

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:20-cv-266-MOC**

ROBERT E. STAFFORD, JR., on behalf)
of himself and all others similarly situated)
))
Plaintiffs,)
))
v.)
))
BOJANGLES’ RESTAURANTS, INC.,)
a North Carolina Corporation,)
))
Defendant.)
_____)

AMENDED COMPLAINT

Plaintiff Robert E. Stafford, Jr. (“Plaintiff” or “Stafford”), on behalf of himself and others similarly situated, by and through the undersigned, brings this action against Bojangles’ Restaurants, Inc. (“Defendant” or “Bojangles”), and hereby alleges upon personal knowledge and information and belief as follows:

NATURE OF THIS ACTION

1. Plaintiff brings this action, on behalf of himself and others similarly situated, to recover (i) unpaid minimum wages, (ii) unpaid overtime premiums, (iii) unpaid bonuses/commissions, and (iv) statutory penalties, including liquidated damages, for Defendant’s violation of the FLSA, 29 U.S.C. §§ 201 *et seq.*, specifically 29 U.S.C. §§ 207, 216(b) (“FLSA”), and specifically a collective action provision of the FLSA, found at §216(b).

2. Plaintiff further brings this action, on behalf of himself and others similarly situated, as a Rule 23 Class Action to recover unpaid wages plus interest, liquidated damages, costs and fees and penalties as allowed for Defendants’ violations of the NCWHA, N.C. Gen. Stat. §§ 95-25.1 *et. seq.*

3. Plaintiff further brings this action, in his individual capacity as a homosexual male, to recover damages for Defendant's discriminatory and otherwise illegal conduct in, among other things, discriminating against him and discharging him because of his sexual orientation, in violation of Title VII of the Civil Rights Act of 1964, as amended.

4. Plaintiff further brings this action, in his individual capacity, seeking damages for wrongful discharge in violation of North Carolina public policy and the North Carolina Equal Employment Practices Act, N.C. Gen. Stat. § 143-422.1, *et seq.*

5. Plaintiff further brings this action, in his individual capacity, seeking damages for interference with his rights under the Family Medical Leave Act, as amended, 29 U.S.C. § 2601, *et seq.* ("FMLA").

6. Plaintiff further brings this action, in his individual capacity, seeking damages for violations of the Equal Pay Act of 1963, 29 U.S.C. § 206, *et seq.* ("EPA"), in that Defendant failed to pay him at the same rate of pay as several heterosexual comparators, even though Plaintiff had more seniority and performed similar duties requiring the same skill, effort, qualifications and responsibility as his heterosexual counterparts.

PARTIES

7. Plaintiff is an adult individual who is a resident of Waxhaw, Union County, North Carolina Wilmington, and worked as a non-exempt hourly employee for Defendants from April 2018 until February 2020 when he was unlawfully terminated. A written consent form for Stafford is attached hereto as Exhibit A, pursuant to 29 U.S.C. § 216(b).

8. Bojangles' Restaurants, Inc. is a North Carolina Corporation with its principal place of business in Raleigh, North Carolina.

9. Defendant Bojangles, through its agents, has authority to hire and fire employees, the authority to direct and supervise the work of employees, including Plaintiff in this case, and the authority to make decisions regarding wage and hour classifications, including the decisions to as to employee compensation and capital expenditures.

10. At all relevant times, Defendant, through its agents, acted in devising, directing, implementing and supervising the wage and hour practices and policies relating to employees, including the decision to not pay Plaintiff for wages earned as required by the FLSA.

JURISDICTION AND VENUE

11. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 in that this action arises under the Constitution and laws of the United States, among them Title VII of the Civil Rights Act of 1964, as amended, the FLSA, 29 U.S.C. §§ 201 et seq., and the FMLA, 29 U.S.C. § 2601, *et seq.*

12. Venue is properly placed in this district pursuant to 28 U.S.C. § 1391(c) in that Plaintiff's residence is in Waxhaw, North Carolina, and Plaintiff primarily worked at Defendant's location in Waxhaw, North Carolina.

13. 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.

14. 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.

