

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF NORTH CAROLINA**

<b>MICHAEL FOSTER and RONALD BOUCHARD, individually and for all others similarly situated,</b>	)	
	)	
<b>Plaintiffs,</b>	)	<b>Case No.</b>
	)	
<b>v.</b>	)	<b><u>COLLECTIVE/CLASS ACTION</u></b>
	)	<b><u>COMPLAINT</u></b>
<b>LOWE’S COMPANIES, INC., and NILOY INC. d/b/a DCT SYSTEMS,</b>	)	
	)	
<b>Defendants.</b>	)	<b>JURY TRIAL DEMANDED</b>

Plaintiffs MICHAEL FOSTER and RONALD BOUCHARD, on behalf of themselves and all others similarly situated, by and through undersigned counsel, hereby set forth this collective/class action for violations of the Fair Labor Standards Act (“FLSA”) under § 216(b) and pursuant to the FLSA, 29 U.S.C. § 201 *et seq.*, as well as for violations of the North Carolina Wage and Hour Act (“NCWHA”) under N.C. Gen. Stat. §§ 95-25.1, *et seq.* against Defendants Lowe’s Companies, Inc. (“Defendant Lowe’s”) and Niloy Inc. d/b/a DCT Systems (“Defendant DCT”) as follows:

**PRELIMINARY STATEMENT**

1. Plaintiffs and those they seek to represent were former Information Technology Workers that worked for Defendants, were misclassified as independent contractors and were not paid anything for work performed during January and February 2014. Specifically, Plaintiffs were hired to perform work for Defendant Lowe’s at its corporate headquarters (Mooresville North Carolina) and promised an hourly rate for all time worked plus reimbursement for work related expenses such as airfare and hotel. Prior to January 1, 2014, Defendants paid Plaintiffs their straight hourly rate for all time worked each week and reimbursed them for all work related

expenses. Defendants, however, failed to pay Plaintiffs anything for time worked from January 1, 2014 to February 15, 2014.

2. The apparent reason for Defendants' failure to compensate Plaintiffs or reimburse them for work related expenses is due to a business dispute between Defendant Lowe's and Defendant DCT Systems. In fact, Defendant DCT Systems has brought claims against Defendant Lowe's seeking damages in the amount of \$1,687,272 for the work actually performed by the Plaintiffs in this case. *See Exhibit A - Niloy, Inc. d/b/a DCT Systems v. Lowe's Companies, Inc.*, 5:16-cv-29 (W.D.N.C Feb. 18, 2016). But, Defendants' ongoing business dispute does not relieve them from their obligations to pay Plaintiffs as required by federal and state wage laws.

3. Additionally, because Defendants failed to pay Plaintiffs anything for time worked during January and February 2014, they fail any test for overtime exemption pursuant to 29 C.F.R. Part 541. Accordingly, Plaintiffs and putative collective/class action members are entitled to their regular rate of pay for hours worked up to 40 per week and an overtime premium of one and one-half times their regular rate for all time worked in excess of 40 hours per week during this time period.

4. As a result of Defendants' common schemes to withhold compensation in direct and willful violation of FLSA, 29 U.S.C. § 201 *et seq.*, Plaintiffs are seeking unpaid regular wages, overtime pay, attorneys' fees, and costs they are due.

5. Plaintiffs also bring this action against Defendants for unpaid regular rate(s) straight time, promised wages, unreimbursed expenses, overtime compensation, and related penalties and damages for Defendants' practice and policy of willfully failing and refusing to properly pay Plaintiffs' and all similarly situated employees earned and accrued wages on their

regular pay date, in addition to, their failure to reimburse Plaintiffs' and all similarly situated their expenses due as promised wages, and illegally withholding wages in direct contravention of the NCWHA, N.C. Gen. Stat. §§ 95-25.1, *et seq.*

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

### **PARTIES**

7. Representative Plaintiff Michael Foster is a resident of Florida who worked for Defendants as an Information Technology Consultant ("ITC") in Lowe's corporate headquarters in Iredell County, North Carolina. At all relevant times, Plaintiff was an "employee" of defendants as defined by the FLSA, 29 U.S.C. §203(e)(1).

