

**IN THE UNITED STATES DISTRICT COURT  
THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

BRANDON STALLWORTH, )  
JAHLEEL WILSON, ALBERTO )  
GONZALEZ JR., and WILLIE HARRIS, )  
on behalf of themselves and all similarly )  
situated persons, )

Plaintiffs, )

v. )

SOUTHEAST CONNECTIONS LLC, )

Defendant. )

CIVIL ACTION FILE NO.:  
1:23-cv-04106-LMM

**JURY TRIAL DEMANDED**

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**FIRST AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

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**PRELIMINARY STATEMENT**

1. This is a collective action brought by individual and named Plaintiffs Brandon Stallworth, Jahleel Wilson, Alberto Gonzalez Jr. and Willie Harris on behalf of themselves and all other similarly situated current and former employees of Defendant who worked as Laborers, Pipefitters, Foremen, and other similar positions whom Defendant compensated on an hourly basis and whom Defendant directed, suffered, or permitted to work off-the-clock without compensation, including without overtime compensation. This group of individuals includes the Plaintiffs and all current

and former employees of Defendant similarly situated to them and is referred to throughout this Complaint as “the FLSA Collective.”

2. Plaintiffs allege that Defendant applied policies and practices to the FLSA Collective under which Defendant: (a) compensated FLSA Collective members on an hourly basis, (b) directed, suffered, or permitted them to work off- the-clock in excess of 40 hours per work week, and (c) intentionally failed to pay them for their off-the-clock work hours, including failing to pay them 1.5 times their regular hourly rates for hours in excess of 40 per week in violation of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

3. Alberto Gonzalez Jr. also brings claims under the North Carolina Wage and Hour Act (“NCWHA”), N.C. Gen. Stat. § 95.25-1 *et seq.*, for failure to pay all owed, earned and/or promised wages, at the appropriate rates, on their regular pay date, on behalf of a putative class of similarly situated persons who are or have been employed by Defendant in North Carolina (the “NC Rule 23 Class”).

4. Willie Harris also brings claims under the Virginia Wage Payment Act, § 40.1-29 (“VWPA”) for failure to pay wages for all hours worked and Virginia Overtime Wage Act, § 40.1-29.2 (“VOWA”) for failure to pay overtime compensation for hours exceeding 40 hours per workweek, on behalf of a putative class of similarly situated persons who are or have been employed by Defendant in Virginia (the “VA Straight Time Class” and “VA Overtime Class”).

### **JURISDICTION AND VENUE**

5. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over Plaintiffs' FLSA claims and those of the FLSA Collective.

6. In addition, this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff Alberto Gonzalez Jr.'s and Plaintiff Willie Harris's supplemental state law claims as they derive from a common nucleus of operative fact.

7. Venue is proper in this district and division pursuant to 28 U.S.C. § 1391(b)(1) because Defendant resides in Rockdale County, GA, which is within the Atlanta Division of the Northern District of Georgia; and 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to this Complaint occurred within the Northern District of Georgia.

### **PARTIES**

8. Brandon Stallworth was employed with Defendant from May 2019 through April 2023. He began his employment as a Pipefitter and became a Foreman in approximately June 2021. Stallworth was Defendant's "employee" within the definition of the FLSA at all times relevant to this Amended Complaint. Stallworth's written consent was previously submitted as Exhibit A to the original Complaint, ECF No. 1-1, and is included here in Exhibit 1.

9. Jahleel Wilson was employed with Defendant from April 2020 through April 2022. He was a Laborer. Wilson was Defendant's "employee" within the

definition of the FLSA at all times relevant to this Amended Complaint. Wilson's written consent was previously submitted as Exhibit B to the original Complaint, ECF No. 1-2, and is included here in Exhibit 1.

10. Alberto Gonzalez Jr. was employed with Defendant from June 2021 through March 2022. He was an Operator. Plaintiff Gonzalez Jr. was Defendant's employee within the definition of the FLSA and the NCWHA at all times relevant to this Amended Complaint. Plaintiff's written consent was filed with the Court on July 31, 2024, and is included again in Exhibit 1.

11. Willie Harris was employed with Defendant from October 4, 2021 through present. He is a Laborer. Plaintiff Harris was Defendant's employee within the definition of the FLSA and Virginia state law at all times relevant to this Amended Complaint. Plaintiff's written consent was filed with the Court on July 18, 2024, and is included again in Exhibit 1.