ADMINISTRATIVE REMEDIES

15. Plaintiff satisfied his obligation to exhaust his administrative remedies by timely filing a Charge of Discrimination against Bojangles with the United States Equal Employment Opportunity Commission ("EEOC") alleging discrimination based on sex.

16. The EEOC issued a Notice of Right to Sue on February 5, 2020. Plaintiff timely brings this action within ninety (90) days of his receipt thereof.

17. Plaintiff has satisfied all private, administrative, and judicial prerequisites to the institution of this action.

COLLECTIVE ACTION FOR VIOLATIONS OF THE FLSA

18. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

19. Plaintiff brings this collective action on behalf of himself and all other persons similarly situated pursuant to the FLSA, 29 U.S.C. §§ 296, 297, and 216(b), specifically, as follows: All Shift Managers employed by Defendant within the three years preceding the filing of this action who were not paid for all hours worked and were not paid overtime premiums for all hours worked over 40 in one workweek.

20. Defendant has violated the provisions of the FLSA, resulting in damages to Plaintiff, and those similarly situated, in the form of unpaid wages, incurred and incurring costs and reasonable attorney's fees.

21. As a result of the minimum wage, overtime pay and record-keeping violations of the FLSA, Plaintiff, and those similarly situated have suffered damages by failing to receive their lawful wages during their tenure of employment with Defendant. In addition to the amount of unpaid wages owing to the Plaintiff, and those similarly situated, they are also entitled to an additional amount of liquidated damages pursuant to 29 U.S.C. 216(b) and/or prejudgment interest.

22. Plaintiff, and those similarly situated are also entitled to an award of attorneys' fees pursuant to 29 U.S.C. 216(b).

23. Defendants' actions in failing to compensate the Plaintiff, and those similarly situated, in accordance with the provisions of the FLSA were willful and not in good faith.

24. There are numerous other similarly situated employees and former employees of Defendant who have been improperly compensated in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Specifically, all employees and former employees of Defendant who have been employed by the Defendant as shift managers in any location owned and/or operated by Defendant in the State of North Carolina should receive notice and the opportunity to join the present lawsuit.

25. Pursuant to 29 U.S.C. 216(b), attached to and filed with this Petition as Exhibit A is the Consent to Join Collective Action form signed by the Representative Plaintiff.

26. The claims under the FLSA may be pursued by those who opt-in to this case under 29 U.S.C. 216(b).

CLASS ACTION FOR VIOLATIONS UNDER NORTH CAROLINA LAW

27. Plaintiff brings this Class Action pursuant to Federal Rule of Civil Procedure 23, on behalf of himself and a Class as defined below: "All persons who have worked or currently work as Shift Managers for Defendant for the past three years and have been deprived of wages for work performed."

28. **Numerosity.** The Class is composed of thousands of persons geographically dispersed throughout the State of North Carolina, the joinder of whom, in one action, is impractical. The Class is ascertainable and identifiable. Membership in the Class can be determined easily. Defendants can determine the identity of all Class Members from their own records.

29. **Commonality.** Questions of law and fact common to the Class exist as to all Members of the Class and predominate over any questions affecting only individual Members of the Class. These common legal and factual issues include the following:

- a. Whether Plaintiff and other members of the class were expected and/or required to work hours without compensation;
- b. Whether Defendant suffered and permitted Plaintiff and other members of the class to work hours without compensation;
- c. Whether Defendant failed to pay Plaintiff and other members of the class all applicable straight time wages for all hours worked;
- d. Whether Defendant failed to pay Plaintiff and other class members overtime compensation due them for all hours worked in excess of forty per week;
- e. The correct statute of limitations for Plaintiff's claims and the claims of other members of the class;
- f. The proper mechanism for assessing and awarding damages and administering relief to the Plaintiffs, including the relief to reduce the threat of future harm to the Plaintiff, and others similarly situated;
- g. The nature and extent of compensatory damages to the Plaintiff, and others similarly situated;
- h. How compensatory damages should be allocated to the Plaintiff and others similarly situated; and
- i. How responsibility for damages should be allocated amongst the Defendants.