8. Representative Plaintiff Ronald Bouchard is a resident of Maryland who worked for Defendants as an ITC in Lowe's corporate headquarters in Iredell County, North Carolina. At all relevant times, Plaintiff was an "employee" of defendants as defined by the FLSA, 29 U.S.C. §203(e)(1).

9. Defendant Lowe's is a national hardware chain incorporated under the laws of North Carolina with its principal place of business located in Mooresville, North Carolina. Defendant Lowe's has been an employer or joint employer of Plaintiffs, an all others similarly situated, and is thus jointly and severally liable to Plaintiffs. Lowe's was also a Principal in that it authorized DCT, its agent, to contract with Plaintiffs for their services.

10. Defendant DCT is an information technology company incorporated under the laws of Georgia with its principal place of business in Norcross, Georgia. Defendant DCT was, at all times relevant to this action an agent of Lowe's. As such, Defendant DCT has, at all relevant times, done business in North Carolina and has been a joint employer of Plaintiffs, and all other similarly situated employees, and is thus jointly and severally liable to Plaintiffs.

11. Defendant Lowe's contracted Defendant DCT to connect Defendant Lowe's with employees for the company's IT department.

12. Upon information and belief, during the time relevant to this action, Defendants were employers or joint employers within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d) or a member of an integrated, common enterprise, that employed Plaintiffs and the putative class members, pursuant to the federal and state statutes, hereunder, in that each Defendant, or its agents, held or implemented the power, *inter alia*, to control the work performance of Plaintiffs and the class members by assigning tasks to Plaintiffs, opt-in, and putative plaintiffs/class members, and each Defendant received the benefit of Plaintiffs' labor.

### **COVERAGE**

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

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

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

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

17. At all times material to this action, corporate Defendants, individually, were enterprises engaged in commerce or in the production of goods for commerce as defined by Section 3(s) of 29 U.S.C. § 203(s)(1) of the FLSA, in that said enterprises have had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and in that each enterprise, has had and have an annual gross volume of sales made or business done greatly exceeding \$500,000.00.

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

19. At all times material to this action, Plaintiffs were individual “employees” for all Defendants, engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § §206-207.

### **JURISDICTION AND VENUE**

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

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

22. The United States District Court for the Western District of North Carolina has jurisdiction because all Defendants conduct business in this district.

23. Venue is proper in this judicial district because Defendants perform substantial work in this district, have substantial contacts in this district, and because the unlawful acts alleged herein occurred in this district.

24. The claims for violations of the NCWhA are based upon the statutory law of the State of North Carolina.

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

### **FACTUAL ALLEGATIONS**

26. Plaintiffs and the people they seek to represent are individuals who have worked for Defendants and were misclassified as independent contractors.

27. Pursuant to their Agreement with Defendants, Plaintiffs were promised and paid an hourly rate.

28. Named Plaintiff Michael Foster worked for Defendants at a rate of \$50/hour.

29. Named Plaintiff Ronald Bouchard worked for Defendants at a rate of \$150/hour.

30. Plaintiffs and those similarly situated performed the duties of IT consultants as part of Lowe's IT department, and were tasked with improving the department's operation to run more effectively.

31. Plaintiffs' primary duties did not include management of the business or a subdivision thereof. Plaintiffs did not evaluate or discipline other employees, set their hours of work or rates of pay, or direct their work. Plaintiffs did not have the authority to discipline anyone for coming in late, leaving early, or for misbehavior while on the job.

32. Daily actions of Plaintiffs and those similarly situated were dictated by all Defendants, as all of the Defendants had supervising authority over Plaintiffs and those similarly situated.

33. All work done by Plaintiffs and those similarly situated had to be approved by Defendant Lowe's.

34. On average, Plaintiffs and those similarly situated worked from forty to fifty (40-50) hours per week, and sometimes more.

35. During the time relevant to this action, Plaintiffs and other similarly situated employees traveled to and worked at the physical address for Lowe's, exclusively for Lowe's, and under the regular or daily supervision of supervisors employed by all Defendants.

36. Prior to January 2014, Defendants paid Plaintiffs and putative plaintiffs/class members every two weeks. Plaintiffs were not required to record their hours.