12. Defendant Southeast Connections, LLC is a North Carolina corporation that is licensed to conduct business in Georgia and transacts business within the Northern District of Georgia. Defendant's principal office is located within this judicial district at 2730 Dogwood Dr, SE, Conyers, GA 30013. Defendant may be served with process via its registered agent, Corporate Service Company, at 2 Sun Court, Suite 400, Peachtree Corners, GA 30092.

13. At all times relevant to the Complaint, Defendant is an “employer,” as defined by the FLSA, the NCWHA, and Virginia state law.

### **GENERAL FACTUAL ALLEGATIONS**

14. Defendant is an energy infrastructure contractor focused on the natural gas industry. Its primary businesses are constructing and replacing pipelines, natural gas and liquids facilities maintenance, horizontal directional drilling, and sewer inspections.

15. Defendant employs approximately 1,600 employees, primarily in Georgia, Tennessee, and North Carolina.

16. During each of the three years preceding the filing of this Complaint, Defendant has employed at least two employees.

17. During each of the three years preceding the filing of this Complaint, Defendant’s annual business revenues have exceeded \$500,000.

18. Defendant compensated Stallworth on an hourly basis throughout his employment, both as a Pipefitter and as a Foreman.

19. Stallworth’s hourly pay rate was approximately \$23.00 per hour as of the end of his employment.

20. As a Pipefitter, Stallworth’s primary job duty was to provide manual labor for Defendant’s pipe installation, replacement, and maintenance projects. His job responsibilities generally entailed: preparatory work at Defendant’s facility including

helping load up a company vehicle, traveling in the company vehicle to an assigned job site as part of a work crew, performing manual labor as a member of the work crew, returning from the job site to Defendant's facility in a company vehicle, and unloading the vehicle before leaving work for the day.

21. When he became a Foreman, Stallworth's duties included basic work crew supervision and safety briefings, and the same manual labor tasks he had performed as a Pipefitter, working alongside the other Laborers and Pipefitters on his crew.

22. Defendant had a supervisor on its job sites to whom Stallworth reported as a Foreman.

23. Stallworth's duties as Foreman did not include hiring or firing employees, negotiating contracts with Defendant's customers, assigning job sites to himself or other employees, or other duties typically associated with managerial employees.

24. Defendant operated approximately 15-20 labor crews out of the Conyers, Georgia facility at which Stallworth worked throughout his employment. Each company truck typically had a Foreman assigned to it, plus a crew of several Laborers, Pipefitters, and other employees whose primary duties were materially similar and whom Defendant paid on an hourly basis, with the number of crew varying depending on the job assigned.

25. Defendant's other Foremen in the Conyers facility had the same or similar duties as did Stallworth, started and ended their workdays at Defendant's facility like Stallworth did, and were paid on an hourly basis like Stallworth.

26. Defendant compensated Wilson on an hourly basis throughout his employment as a Laborer.

27. Wilson's hourly pay rate at the end of his employment was approximately \$15.00 per hour.

28. Wilson's primary job duty as a Laborer was to provide manual labor for Defendant's pipe installation, replacement, and maintenance projects. His job responsibilities generally entailed: preparatory work at Defendant's facility including helping load up a company vehicle, traveling in the company vehicle to an assigned job site as part of a work crew, performing manual labor as a member of the work crew, returning from the job site to Defendant's facility in a company vehicle, and unloading the vehicle before leaving work for the day.

29. Defendant employed at least dozens of Laborers in its Conyers facility, where Wilson worked.

30. Defendant's other Laborers at the Conyers facility had the same or similar duties as Wilson, started and ended their workdays at Defendant's facility, like Wilson did, and were compensated on an hourly basis like Wilson.

31. In addition to its Conyers, GA facility at which Stallworth and Wilson worked, Defendant operates multiple facilities in Georgia, North Carolina, Tennessee, and Virginia. Defendant employs Foremen, Pipefitters, Laborers, and other similarly situated employees at most or all of its facilities.

32. Plaintiff Harris works in Defendant's Chesapeake, Virginia facility. As a Laborer, he was paid on an hourly basis.

33. Plaintiff Gonzalez Jr. worked in Defendant's Kernersville, North Carolina facility. As an Operator, he was paid on an hourly basis.

34. Regardless of their work location, Defendant's hourly paid Foremen and Crewmembers (which includes Laborers, Pipefitters, Pipeline Crew Members, Operator, Fuse/Fitters, and Commercial Driver Licensed (CDL) Drivers/Crew Members) who started their workday at a company facility, traveled to a worksite in a company vehicle, and returned to the company facility in that vehicle) performed substantially similar job duties and worked substantially similar schedules.