30. **Typicality.** Plaintiff's claims are typical of the claims of the Plaintiff Class, as all such claims arise out of Defendant's uniform course of wrongful conduct complained of herein.

31. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the interests of the Members of the Class and has no interest antagonistic to those of the Class. Plaintiff has retained counsel experienced in complex litigation and labor and employment law matters.

32. **Predominance and Superiority.** This Class Action is appropriate for certification because questions of law and fact common to the Members of the Class predominate over questions affecting only individual Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all Members of the Class is impracticable. Should individual Class Members be required to bring separate actions, this Court and courts throughout the State of North Carolina would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this Class Action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

FACTUAL ALLEGATIONS

33. Plaintiff was hired by Bojangles as a crew member on or about April 14, 2018.

34. Plaintiff typically worked Wednesday through Sunday. He was scheduled to work 40-hour shifts, but he was frequently required to work off the clock. This off the clock work resulted in Plaintiff working more than 40 hours per week during at least one work week. In fact,

Plaintiff worked more than 40 hours per week in each work week during his entire employment with Bojangles.

35. Plaintiff was often required to perform tasks before and after his scheduled shift, of which Defendant was fully aware and required.

36. As Shift Manager, Plaintiff was required to comply with Defendant's "labor budget" and would be subject to reprimand, discipline, and termination if he exceeded labor budgets during any given shift.

37. Often circumstances arose during preceding shifts which would put the next Shift Manager over the labor budget. Defendant was fully aware of this situation. Defendant was also aware that it gave the Shift Manager two options - have employees work off the clock or have the Shift Manager work off the clock -- in order to balance the labor budget.

38. Defendant was aware that Plaintiff and other Shift Managers were frequently forced to work off the clock in order to comply with Defendant's strict and unpliant labor budgets.

39. Throughout his tenure with Bojangles, Plaintiff consistently and accurately performed his duties and met and/or exceeded all job requirements. He never had any disciplinary issues.

40. At all relevant times, Plaintiff had excellent relationships with his colleagues and customers, often covering shifts for his teammates. Plaintiff was often complimented by customers for his outstanding work efforts. Plaintiff consistently earned rewards through the Bo Star Incentive Reward Program.

41. Plaintiff was open and honest at work regarding his sexual orientation and his boyfriend frequently visited him at work. It was common knowledge that Plaintiff was not heterosexual like most of the other employees and all of the other Shift Managers.

42. When Plaintiff would get his nails manicured, several co-workers would make statements and questioned supervisors whether it was appropriate for Plaintiff to have manicured fingernails and whether that was the “look” Defendant should be presenting to customers.

43. After this commenting and questioning about Plaintiff’s choice to have his nails manicured, the Area Director approached Plaintiff at work and told him that he “needed to do something with his nails” and to “cut them down or something.” Plaintiff’s nails were not long at this time. The Area Director was clearly directing Plaintiff to “do something” about his manicured nails.

44. Plaintiff was also told by a supervisor to “watch his mannerisms” at work, which specifically referred to his sexual orientation.

45. In November 2018, Plaintiff completed the required hands-on training to work as a Shift Manager and began working as Shift Manager at that time.

46. In April 2019, Plaintiff completed the second stage of the training requirements to work as a Shift Manager which included completion of a handbook and review of forty-seven (47) training videos, which were completed at home.

47. Defendant at all times had actual knowledge Plaintiff had completed the required video/training from home yet failed to pay him minimum wages for hours spent completing.

48. Plaintiff was promised an increase in pay along with the increase in responsibilities from the time he first began working as Shift Manager. Plaintiff was told that this position would eventually lead into the Assistant Unit Director position.

49. In his new position as Shift Manager, and at the direction of Defendant, Plaintiff often travelled to different store locations to help when needed. Plaintiff frequently paid travel expenses out of his own pocket and was not reimbursed.

50. Plaintiff was not paid any wages for the travel he was required to make between stores.

51. Plaintiff was frequently required to stay on the premises, on duty, after closing to clean up and close down the restaurant. Plaintiff was not clocked in during these times and was not paid for the hours worked.