37. Plaintiffs and putative plaintiffs/class members were never paid overtime at a rate of one and one-half times their regular rate for hours worked over forty (40) per week.

38. Named Plaintiffs and those similarly situated regularly worked in excess of 40 hours per week.

39. Defendants refused to pay Plaintiffs and the putative plaintiffs/class members any of their wages from January through February 2014 according to the parties' employment contract.

40. Defendants also failed to pay Plaintiffs and the putative plaintiffs/class members for all overtime hours actually worked at a rate of one and one-half times their regular rate of pay from January through February of 2014. Plaintiffs and all similarly situated employees regularly worked over 40 hours per week without overtime compensation.

41. Defendants also failed to reimburse Plaintiffs for their travel expenses according to the parties' contract.

42. In February 2014, Lowe's terminated Plaintiffs' employment and required them

to return their Lowe's equipment.

**COMMON BUSINESS PRACTICES/JOINT EMPLOYMENT FACTUAL  
ALLEGATIONS**

43. Defendant Lowe's adheres throughout its operations to a uniform division, as a practical matter, of its installation workforce into "apparent" employees—those directly employed by Defendant Lowe's and concededly covered by the FLSA and the NCWHA—and "contract" employees—those either contracting with Lowe's or directly employed by contractors with Defendant Lowe's, such as those employed by Defendant DCT, and treated as not covered by the FLSA and the NCWHA.

44. Defendants used the same or similar employment contract to hire Plaintiffs and the putative plaintiffs/class members.

45. Plaintiffs were assigned to work at Lowe's headquarters in North Carolina, where they had a designated work area. In the geographic area where Plaintiff worked and around the period when Plaintiff was a "contract" employee for Defendant Lowe's, Defendant Lowe's had contracts with several entities, including Defendant DCT, which then hired Plaintiff and those similarly situated for the exclusive purpose of performing IT work and related services for Defendant Lowe's. Defendant DCT paid these employees on an independent contractor basis.

46. Lowe's supervised and controlled Plaintiffs' work by, for example, assigning Plaintiffs the tasks they needed to perform, and the timeline for their performance.

47. Lowe's required Plaintiffs to follow its rules, policies, and directives including its timekeeping and reimbursement policies.

48. Lowe's required Plaintiffs to follow their dress code, tobacco, alcohol, and drug use guide, and email etiquette guide.

49. Plaintiffs' IT work was a job integral to Lowe's business.



50. Defendant Lowe's adheres throughout its operations to a uniform approach to securing, monitoring, and compensating "contract" employees within its installation workforce.

51. Defendant Lowe's hires as direct employees, IT Techs who perform all the same tasks as its "contract" employees directly employed by Defendant DCT.

52. Defendant Lowe's limits its number of direct employees by distributing the installation workload to its "contract" employees employed by Defendant DCT.

53. Defendant Lowe's paid Plaintiffs and those similarly situated through a contract with Defendant DCT, in which Defendant DCT was paid by Defendant Lowe's directly, and direct employees of Defendant DCT would be paid from that amount on a monthly basis.

54. All Defendants directly or indirectly told Plaintiffs and those similarly situated what to do, when to do it, and how to do it in regards to the proper techniques for completing various job tasks.

55. Plaintiffs and those similarly situated had to perform all job tasks to Defendant Lowe's specifications as detailed in emails from Lowe's representatives detailing job duties on a daily basis.

56. The job tasks that were performed by Plaintiffs and those similarly situated were subject to quality control monitoring by Defendant Lowe's.

57. Defendants shared the ability to hire, direct, and terminate the employment of Plaintiff or those similarly situated.

58. Plaintiffs and those similarly situated had little time to pursue other sources of income as IT Consultants because the IT jobs they performed in service of Defendant Lowe's required a full workday to complete.

59. The daily job tasks assigned by Defendant Lowe's took so much time that Plaintiffs and those similarly situated could not perform services for any other employer.

60. At all times material to this Complaint, Defendant Lowe's knew that the nature of the job tasks each Plaintiff or putative plaintiff/class member performed daily ensured that Plaintiffs and individuals similarly situated were effectively precluded from performing services for any other employer.