35. For example, in August 2023, Defendant's website posted job descriptions for vacant Construction Pipeline Crew Member positions (one of the positions considered a Laborer position) at Defendant's facilities in Nashville, Lebanon, and Chattanooga, TN; Savannah, Conyers, Warrenton, and Waycross, GA; Asheville and Indian Trail, NC; and Chesapeake, VA. The job descriptions for all these positions, per Defendant's website, are materially identical.



36. As of August 2023, Defendant's website also posted job descriptions for vacant Commercial Driver Licensed ("CDL") Driver/Crew Member positions (another Laborer position) at Defendant's facilities in Asheville, NC; Chesapeake, VA; and Lebanon, TN. The job descriptions for all these positions, per Defendant's website, are materially identical.

37. Additionally, as of August 2023, Defendant's "Careers" webpage, on which it advertises for vacant positions, contains a "Day in the Life of a Laborer" video. The video is non-specific as to job location, specific job title, or any other characteristic; i.e., it applies to all Laborer positions throughout the company. The video describes a schedule and work duties common to Defendant's Laborers, including: (a) Laborers arrive at Defendant's facility at 6:30AM to start their workday; (b) Laborers leave Defendant's facility for their job site in a company truck at about 7:15AM; (c) Laborers' work includes digging trenches; and (d) after finishing work at the job site, Laborers return from the site to Defendant's facility.

38. In August 2023, Defendant's website also posted job descriptions for vacant Foreman positions at Defendant's Savannah, GA; Nashville and Lebanon, TN; and Indian Tail, NC facilities. The job descriptions for all these Foreman positions are, per Defendant's website, materially identical.

39. Like its Day in the Life of a Laborer video, as of August 2023, Defendant's careers website also contains a "Day in the Life of a Foreman" video.

This video is also non-specific to job location; i.e., it applies to Foreman at all of Defendant's locations. The video describes a schedule and work duties common to Defendant's Foremen, including: (a) Foremen help lead safety talks for their crews at Defendant's facility at 6:30AM; (b) Foremen drive with their crews from Defendant's facility to the job site; (c) Foremen are responsible for ensuring the company truck is fueled, equipped, and ready for the workday; (d) Foremen brief their crews on job hazards; (e) Foremen are in charge of traffic control; (f) Foremen are "working foremen" and, as such, they work alongside their crew; (g) Foremen secure the job site at the end of each day; and (h) Foremen have 30 minutes to complete paperwork after they return to Defendant's facility.

40. Pursuant to its company-wide timekeeping and pay practices, Defendant did not compensate Plaintiffs or the other members of the FLSA Collective, the NC Rule 23 Class, VA Straight Time Class, or VA Overtime Class for all of the hours they worked.

41. Defendant required Plaintiffs to arrive at its facility at or around 6:30 AM to begin work, such as loading the truck for the day. However, Defendant did not start counting their compensable time until 7:00 AM. Plaintiffs and others similarly situated worked off-the-clock in the morning.

42. After they finished working at the job site each day, Plaintiffs returned from the job site to Defendant's facility riding in a company vehicle.

43. Per company-wide policy and practice, Defendant only paid the crew member who drove the truck for the time spent traveling from the job site back to the facility.

44. Per company-wide policy and practice, Defendant did not pay the other crew members who rode back from the same job site to the same facility in the same company truck as the crew member driver.

45. Defendant's company-wide practice of failing to pay the non-driving crew members for their time spent traveling from the job site back to Defendant's facility violated the FLSA. 29 C.F.R. § 785.38 ("Time spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked. Where an employee is required to report at a meeting place to receive instructions or to perform other work there, or to pick up and to carry tools, the travel from the designated place to the workplace is part of the day's work, and must be counted as hours worked regardless of contract, custom, or practice").

46. Defendant required Plaintiffs and others similarly situated to perform additional uncompensated work once they arrived back at Defendant's facility, including, for example, unloading the truck and performing other tasks.

47. Defendant's company-wide practice of requiring, suffering, or permitting Plaintiffs and others similarly situated to work off-the-clock and without

compensation before and after the start of their “on-the-clock” workday violates the law. *See, e.g.*, 29 C.F.R. §§ 785.11; 785.13.

48. Defendant also deducted 30 minutes for lunch from Plaintiffs’ pay every day even though they and the others similarly situated frequently worked through their lunch break time.

