S.C. § 1681n(a)(3).

**JURY DEMAND**

102. Plaintiff demands trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

103. Plaintiff, on behalf of himself and the FLSA Class, NCWHA Class, and FCRA Class prays for relief as follows:

- A. Determining that the FLSA claims stated herein may proceed as a collective action;
- B. Determining that the NCWHA and FCRA claims stated herein may proceed as a class action;
- C. Declaring that Defendant committed multiple, separate violations of the FCRA, NCWHA, and FLSA;
- D. Declaring that Defendant acted willfully in deliberate or reckless disregard of Plaintiffs' rights and its obligations under the FCRA, NCWHA, and FLSA;
- E. Awarding statutory damages, unpaid overtime wages, liquidated damages, penalties, and punitive damages as authorized by the FLSA, FCRA, and NCWHA;
- F. Awarding reasonable attorneys' fees and costs as provided by the FCRA, NCWHA, and FLSA; and
- G. Granting such other and further relief, in law or equity, as this Court may deem appropriate and just.

Respectfully submitted,

KENNEDY HODGES, L.L.P.

By: /s/ Don Foty

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MEMBERS

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

TYRONN FEREBEE on Behalf of Himself and on Behalf of All Others  
Similarly Situated

**DEFENDANTS**

Excel Staffing Service, Inc.

(b) County of Residence of First Listed Plaintiff Pasquotank  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Guilford  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd R. Ellis, Law Office of Todd Ellis, P.A.  
7911 Broad River Road, Suite 100  
Irmo, South Carolina 29063

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from Another District (specify)  
☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 29 U.S.C. § 1331 and 28 U.S.C. § 1367

Brief description of cause:

Failure to pay state and federal minimum wage and overtime standards.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- 
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.



## UNITED STATES DISTRICT COURT

for the

## Eastern District of North Carolina

TYRONN FEREBEE on Behalf of Himself and on  
Behalf of All Others Similarly Situated

Plaintiff(s)

V.

Excel Staffing Service, Inc.

Defendant(s)

Civil Action No. 2:16-cv-00008

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* David J. Tolin, Registered Agent  
1202 East Wendover Avenue  
Greensboro, North Carolina 27405

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Law Office of Todd Ellis, P.A.

Law Office of Todd Ellis, P.A.  
7911 Broad River Road, Suite 100, Irmo, South Carolina 29063

Kennedy Hodges  
711 W. Alabama Street Houston, Texas 77006

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk



Civil Action No. 2:16-cv-00008

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:



CONSENT TO BECOME A PARTY PLAINTIFF  
OVERTIME AND UNPAID WAGE LAWSUIT

Name: Tyronn ferebee

1. I consent and agree to pursue my claims for unpaid overtime and/or minimum wage through the lawsuit filed against my employer.

2. I understand that this lawsuit is brought to recover unpaid wages under the Fair Labor Standards Act and all applicable state laws. I hereby consent, agree and opt-in to become a plaintiff herein and be bound by any judgment by the Court or any settlement of this action.

3. I intend to pursue my claim individually, unless and until the court certifies this case as a collective or class action. I agree to serve as the class representative if the court approves. If someone else serves as the class representative, then I designate the class representatives as my agents to make decisions on my behalf concerning the litigation, the method and manner of conducting the litigation, the entering of an agreement with the plaintiffs' counsel concerning attorney's fees and costs, and all other matters pertaining to this lawsuit.

4. If my consent form is stricken or if I am for any reason not allowed to participate in this case, I authorize Plaintiffs' counsel to use this Consent Form to re-file my claims in a separate or related action against my employer.

(Signature) \_\_\_\_\_



(Date Signed) 10/16/2015



# NOTIFICATION AND RELEASE

Sales Representative Josh Kneeland

Company Name Excel Staffing Service - Greensboro

Access ID \_\_\_\_\_ BeeCheck ID 0000111712283500

CAC Code XC35

The information contained in my application for employment with (company name) Excel Staffing Service - Greensboro (hereinafter, "The Company") is true to the best of my knowledge and belief. I understand that any misrepresentation or false statement made by me in connection with the application or any related documents which is deemed material by The Company shall result in The Company not employing me or, if employed, terminating my employment. I understand and agree that all information furnished in my application and all attachments may be verified by The Company or its authorized representative. I hereby authorize all individuals and organizations named or referred to in my application and any law enforcement organization to give The Company all information relative to such verification and hereby release such individuals, organizations and The Company from any and all liability for any claim or damage resulting therefrom. I hereby acknowledge that I have been informed by The Company that The Company may seek to obtain a consumer report and/or investigative report that will include personal information regarding me, including but not limited to, educational history, work references, driving record, drug testing and criminal convictions or arrest records if allowed, in order to assist The Company in making certain employment decisions. I further acknowledge notification by The Company that reports may be provided to The Company by other firms subcontracted for that purpose. I, my heirs, assigns and legal representatives, hereby release and fully discharge The Company, its parent and affiliated companies and the respective officers, directors, shareholders, employees, agents of each, including subcontractors, from any and all claims, monetary or otherwise, that I may have against The Company, its parent, affiliates or subcontractors, arising out of the making, or use of, either a consumer report and/or investigative report, including any errors or omissions contained or omitted from such reports or investigations. The Company agrees to inform you if an employment decision has been influenced by information contained in a consumer report, made at our request by Castle Branch Inc. You may obtain a free copy of the report within sixty days by calling Castle Branch Inc. collect at (910) 815-3880 or toll free at (888) 520-0520. The Company will make available to you "A Summary of Your Rights Under The Fair Credit Reporting Act."

## PLEASE PRINT

Name (First, Middle, Last) \_\_\_\_\_ Date of Birth (mo/day/yr) \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Maiden Name or "AKA" (First, Middle, Last) \_\_\_\_\_ Dates Used (yr) from \_\_\_\_\_ to \_\_\_\_\_

Social Security # \_\_\_\_\_ Driver's License # \_\_\_\_\_ State \_\_\_\_\_

Current and previous address(es). PROVIDE ALL ADDRESSES FOR PREVIOUS 7 YEARS. (Use extra page if necessary)

Street \_\_\_\_\_ From \_\_\_\_\_

City, State, Zip, County \_\_\_\_\_ To \_\_\_\_\_

Street \_\_\_\_\_ From \_\_\_\_\_

City, State, Zip, County \_\_\_\_\_ To \_\_\_\_\_

Street \_\_\_\_\_ From \_\_\_\_\_

City, State, Zip, County \_\_\_\_\_ To \_\_\_\_\_

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

signature required

For Employer Use Only: Please mark (✓) the searches to be conducted.

Contact Sabrina Gregory

Email personexcel@yahoo.com

Phone 336-230-1103

Fax 1-336-291-1011

☐ NW-Database

☐

☐

Notes

NW-Database

Residency History

Fax to (910) 815-3881 or call (910) 815-3880

Exhibit B