61. The tools and equipment essential for Plaintiffs and individuals similarly situated to perform their jobs were supplied to Plaintiffs by Defendant Lowe's. These tools included all of the basic necessities for IT Tasks such as laptops, printers, projectors, internet access, various program access codes, Lowe's email accounts, ID badges, and other tools.

62. Defendant Lowe's had access to the records of which employees were working, as well as the nature of employees' job tasks and the approximate amount of time each employee would spend doing certain tasks.

63. Named Plaintiffs and those similarly situated were promised reimbursement for travel expenses when they would commute long distances to the Lowe's location in North Carolina.

64. Named Plaintiffs and those similarly situated routinely introduced themselves to their customers by saying they were from "Lowe's".

65. The job tasks Plaintiffs and those similarly situated performed were performed in the same way that Defendant Lowe's direct employees given such tasks performed them.

66. Employees of Defendant Lowe's were paid overtime if they worked more than forty (40) hours in a single workweek.

67. Defendants' failure and refusal to compensate Plaintiffs and those similarly situated for the correct amount precluded Plaintiffs and those similarly situated from having any level of control over their rate or method of payment.

68. As a direct result of Defendant Lowe's uniform approach throughout its operations to securing, assigning, monitoring, and compensating "contract" employees within its installation workforce, and through its joint employer relationship with Defendant DCT, it paid its "contract" employees indirectly through its contract with Defendant DCT, and did not pay them either for all the hours they worked or overtime pay for hours worked in excess of forty hours per week despite the fact that it knew "contract" employees were working well in excess of forty (40) hours per week.

69. At all times material to this complaint, Defendant Lowe's uniform approach throughout its operations to securing, assigning, monitoring, and compensating "contract" employees within its IT workforce was intentionally used to evade its obligations under the FLSA and NCWHA.

70. Defendants knew, and were aware at all times, of the above mentioned violations.

71. The conduct alleged above reduced Defendants' labor and payroll costs.

72. Plaintiffs and the putative plaintiffs/class members were subject to Defendants' uniform policies and practices and were victims of Defendants' schemes to deprive them of wages and overtime compensation. As a result of Defendants' improper and willful failure to pay Plaintiffs and the putative plaintiffs/ class members in accordance with the requirements of the FLSA, Plaintiffs and the putative plaintiffs/class members suffered lost wages and other damages.

73. At all times material to this complaint, Defendants' uniform approach throughout their operations to securing, assigning, monitoring, and compensating employees within its installation workforce was intentionally used to evade their obligations under the FLSA and NCWHA.

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

75. Each wrongful act alleged in this Complaint was undertaken by each of the Defendants either directly or through their agents, who had actual or apparent authority to undertake such acts. Plaintiff is aware of other similarly situated persons who were subjected to the same unlawful wage and hour practices by all Defendants during the relevant period of time

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

76. Named Plaintiff, opt-in, and putative plaintiffs/class members incorporate paragraphs 1-75 as set forth above.

77. Plaintiffs seek to proceed as a collective action, pursuant to 29 U.S.C. §216(b) on behalf of themselves and the following group of persons:

All individuals who were misclassified as independent contractors by the Defendants who worked for Lowe's as Information Technology Consultants, or any similarly titled position, during the relevant statute of limitations period and who were not paid anything during any given week between January and February 2014.

78. Plaintiffs and other members of the FLSA Collective are similarly situated because they all had similar duties; performed similar tasks; were subjected to the same work policies, pay plans, and often worked in excess of 40 hours per week.

79. Plaintiffs and other members of the FLSA Collective do not meet any test for exemption under the FLSA.

80. Defendants have encouraged, permitted, and required Plaintiffs and putative plaintiffs to work without any compensation, including the applicable minimum wage.

81. Defendants have encouraged, permitted, and required Plaintiffs and putative plaintiffs to work more than 40 hours per week without overtime compensation.

82. Defendants have known that Plaintiffs and putative plaintiffs have performed work that required overtime compensation. Nonetheless, Defendants operated a scheme to deprive Plaintiffs and putative plaintiffs for all of their time worked.

83. Defendants' conduct, as alleged herein, has been willful and has caused significant damage to Plaintiffs and other members of the FLSA collective action; therefore, the FLSA's three year statute of limitation applies.

84. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of Named Plaintiffs and all putative plaintiffs.

85. Named Plaintiffs requests that they be permitted to serve as representatives of those who consent to participate in this action and that this action be granted collective action status pursuant to 29 U.S.C. § 216(b).

#### **NCWHA CLASS ACTION ALLEGATIONS**

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

87. Pursuant to Rule 23(b) and 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs, bring their second claim for relief to redress and remedy Defendants' violations of the NCWHA, N.C. Gen. Stat. § 95-25.1, *et seq.*, on behalf of themselves and the putative class members.

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

89. The Proposed Class: Named Plaintiffs propose the same class for purposes of certification under Rule 23 as under § 216(b) of the FLSA. The proposed class is easily ascertainable. The number and identity of NCWHA class members determinable from a list of Defendants' IT workers and any other payroll records.

90. Numerosity: The proposed class is so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. On information and belief, the total number of putative class members represents approximately 40 individuals. The exact number of class members may be determined from Defendants' payroll records.

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

- a. Whether Defendants refused to pay named Plaintiffs and the putative class members promised straight-time, regular-rate, and overtime wages for all hours worked over forty (40) per week on their regular payday as part of their earned and accrued wages in violation of NCWHA § 95-25.6;

- b. Whether Defendants' refusal to pay such compensation is in violation of the NCWHA; and
- c. Whether Defendants refusal to reimburse Named Plaintiffs and putative class members' expenses is a violation of the NCWHA § 95-25.6;

92. The damages suffered by the named Plaintiffs and putative class members arise from the same nucleus of operative facts.

93. Typicality: The claims of named Plaintiffs herein are typical of those claims which could be alleged by a putative class member, and the relief sought is typical of the relief which would be sought by each member of the class in separate actions. All class members were subject to the same compensation practices of Defendants, as alleged herein, of refusing to pay minimum, promised, overtime wages and expenses on the regular payday of the putative class members in compliance with the NCWHA. Defendants' compensation policies and practices affected all putative class members similarly, and Defendants benefitted from the same type of unfair and/or wrongful acts as to each putative class member. Named Plaintiffs and the putative class members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

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

95. Superiority: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all class members is impracticable. Class action treatment will permit a large number of similarly situated persons to

prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions engender. Because the losses, injuries and damages suffered by each of the individual class members are small in the sense pertinent to the class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual class members to redress the wrongs done to them.

On the other hand, important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for the adjudication of individual litigation and claims would be substantial and substantially more than if the claims are treated as a class action. Prosecution of separate actions by individual members of the proposed class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the class, establishing incompatible standards of conduct for Defendants and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issue in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can and is empowered to fashion methods to efficiently manage this action as a class action.

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



**COUNT I**  
**FLSA –FAILURE TO PAY MINIMUM WAGE**  
**(ALL DEFENDANTS)**

97. Named Plaintiffs, opt-in, and putative plaintiffs/class members incorporate paragraphs as set forth above, and state that all Defendants' actions complained of herein constitute a violation of 29 U.S.C. § 206, *et seq.* of the FLSA because all Defendants – at all times during Plaintiff and opt-in and putative plaintiffs/class members' employment – failed and otherwise refused to compensate Plaintiffs and the putative plaintiffs/class members regular wages for their last two months of work, which were earned in January and February 2014.

98. Plaintiffs and members of the proposed collective action were employed, either directly or jointly, by all Defendants and improperly classified as independent contractors, performed work for them, and were not paid for work they performed in violation of the FLSA.

99. Defendants failed to pay Plaintiffs wages for their last two months of work, which were earned in January and February 2014.

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

**FLSA –FAILURE TO PAY OVERTIME**  
**(ALL DEFENDANTS)**

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

102. Defendants have willfully failed to pay Named Plaintiffs and putative plaintiffs at one and one-half times their regular rate for all hours worked in excess of forty (40) hours per week, in violation of the FLSA.

103. As a result of Defendants' willful failure to pay Plaintiffs and putative plaintiffs as required by law, Defendants owe Plaintiffs and putative plaintiffs wages as well as liquidated damages in an amount equal to the amount of unpaid wages.