49. Because Defendant did not completely relieve Plaintiffs and the others similarly situated of their duties during their full unpaid lunch breaks, their missed meal periods should have been counted as hours worked.

50. Plaintiffs typically worked Monday through Friday each workweek, with Plaintiff Harris also regularly working on Saturday up until August 2024.

51. Defendant suffered or permitted Plaintiffs and other members of the FLSA Collective, the NC Rule 23 Class, VA Straight Time Class, and VA Overtime Class to work off-the-clock without pay.

52. For example, during the week of January 22, 2023, where Plaintiff Stallworth recorded at least 40 hours of work, he accrued, on average, \$293.25 in unpaid overtime damages based on:

- a. 2.5 weekly unpaid hours because of 30 minutes of pre-shift work each morning at Defendant’s facility:  $2.5 \text{ hours} \times \$34.50 = \$86.25$ ;

- b. One weekly unpaid hour spent working during lunch breaks deducted from Stallworth's pay even though he was not fully relieved of duty: 1.0 hour x \$34.50 = \$34.50;
  - c. 2.5 weekly unpaid hours spent working during return trips from the job site to Defendant's facility when Stallworth was not a driver two or three of the workdays: 2.5 hours x \$34.50 = \$86.25;
  - d. 2.5 weekly unpaid hours based on 30 minutes spent working at Defendant's facility each day after returning to it from the job site: 2.5 hours x \$34.50 = \$86.25.
53. During a representative week for Wilson, where he recorded at least 40 hours, he accrued, on average \$219.38 in unpaid overtime damages based on:
- a. 2.5 weekly unpaid hours because of 30 minutes of pre-shift work each morning at Defendant's facility: 2.5 hours x \$22.50 = \$56.25
  - b. One weekly unpaid hour spent working during lunch breaks deducted from Wilson's pay even though he was not fully relieved of duty: 1.0 hour x \$22.50 = \$22.50
  - c. A low-end average of 3.75 weekly unpaid hours spent working during return trips from the job site to Defendant's facility: 3.75 hours x \$22.50 = \$84.38

d. 2.5 weekly unpaid hours based on 30 minutes spent working at Defendant's facility each day after returning to it from the job site: 2.5 hours x \$22.50 = \$56.25.<sup>1</sup>

54. Plaintiff Gonzalez Jr. regularly worked unpaid hours. For example, during the workweek of September 13, 2021, Plaintiff Gonzalez Jr. worked approximately 6 hours and 15 minutes off-the-clock and was not paid for these hours at the proper rates on his regular pay day.

55. Plaintiff Harris regularly worked unpaid hours. For example, during the workweek of June 10, 2024, in which he worked over 40 hours, Plaintiff Harris worked approximately 8 hours and 30 minutes off-the-clock and was not paid for those hours.

56. As a Foreman, Stallworth was required to enter his working time and his crew's working time each day using Defendant's software and a laptop. Stallworth was directed and required to follow Defendant's company-wide pay practices in so doing.

57. Each day, Stallworth and other Foremen sent their supervisors the time entries for themselves and their crews. The time sheets were referred to as "dailies."

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<sup>1</sup> In this representative week, Wilson accrued liquidated damages equal to his unpaid wage damages.

58. To combat Defendant's unlawful pay practices, Stallworth sometimes submitted dailies to his supervisor with the crew's start time at 6:30 AM (when they actually began working at Defendant's facility) rather than 7:00 AM despite Defendant's company-wide policy. Stallworth also sometimes submitted dailies reporting as hours worked the return drive time from the job site to Defendant's facility for the entire crew.

59. When Stallworth submitted dailies that reported time he and/or his crew spent on pre-shift work, on non-driving return trip time, or on post-shift work at the facility, Defendant's Area Manager, Jeff Hamlin, directed Stallworth to alter the time entries to conform to Defendant's company-wide practices, or Hamlin altered the dailies himself to so conform.

60. In approximately October or November 2022, Stallworth told Area Manager Hamlin that he believed Defendant's policies of requiring employees to work unpaid hours at the facility in the morning and at day's end, and of paying only the driver for the crew's obligatory return travel from site to facility, improperly denied the employees overtime they were entitled to earn.

61. Hamlin told Stallworth Defendant would not change its policies.

62. Defendant did not keep accurate records of Plaintiffs' and other similarly situated employees' hours worked.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

63. Plaintiffs bring this action on behalf of themselves and all other similarly situated employees pursuant to 29 U.S.C. § 216(b).

