

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION

MICHAEL ANSTROM, on behalf of	)	
himself and all others similarly	)	
situated	)	Case No. 1:16-CV-1365
Plaintiff,	)	
	)	
v.	)	Collective and Class Action
	)	
BEST LOGISTICS GROUP, INC.	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiff, Michael Anstrom ("Anstrom" or "Plaintiff"), on behalf of himself and all others similarly situated, by and through counsel, brings this collective/class action for violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b), as well as for violations of the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.1 et.seq., against Defendant Best Logistics Group, Inc. ("BLG" or "Defendant"). Anstrom also brings an individual claim against BLG for breach of contract and violation of N.C. Gen. Stat. §§ 95-25.1 et.seq. for failure to pay all earned and accrued bonuses.

**NATURE OF PLAINTIFF'S CLAIMS**

1. Anstrom and those he seeks to represent are current and former freight brokers and freight coordinators who BLG

misclassified as exempt employees under the FLSA and did not pay overtime compensation. The job titles of "freight brokers" and "freight coordinators" are interchangeable and BLG advertises available jobs for both positions using an identical job description.

2. Anstrom brings his FLSA claim pursuant to the collective action provision of 29 U.S.C. § 216(b) and he seeks to recover overtime compensation and statutory penalties for himself and any similarly situated co-workers who elect to opt-in to this action for all hours worked in excess of 40 hours per week during the three-year period preceding the filing of this Complaint.

3. Anstrom brings his NCWhA claim pursuant to the class action provision of Federal Rule of Civil Procedure 23 and he seeks to recover unpaid wages and related penalties and damages for himself and any similarly situated co-workers to remedy Defendant's practice and policy of willfully failing and refusing to properly pay Plaintiff and all similarly situated employees all of their earned and accrued wages on their regular pay dates.

4. Anstrom also brings an individual claim against Defendant for breach of contract and violation of the NCWhA

resulting from Defendant's failure to pay all earned and accrued bonuses on his regular pay dates.

#### **THE PARTIES**

5. Anstrom is an adult individual who is a resident of Charlotte, North Carolina.

6. Anstrom was employed by BLG as a Freight Broker from April 16, 2015 to September 30, 2016.

7. A written consent form for Anstrom is being filed with this Complaint as Exhibit A.

8. BLG is a domestic business corporation registered and in good standing in the State of North Carolina since 2013, with its principal place of business located at 829 Graves St., Kernersville, NC 27284.

#### **JURISDICTION AND VENUE**

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

10. This Court has personal jurisdiction because Defendant conducts business in Forsyth County, North Carolina, which is located within this judicial district.

11. Venue is proper in this judicial district because Defendant has substantial business contacts in this district and

because the unlawful acts alleged herein occurred in Forsyth County, North Carolina.

12. The claims for violations of the NCWHA are based on the statutory law of the State of North Carolina. 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.

13. 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.

#### **COVERAGE ALLEGATIONS**

14. At all times hereinafter mentioned, Defendant has been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

15. At all times hereinafter mentioned, Defendant has been an enterprise within the meaning of Section 3(r) of the FLSA 29 U.S.C. § 203(r).

16. At all times hereinafter mentioned, Defendant has been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that the enterprise has 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 the enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

17. At all times hereinafter mentioned, Plaintiff has been an employee within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

18. At all times hereinafter mentioned, Plaintiff was an individual employee who was engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

19. At all times hereinafter mentioned, Defendant has been an employer within the meaning of Section 95-25.2(5) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(5).

20. At all times hereinafter mentioned, Plaintiff was an employee within the meaning of Section 95-25.2(4) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(4).

#### **PLAINTIFF'S FACTUAL ALLEGATIONS**

21. BLG is a freight management company that matches its customers' shipping needs with shipping companies that are looking for loads.

22. Anstrom's primary job duty as a Freight Broker was inside sales.

23. Anstrom spent the majority of his working hours obtaining orders for shipments from BLG customers and matching them with shipping companies.

24. Anstrom was paid a salary, plus a monthly bonus.

25. Anstrom regularly worked in excess of forty (40) hours per week during his tenure with BLG.

26. Anstrom was not paid an overtime premium for hours worked in excess of forty (40) each workweek.

27. BLG did not record or track the hours worked by Anstrom.

28. BLG had knowledge that Anstrom regularly worked in excess of forty (40) hours per workweek.

29. BLG misclassified Anstrom as "exempt" from the overtime requirements of the FLSA.

30. On or about April 7, 2015 Anstrom and BLG entered into a contract that, among other things, required BLG to pay Anstrom a monthly bonus equal to "10% of gross margin," following Anstrom's completion of the first ninety (90) days of employment. A copy of the contract is attached hereto as Exhibit B.