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

105. Named Plaintiffs and putative plaintiffs each worked more than forty (40) hours in one or more workweeks within the applicable statutory period.

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

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

**THE THREE-YEAR STATUTE OF LIMITATIONS SHOULD APPLY TO  
THIS CASE BECAUSE THE NON-PAYMENT OF OVERTIME WAS WILLFUL  
(ALL DEFENDANTS)**

108. Plaintiff incorporates paragraphs set forth above, and states that that the three year provision of 29 U.S.C. § 255(a) should apply in this case because the violation of 29 U.S.C. § 207(a)(1) was willful. Defendants required Plaintiff and all those similarly situated the applicable minimum wage pursuant to 29 U.S.C. § 206, *et seq.* Defendants' own records indicate that there was already knowledge of hours worked by Named Plaintiffs verifiable in pay history. Additionally, Defendants have repeatedly admitted that Defendants failed to pay proper wages to not just Named Plaintiffs, but to other similarly situated putative plaintiffs/class members as well.

**COUNT II**  
**VIOLATIONS PURSUANT TO THE NCWHA FOR FAILURE TO PAY ALL  
PROMISED, EARNED, AND ACCRUED WAGES ON NAMED PLAINTIFFS AND  
PUTATIVE CLASS MEMB REGULAR PAY DAY**

109. Plaintiffs incorporate by reference all preceding paragraphs as if the same were set forth again fully at this point.

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

111. Named Plaintiffs are members of a class that meets the requirement for certification and maintenance of a class action pursuant to Rule 23.

112. At all relevant times, Lowe's, through its agents DCT contracted with the Plaintiffs and putative class members to provide Lowe's with IT services.

113. Defendant Lowe's intentionally violated N.C. Gen. Stat. § 95-25.6 with named Plaintiffs and putative class members when it permitted them to work from January through

February 2014 without paying them their agreed rate on their regular payday, and violated the same statute through refusal to pay Plaintiffs and putative class members all promised wages as defined by N.C. Gen. Stat. § 95-25.2 by failing to reimburse Plaintiffs and putative class members for their expenses contrary to the company's contract with Plaintiffs and putative class members.

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

115. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, Defendants were required to pay Plaintiffs and putative class members all wages, when due, for all hours of work on their regular pay date.

116. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, Defendants were required to pay Plaintiffs and putative class members all wages, when due, for all overtime wages of one and one-half times the putative class member's regular or straight-time rate(s) which is a part of all the putative class members' accrued and earned wages, and which should have been paid when due on their regular payday; this requirement is not covered by the overtime provision under the FLSA.

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

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

119. As a direct and proximate result of Defendants' violations, Plaintiffs and putative class members have been damaged. Such damages can be ascertained from Defendants' business records, specifically Plaintiffs time entries and travel receipts.

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

121. Plaintiffs, on behalf of themselves, and all those similarly situated, seek recovery of their attorney's fees as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(d).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, MICHAEL FOSTER and RONALD BOUCHARD, individually and on behalf of all others similarly situated, through their attorneys, demand judgment against the Defendants, jointly and severally, and in favor of Plaintiffs and all others similarly situated, for a sum that will properly, adequately and completely compensate Plaintiffs for the nature, extent and duration of their damages, the costs of this action and as follows:

- A. Award Plaintiffs and all those similarly situated actual damages for unpaid wages and liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs and the proposed class as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(al) and pursuant to the FLSA, U.S.C. § 216(b);
- B. Award Plaintiffs and all those similarly situated their attorneys' fees, costs, and disbursements as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(d) and pursuant to the FLSA, 29 U.S.C. § 216(b);

- C. Award Plaintiffs and all those similarly situated pre- and post-judgment interest at the statutory rate as provided by the NCWHA, N.C. Gen. Stat. § 95-25.22(a) and pursuant to the FLSA, 29 U.S.C. § 216(b);
- D. Grant Plaintiff and all those similarly situated any additional relief that the Court deems appropriate and just.

**JURY DEMAND**

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

Respectfully submitted this 7th day of September, 2016.

/s/Gilda Adriana Hernandez

Gilda A. Hernandez, (NCSB No. 36812)

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