64. Plaintiffs and similarly situated individuals in the FLSA Collective:

- a) are or were employed by Defendant at any time at any time between September 13, 2021, and the notice dissemination date of July 15, 2024 (the “relevant time period”);
- b) worked during this period in hourly-paid positions in which they started work at a company facility, rode to a job site in a company vehicle, and returned to the company facility in a company vehicle, which positions include but are not limited to foremen and crewmembers; and
- c) worked off the clock without compensation, overtime compensation, or both, during at least one workweek within the covered period.

65. Defendant classified FLSA Collective members as non-exempt from the FLSA’s overtime requirements.

66. Members of the FLSA Collective are similarly situated under the FLSA because, *inter alia*:

- a) They held the same or materially similar positions with Defendant during the relevant period;



- b) They had the same or materially similar job duties during the relevant time period;
- c) Defendant, applying a policy and practice common to the FLSA Collective, compensated all FLSA Collective members by the hour and classified them as non-exempt from the FLSA's overtime requirements;
- d) Defendant, applying a policy and practice common to the FLSA Collective, directed, suffered, or permitted FLSA Collective members to work off-the-clock before and after their official paid shift times and during unpaid lunch breaks; and
- e) Defendant, applying a policy and practice common to the FLSA Collective, failed to compensate FLSA Collective members for their off-the-clock work at applicable overtime premium rates.

### **NORTH CAROLINA CLASS ALLEGATIONS**

67. Plaintiff Gonzalez Jr. brings Count II as a class action pursuant to Federal Rule of Civil Procedure 23. The proposed NC Rule 23 Class is defined as:

All persons who are or have been employed by Defendant in North Carolina as an hourly paid Foreman, Laborer, Pipefitter, Pipeline Crew Member Operator, Fuse/Fitter, CDL Driver/Crew member, or similar position that start their workday at a company facility, travel to and from a worksite in a company vehicle, and have worked unpaid hours off-the-clock during at least one workweek at any time within the two years prior to the commencement of this action to the present.

68. Class action treatment of Plaintiff Gonzalez Jr.'s NCWHA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

69. The NC Rule 23 Class, upon information and belief, includes dozens of individuals, all of whom are readily ascertainable based on Defendant's business records and are so numerous that joinder of all class members is impracticable.

70. Plaintiff Gonzalez Jr. estimates that as many as 790 individuals are putative NC Rule 23 Class members.

71. There are questions of law and fact common to the putative NC Rule 23 Class that predominate over any question solely affecting individual members, including but not limited to the following:

- a. Whether Defendant failed to compensate putative NC Rule 23 Class Members for all of their earned, accrued, and/or promised wages, at the proper rate, on their regular pay date, in violation of the NCWHA, N.C. Gen. Stat. § 96-25.6;
- b. Whether under N.C. Gen. Stat. § 95-25.22(a1), Defendant's violations of the NCWHA were in good faith, and whether Defendant had reasonable grounds for believing its actions did not violate the statute; and
- c. The proper measure of damages sustained by the proposed NC Rule 23 Class.

72. Plaintiff Gonzalez Jr.'s claims are typical of those of the putative NC Rule 23 Class. He, like other members of the NC Rule 23 Class, was subject to Defendant's practices and policies, as described in this Amended Complaint, including failing to pay North Carolina employees all of their owed, earned, and/or promised wages paid at the proper rate on the regular pay date pursuant to N.C. Gen. Stat. § 95-25.6. Further, Plaintiff's job duties are typical of the putative NC Rule 23 Class, as all class members are or were Laborers, Pipefitters, Foreman, Operators, or similar position, who were paid hourly and primarily responsible for performing manual labor.

73. Plaintiff Gonzalez Jr. will fairly and adequately protect the interests of the NC Rule 23 Class and has retained counsel experienced in complex wage and hour class and collective action litigation.

74. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this litigation because, in the context of wage and hour litigation, individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against large corporate defendants. Class litigation is also superior because it will preclude the need for unduly duplicative litigation resulting in inconsistent judgments pertaining to Defendant's

policies and practices. There do not appear to be any difficulties in managing this class action.

75. Plaintiff intends to send notice to all members of the putative NC Rule 23 Class to the extent required by Fed. R. Civ. P. 23.