31. BLG did not timely and fully pay Anstrom's earned bonuses.

### **COLLECTIVE ACTION ALLEGATIONS**

32. This action is maintainable as an "opt-in" collective action pursuant to the FLSA, 29 U.S.C. § 216(b), as to claims for unpaid overtime compensation, liquidated damages, and attorneys' fees and costs.

33. Pursuant to 29 U.S.C. § 216(b), Plaintiff brings his First Cause of action, an FLSA claim, on behalf of himself and similarly situated employees who have worked as Freight Brokers or Freight Coordinators (and/or individuals in any other similarly titled position) and who elect to opt-in to this action ("Opt-in Plaintiffs).

34. The FLSA § 216(b) collective action class is properly defined as: All current and former employees of Defendant who were employed by BLG as Freight Brokers or Freight Coordinators (and/or individuals in any other similarly titled position), anytime during the three-year period preceding the filing of the Complaint in this action.

35. Consistent with Defendant's policy and pattern or practice, Plaintiff and Opt-in Plaintiffs have not been paid overtime compensation for all hours worked beyond 40 per workweek.

36. All of the work that Plaintiff and Opt-in Plaintiffs have performed has been assigned by Defendant, and/or Defendant

has been aware of all of the work that Plaintiff and Opt-in Plaintiffs have performed.

37. As part of its regular business practice, Defendant has intentionally, willfully and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and Opt-in Plaintiffs. This policy and pattern and practice includes, but is not limited to, willfully failing to pay Plaintiff and Opt-in Plaintiffs premium overtime wages for all hours worked in excess of 40 hours per workweek.

38. Defendant is aware or should have been aware that federal law required it to pay Plaintiff and Opt-in Plaintiffs overtime premiums for all hour worked in excess of 40 per workweek.

39. Plaintiff and Opt-in Plaintiffs perform or performed the same basic job duties, were paid pursuant to the same compensation scheme, were subject to the same employment policies, practices and procedures, and have been subject to the same unlawful practices alleged herein.

40. Plaintiff and Opt-in Plaintiffs have each worked more than forty (40) hours in one or more workweeks within the applicable statutory period.

41. Defendant's unlawful conduct has been widespread, repeated, and consistent.



42. There are many similarly situated current and former employees who have been denied overtime compensation in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. This notice should be sent to the Opt-in Plaintiffs pursuant to 29 U.S.C. § 216(b).

43. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant's records.

44. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Defendant's conduct was willful in that it knew that it's payroll policies, practices and/or procedures were in violation of the FLSA or it showed reckless disregard to whether it's payroll policies, practices and/or procedures were in violation of the FLSA.

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

#### **CLASS ACTION ALLEGATIONS**

46. This action is maintainable as a class action pursuant to Rule 23(a) and 23(b) (3) of the Federal Rules of Civil

Procedure pursuant to NCWHA, N.C. Gen. Stat. §§ 95-25.6 for failure to pay promised and earned wages for all hours worked by Plaintiff and members of the proposed class.

47. Plaintiff proposes the same class for purposes of certification under Rule 23 as under § 216(b) of the FLSA, with the exception that the class period for this state law cause of action is two years from the date of the filing of this Complaint. The proposed class is easily ascertainable. The number and identity of NCWHA class members are determinable from Defendant's payroll records or records over which they have control, as are the positions held for each class member.

48. The proposed class is so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a class will benefit the parties and the Court. While the exact number of class members is unknown to Plaintiff at this time, upon information and belief, the class is comprised of at least 40 persons.

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

(a) whether Defendant refused to pay Plaintiff and members of the proposed class promised and earned overtime wages for all hours worked over forty (40) per week on their regular pay day in violation of NCWHA §§ 95-25.6; and

(b) Whether Defendant's refusal to pay such compensation is in violation of NCWHA.

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

51. The claims of Plaintiff are typical of those claims that could be alleged by any member of the proposed class and the relief sought is typical of the relief that would be sought by each member of the class in separate actions. All class members were subject to the same compensation practices of Defendant; i.e. refusing to timely pay promised and earned wages on regular paydays. The compensation policies and practices of Defendant affected all class members similarly, and Defendant benefitted from the same type of unfair and/or wrongful acts as to each class member. Plaintiff and members of the proposed class sustained similar losses, injuries, and damages arising from the same unlawful policies, practices and procedures.

52. Plaintiff is able to fairly and adequately protect the interests of all members of the class, and there are no known

conflicts of interest between Plaintiff and members of the proposed class. Plaintiff has retained counsel who is experienced and competent in both wage and hour and multi-plaintiff litigation.

53. 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 loss, injuries, and damages suffered by each of the individual class members are modest, 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.