52. In July 2019, Plaintiff discovered that he had not been receiving increased pay commensurate with his new position as a Shift Manager and was still receiving the lower crew member pay rate, exclusive of the off-the-clock time he was not paid for.

53. Plaintiff repeatedly contacted Human Resources regarding this discrepancy. When Plaintiff would request clarification, there always seemed to be miscommunication as to who was responsible for gathering and processing the necessary information.

54. Defendant, through its senior managers, had failed to properly facilitate the paperwork necessary to process Plaintiff's promotion and failed to pay Plaintiff as promised.

55. When Defendant finally began paying Plaintiff at the correct rate in August of 2019, he was nonetheless paid less than his heterosexual counterparts, even though he held the most seniority among the lower level managerial staff.

56. Plaintiff was paid significantly less than the other shift managers, despite performing the same or similar job duties. Plaintiff also worked for Defendant longer than these individuals. The only difference is they are heterosexual.

57. For instance, Plaintiff earned \$10.00 per hour while Marcy Parker and Cathy Richardson earned \$13.20 per hour and Heavny Tim earned \$12.00 per hour.

58. Plaintiff was repeatedly told that he would be promoted to Assistant Unit Director, but each time, on at least three occasions, Defendant filled the positions with other employees, all heterosexual, and all of whom Plaintiff had trained.

59. Plaintiff suffers from chronic mineral deficiency that causes him to bleed or spot in his stool and any viral infections or illness can cause a flare up resulting in more bleeding. The bleeding, in turn, causes loss of consciousness at times. The mineral deficiency also causes hair loss. He has been treated for the condition and he also tries to manage it himself.

60. In October of 2019, Plaintiff experienced considerable bleeding. He required medical treatment for this condition and it was very frightening for him, as he has an extensive family history of cancer, including terminal cancer at a young age.

61. On January 25, 2020, Plaintiff woke up with a headache and notified his supervisor. She told him to stay home and take care of himself and to not worry about his 4:00 pm shift. Later in the day, Plaintiff was involved in a car accident and certainly could not work his shift.

62. On February 1, 2020, Plaintiff had to call out of work due to a family emergency when his sister was hospitalized due to severe Lupus complications.

63. Late that night, around 2 a.m. on February 2, 2020, Plaintiff himself was admitted to the hospital due to low blood pressure resulting in unconsciousness. The low blood pressure was related to his ongoing mineral deficiency and rectal bleeding condition of which Defendant was well aware.

64. Plaintiff's medical condition constituted qualifying events under the FMLA, triggering Defendant's responsibility to offer FMLA leave to Plaintiff.

65. Instead, without any warning or FMLA discussion occurring, Defendant terminated Plaintiff for being "undependable" and "unreliable," despite his otherwise impeccable attendance record prior to the two medical incidents leading up to his termination, neither of which were within his control.

66. At no time did Plaintiff "stop showing up for work." His supervisor told him on January 25, 2020 that it was fine if he did not come in to work after he told her he had a headache. Later that day, he was in a car accident and definitely could not work his shift.

67. On February 1, 2020, he had a family emergency and that night he was hospitalized with low blood pressure from an ongoing medical condition which Defendant was aware of.

68. Plaintiff notified the supervisor of his emergency room visit at 10:00 a.m. in the morning when his shift did not begin until 4:00 p.m. The supervisor told him at that time she was taking him off the schedule. Plaintiff was never a "no show" and certainly did not "stop showing up for work."

69. Defendant seeks to paint a negative picture of Plaintiff to cover up its discrimination against Plaintiff for his sexual orientation, as well as deflect attention from Defendant's other wrongdoing.

70. Moreover, during his employment, several of his coworkers failed to meet requirements and/or acted in ways that would have warranted termination, but were never reprimanded. Specifically:

- a. In September 2019, Malcom Boykin, a heterosexual, put a knife to Plaintiff's head while Plaintiff was at work counting money. Plaintiff reported this incident to his supervisor, but no disciplinary action was taken.
- b. In November 2019, Mr. Boykin called Plaintiff a "niggah" in front of customers. Plaintiff again reported this incident to his supervisor and no disciplinary action was taken.
- c. Dillon Lewis, another Shift Manager, frequently called out or was tardy for his shifts. Over the course of ten months from February 2019 through December 2019, Mr. Lewis was late or absent at least fourteen (14) times. Other than the disciplinary actions implemented by Plaintiff himself, no other disciplinary measures were taken.