### **VIRGINIA CLASS ACTION ALLEGATIONS**

76. Plaintiff Harris brings Count III individually and as a class action pursuant to Federal Rule of Civil Procedure 23. The proposed VA Straight Time Class is defined as:

All persons who are or have been employed by Defendant in Virginia as an hourly paid Foreman, Laborer, Pipefitter, Pipeline Crew Member Operator, Fuse/Fitter, CDL Driver/Crew member, or similar position that start their workday at a company facility, travel to and from a worksite in a company vehicle, and work unpaid hours off-the-clock during at least one workweek at any time within the three years prior to the commencement of this action to the present.

77. Plaintiff Harris brings Count IV individually and a class action pursuant to Federal Rule Civil Procedure 23. The proposed VA Overtime Class is defined as:

All persons who are or have been employed by Defendant in Virginia as an hourly paid Foreman, Laborer, Pipefitter, Pipeline Crew Member Operator, Fuse/Fitter, CDL Driver/Crew member, or similar position that start their workday at a company facility, travel to and from a worksite in a company vehicle, work unpaid hours off-the-clock and work more than forty hours during any workweek within the past three years prior to commencement of this action to the present.

78. Class action treatment of Plaintiff Harris' Virginia Wage Payment Act ("VWPA") and Virginia Overtime Wage Act ("VOWA") claims is appropriate

because, as alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

79. The VA Straight Time Class and VA Overtime Class, upon information and belief, each respectively includes dozens of individuals, all of whom are readily ascertainable based on Defendant's business records and are so numerous that joinder of all class members for each of these classes is impracticable.

80. Plaintiff estimates that as many as 400 individuals are putative class members for these classes.

81. There are questions of law and fact common to the putative VA Straight Time Class and VA Overtime Class that predominate over any question solely affecting individual members, including but not limited to the following:

- a. whether Defendant violated the VWPA, Va. Code § 40-1.29 by failing to pay Plaintiff and the putative VA Straight Time Class their wages for all hours worked;
- b. whether Defendant violated VOWA, Va. Code § 40-1.29.2 by failing to compensate Plaintiff and the putative VA Overtime Class members overtime wages for all hours worked in excess of forty hours;
- c. whether Defendant knowingly or willfully failed to pay Plaintiff and the proposed VA Straight Time Class and VA Overtime Class all wages due, including overtime wages; and

d. the proper measure of damages sustained by the proposed VA Straight Time Class and VA Overtime Class.

82. Plaintiff Harris' claims are typical of those of the putative VA Straight Time Class and VA Overtime Class. He, like other members of the putative classes, was subject to Defendant's lawful pay practices and policies, as described in this Amended Complaint, including failing to pay VA employees their wages for all hours worked pursuant to Va. Code § 40-1.29 and failing to pay overtime compensation pursuant to Va. Code § 40-1.29.2. Further, Plaintiff's job duties are typical of the putative Rule 23 Class and Overtime Class, as all class members are or were Laborers, Pipefitters, Foremen, Operators or similar positions who were paid hourly and primarily responsible for performing manual labor.

83. Plaintiff Harris will fairly and adequately protect the interests of the proposed VA Straight Time Class and VA Overtime Class and has retained counsel experienced in complex wage and hour class and collective action litigation.

84. This action is properly maintainable as a class action under Fed. R. Civ. P. 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members, and a class action is superior to other methods in order to ensure a fair and efficient adjudication of this litigation because, in the context of wage and hour litigation, individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal court against large corporate

defendants. Class litigation is also superior because it will preclude the need for unduly duplicative litigation resulting in inconsistent judgments pertaining to Defendant's policies and practices. There do not appear to be any difficulties in managing this class action.

85. Plaintiff Harris intends to send notice to all members of the putative VA Straight Time Class and VA Overtime Class to the extent required by Fed. R. Civ. P. 23.

### **CAUSES OF ACTION**

#### **COUNT I - VIOLATION OF THE FAIR LABOR STANDARDS ACT** ***(On Behalf of Plaintiffs and the FLSA Collective)***

86. Plaintiffs incorporate by reference all preceding paragraphs of the Complaint as if fully restated here.

87. Defendant engaged in a widespread, centralized pattern, policy, and practice of violating the FLSA by failing to pay Plaintiffs and other FLSA Collective members overtime at a rate of one and one-half times their regular rate for their off the clock hours worked in excess of 40 per week.

88. At all relevant times, Plaintiffs and other FLSA Collective members were engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 207(a).

89. The overtime wage provisions set forth in the FLSA apply to Defendant and protect Plaintiffs and the FLSA Collective.

90. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiffs and the other similarly situated individuals, Defendant has failed to make, keep, and preserve records with respect to each of their employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

91. The meal and break time deduction provisions of the FLSA and its implementing regulations apply to Defendant and required Defendant to, *inter alia*, either fully relieve Plaintiffs and the FLSA Collective members of duty during their unpaid 30-minute lunch breaks or pay them for the time worked during such ostensible breaks.

92. At all relevant times, Defendant was an employer engaged in interstate commerce within the meaning of the FLSA, 29 U.S.C. § 207(a).

93. At all relevant times, Defendant employed Plaintiffs and the FLSA Collective within the meaning of the FLSA.

94. As a result of Defendant's failure to compensate Plaintiffs and the members of the FLSA Collective at a rate of one and one-half times their regular rate for hours worked in excess of 40 per week, Defendant violated the FLSA, 29 U.S.C. § 207(a)(1).



95. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Because Defendant's violations of the FLSA were willful, a three-year statute of limitations applies.

96. Defendant did not make a good-faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and the FLSA Collective members.

97. Due to Defendant's FLSA violations, Plaintiffs and the other members of the FLSA Collective are entitled to recover from Defendant their unpaid overtime wages for all hours they worked in excess of 40 per week, an additional and equal amount as liquidated damages, prejudgment interest, reasonable attorneys' fees, and costs of litigation.

**COUNT II – VIOLATION OF NCWHA, § 95-25.6**  
***(On Behalf of Plaintiff Gonzalez Jr. and the Putative NC Rule 23 Class)***

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

99. At all relevant times, Plaintiff and the members of the putative Rule 23 Class were employees within the meaning of N.C. Gen. Stat. § 95-25.2(4).

100. At all relevant times, Defendant was an employer within the meaning of N.C. Gen. Stat. § 95-25.2(5). It is unlawful under North Carolina law for an employer to "suffer or permit" an employee to work without paying owed, earned, and/or promised wages for all hours worked, in violation of N.C. Gen. Stat. § 95-25.6.

101. Pursuant to the NCWHA, N.C. Gen Stat. § 95-25.6, employers must pay all owed, earned, and/or promised wages accruing to their employees, for all hours worked, on the employees' regular payday.

102. Pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.6, Defendant was required to pay Plaintiff Gonzalez Jr. and putative NC Rule 23 class members all wages, when due, for all promised, earned, and accrued regular, straight, and overtime wages of one and one-half times the promised wage rate, which is a part of all the employees' accrued and earned wages, and which should have been paid when due on the employees' regular payday; this requirement is not covered by the overtime provision under the FLSA.

103. Defendant, pursuant to their policies and practices, refused and failed to pay Plaintiff and the members of the putative NC Rule 23 Class for all wages that accrued on their designated pay days as set forth in the preceding paragraphs of this Complaint.

104. Plaintiff and the members of the putative NC Rule 23 Class worked off-the-clock in one or more workweeks within the past two years but due to Defendant's failure to pay them for all hours worked, they were not paid all owed, earned, and/or promised wages, including all straight time wages for all hours worked up to forty (40) and overtime wages for hours worked in excess of forty (40) per workweek pursuant

to the promised straight-time rate and corresponding overtime rate in violation of N.C. Gen. Stat. § 95-25.6.

105. Defendant acted willfully and with reckless disregard as to the rights of the putative NC Rule 23 Class under the NCWHA because Defendant has and had actual knowledge that the putative NC Rule 23 Class were not paid for all wages that accrued on their designated pay days, as set forth in the preceding paragraphs of this Complaint.

106. As a result of Defendant's unlawful policies and practices, Plaintiff Gonzalez Jr. and putative class members have been deprived of compensation due and owing.

107. Defendant's conduct, as alleged, was not in good faith, and Defendant did not have reasonable grounds for believing that their actions did not constitute a violation of the NCWHA. *See* § 95-25.22(a1).

108. As a direct and proximate result of Defendant's willful and unlawful conduct, Plaintiff and the members of the putative NC Rule 23 Class have suffered damages and are entitled to recovery of such amounts, including liquidated damages, prejudgment interest, and attorneys' fees and costs, pursuant to N.C. Gen. Stat. §§ 95-25.6, 95.25-22(a), (a1), and (d).

**COUNT III –VIOLATION OF VA. CODE § 40.1-29 (VIRGINIA WAGE  
PAYMENT ACT)**

***(On Behalf of Plaintiff Harris and the Putative VA Straight Time Class)***

109. Defendant violated Va. Code § 40-1.29 by failing to pay Plaintiff Harris and other similarly situated VA Straight Time Class Members their wages for all hours worked.