54. Important public interests will be served by addressing the matter as a class action. The cost to the court system and the public for 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 the Defendant and resulting in the impairment of class members' rights and the disposition of their interests through actions to which they were not parties. The issues 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.

#### **COUNT I**

##### **(Violation of FLSA - Overtime Collective Action)**

55. Plaintiff incorporates by reference paragraphs 1-54 of his Complaint.

56. Count I arises from Defendant's violation of the FLSA, for its failure to pay overtime wages earned by Plaintiff and Opt-In Plaintiffs.

57. Defendant violated the FLSA by failing to pay Plaintiff and Opt-in Plaintiffs an overtime premium rate of pay for all hours worked in excess of forty in a workweek.

58. Defendant violated the FLSA by failing to keep, make and preserve accurate records of all time worked by Plaintiff and Opt-in Plaintiffs.

59. Defendant's violation of the FLSA was willful.

**COUNT II**

**(Violation of NCWHA – Class Action)**

60. Plaintiff incorporates by reference paragraphs 1 through 59 of his Complaint.

61. Count II arises from Defendant's policy and practice of suffering or permitting Plaintiff and similarly situated employees to work without paying promised and earned wages for all hours worked in violation of N.C. Gen. Stat. §§ 95-25.6.

62. Defendant violated N.C. Gen. Stat. §§ 95-25.6 by failing to pay Plaintiff and similarly situated employees all promised wage and overtime payments on the employees' regular payday for all hours worked.

63. Defendant's violation of the NCWHA was willful.

**COUNT III**

**(Violation of NCWHA – Individual Action)**

64. Plaintiff incorporates by reference paragraphs 1 through 63 of his complaint.

65. Count III arises from Defendant's practice of suffering or permitting Plaintiff to work without paying his promised and earned bonuses in violation of N.C. Gen. Stat. §§ 95-25.6.

66. Defendant violated N.C. Gen. Stat. §§ 95-25.6 by failing to pay Plaintiff his promised earned bonuses on Plaintiff's regular paydays.

67. Defendant's violation of the NCWHA was willful.

#### **COUNT IV**

##### **(Breach of Contract)**

68. Plaintiff incorporates by reference paragraphs 1 through 67 of his complaint.

69. Plaintiff and Defendant are parties to a contract that required Defendant to pay Plaintiff a monthly bonus, beginning after Plaintiff's first ninety days of employment, in an amount equal to "10% of gross margin."

70. Defendant breached its contract with Plaintiff by failing to pay him the full amount of the bonus agreed to by the parties.

71. Plaintiff has suffered injury as a result of Defendant's breach.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and all employees similarly situated who join in this action demand:

- a) Order the Defendants to file with this Court and furnish to counsel for Plaintiffs a list of all names, telephone numbers, home addresses and email addresses of

all freight brokers and freight coordinators, or any other similarly titled position, who have worked for Defendant within the last three years;

- b) Authorize Plaintiff's counsel to issue notice at the earliest possible time to all freight brokers and freight coordinators, or any other similarly titled position, who have worked for Defendant within the last three years, informing them that this action has been filed, of the nature of the action, and of their right to opt-in to this lawsuit if they were deprived of overtime compensation, as required by the FLSA;
- c) An Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid overtime wages due to Plaintiff (and those who have joined in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff (and those who have joined in the suit);
- d) An Order certifying this action as a class action under the NCWHA and designating the above Plaintiff as a representative on behalf of all those similarly situated freight brokers and freight coordinators, or any other similarly titled position;
- e) An Order pursuant to the NCWHA finding Defendant liable for unpaid and untimely overtime wages and



liquidated damages equal in amount to the unpaid and untimely compensation due to Plaintiff and the class;

- f) An Order pursuant to the NCWHA finding Defendant liable for unpaid and untimely bonus payments to Plaintiff and liquidated damages equal in amount to the unpaid compensation due to Plaintiff;
- g) An Order finding Defendant breached its contract with Plaintiff and finding Defendant liable for unpaid bonus payments to Plaintiff;
- h) An Order awarding the costs of this action;
- i) An Order awarding reasonable attorneys' fees;
- j) A Declaration and finding by the Court that Defendants willfully violated provisions of the FLSA by failing to comply with the minimum wage and overtime requirements of the FLSA;
- k) An Order awarding pre-judgment and post-judgment interest at the highest rates allowed by law; and
- l) An Order granting such other and further relief as may be necessary and appropriate.

**JURY TRIAL DEMAND**

The named Plaintiff demands a trial by jury for all issues of fact.

Respectfully submitted,

/s/ Philip J. Gibbons, Jr.  
Philip J. Gibbons, Jr., NCSB #50276

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