110. Defendant knew that Plaintiff and other similarly situated VA Straight Time Class members were not paid for all hours worked. Defendant knowingly and/or willfully failed to pay them all of the wages they were due.

111. Pursuant to Va. Code § 40-1.29(J), Plaintiff and those similarly situated are entitled to recover payment of their unpaid wages, an equal amount of liquidated damages, prejudgment interest, and attorneys' fees. Further, Defendant knowingly failed to pay such wages, thus entitling Plaintiff and those similarly situated to recover triple damages.

**COUNT IV- VIOLATION OF VA. CODE § 40.1-29.2 (VIRGINIA OVERTIME  
WAGE ACT)**

*(On Behalf of Plaintiff Harris and the Putative VA Overtime Class)*

112. Since July 1, 2021, Defendant has been an “employer” within the meaning of VOWA.

113. Since July 1, 2021, Plaintiff Harris and those similarly situated have met the definition of “employee” within the meaning of VOWA.

114. Plaintiff Harris and the putative VA Straight Time Class were or have been employed by Defendant in Virginia at any time since July 1, 2021, and have been covered employees entitled to the protections of VOWA.

115. Defendant is not exempt from paying Plaintiff Harris and the VA Overtime Class overtime premiums in accordance with VOWA.

116. Since July 1, 2021, Defendant has violated VOWA by failing to pay Plaintiff, and those similarly situated an overtime premium for all hours worked beyond 40 hours per week.

117. Defendant knew that Plaintiff Harris and the VA Overtime Class members were not paid overtime wages for all hours worked over 40 hours per week. Defendant knowingly or willfully failed to pay Plaintiff and the VA Overtime Class members all overtime wages due.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and all members of the FLSA Collective who join this action demand a **TRIAL BY JURY** and pray for the following relief:

- A. final certification of this case as a collective action pursuant to 29 U.S.C. § 216(b);
- B. an order designating Plaintiffs as representatives of the FLSA Collective and their undersigned counsel as FLSA Collective counsel;
- C. an order declaring that the practices complained of herein are unlawful under the FLSA;
- D. Application of the FLSA's three-year statute of limitations commensurate with Defendant's willful FLSA violations;
- E. an order granting judgment in favor of Plaintiffs and the FLSA Collective, and awarding the full amount of damages and liquidated damages available;
- F. an award of prejudgment and post-judgment interest;

- G. an award of Plaintiffs' reasonable attorneys' fees and costs; and
- H. such other and further relief as this Court deems just and proper.

WHEREFORE, Plaintiff Gonzalez Jr. and all members of the NC Rule 23 Class demand a **TRIAL BY JURY** and pray for the following relief:

- A. certification of the proposed NC Rule 23 Class and for designation of Alberto Gonzalez Jr. as class representative and his counsel as class counsel;
- B. judgment against Defendant for violation of the wage payment provisions of the North Carolina Wage and Hour Act, N.C. Gen. Stat. § 95-25.6;
- C. an award of damages, liquidated damages, appropriate statutory penalties, pre-judgment and post-judgment interest, and attorneys' fees and costs to be paid by Defendant pursuant to North Carolina law;
- D. all other legal and equitable relief available pursuant to applicable law; and
- E. such other relief as the Court may deem just and proper.

WHEREFORE, Plaintiff Harris and all members of the VA Straight Time Class and VA Overtime Class demand a **TRIAL BY JURY** and pray for the following relief:

- A. certification of the proposed VA Straight Time Class and for designation of Willie Harris as class representative and his counsel as class counsel;
- B. certification of the proposed VA Overtime Class and for designation of Willie Harris as class representative and his counsel as class counsel;
- C. judgment against Defendant finding it violated the VWPA by failing to pay Plaintiff and the proposed VA Straight Time Class for all of their wages earned;

D. judgment against Defendant finding it violated VOWA by failing to pay Plaintiff and the proposed VA Overtime Class overtime compensation for hours worked over forty per workweek;

E. liquidated damages equal to the unpaid wage compensation due under Va. Code § 40.1-29(J); and/or treble damages under Va. Code § 40.1-29(J) for Defendant's knowing violation of the law;

F. reasonable attorneys' fees and costs incurred in filing and prosecuting this lawsuit pursuant to § 40.1-29;

G. all other legal and equitable relief available pursuant to applicable law; and

H. such other relief as the Court deems appropriate.

Date: March 24, 2025

Respectfully submitted,

**NICHOLS KASTER, PLLP**

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