71. On information and belief, based on his experience as a Shift Manager and his participation in duties typically performed by Unit Managers, the conduct described above would have resulted in termination by Defendant.

72. As described in the preceding paragraphs, Defendant, through its managers, treated Plaintiff differently than every other heterosexual employee.

73. Plaintiff earned monetary rewards through the Bo Star Incentive Reward Program. As of February 2, 2020, Plaintiff had \$250 in outstanding employee rewards. Plaintiff has not been paid for those bonus rewards.

FIRST CAUSE OF ACTION
Violation of Fair Labor Standards Act – Unpaid Wage
(On Behalf of North Carolina Collective)

74. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

75. 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).

76. 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).

77. 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).

78. At all times hereinafter mentioned, Plaintiff, and others similarly situated, have been employees within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

79. At all times hereinafter mentioned, Plaintiff, and all others similarly situated, were individual employees engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

80. Defendant violated the FLSA by not paying Plaintiff, and all others similarly situated, for every hour that he worked in that Defendant: (1) suffered or permitted them to work off the clock, performing opening and/or closing duties; (2) did not pay them for hours worked

over 40 hours in a workweek; and (3) failed to pay Plaintiff for training and travel time that was on the clock but unpaid.

81. Defendant's violation of the FLSA was willful in that Plaintiff complained to his supervisors about these issues but they were not corrected.

SECOND CAUSE OF ACTION
Violations of North Carolina Wage and Hour Act
(On Behalf of North Carolina Class)

82. Plaintiff reasserts the allegations set forth in the above paragraphs.

83. 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).

84. 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).

85. Defendant violated these statutes by failing to pay Plaintiff all promised and earned wages on the employee's regular payday for all hours worked.

86. Defendants also violated Plaintiff's rights under the NCWHA by failing to pay and diverting from Plaintiff earned bonuses through the Bo Star Incentive Reward Program that he procured before his employment ended on February 2, 2020.

87. Defendant willfully violated Plaintiff's rights under the NCWHA.

88. As a result of Defendant's willful action, Plaintiff is entitled to recover liquidated damages pursuant to N.C. Gen. Stat. § 95-25.22.

89. Plaintiff is entitled to recover his attorneys fees pursuant to N.C. Gen. Stat. § 95-25.22(d).

THIRD CAUSE OF ACTION
Title VII – Discrimination on the Basis of Sex
(On Behalf of Plaintiff Individually)

90. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint.

91. At all relevant times, Bojangles was an “employer” under Title VII, that engaged in an industry affecting commerce and had more than fifteen (15) employees, as defined in 42 U.S. Code § 2000e.

92. Plaintiff, a homosexual male, was also passed over for promotion to the Assistant Unit Director position based on his sexual orientation.

93. When Plaintiff initially accepted the role as Shift Manager, Defendant failed to process his paperwork for nine months and continued to pay Plaintiff a lesser rate than other heterosexual employees in his position, as identified herein.

94. Plaintiff was terminated for allegedly being undependable and unreliable, despite his long-standing record of dependability and reliability.

95. While Plaintiff was terminated for purported misconduct, other heterosexual employees who had failed to perform their job requirements were not disciplined and maintained their employment and did not suffer the adverse consequences to their careers and reputation that Plaintiff suffered.

96. Defendant singled Plaintiff out for his sexual orientation by telling Plaintiff he needed to “do something” about his manicured fingernails. The supervisor who instructed Plaintiff to do something about his appearance was responding to comments by coworkers who questioned whether Plaintiff should be allowed to have manicured fingernails at work and whether it was the type of “look” Defendant wanted to portray to customers.

97. Supervisors also instructed Plaintiff to “watch his mannerisms” - which a reasonable person would interpret as referring to Plaintiff’s sexual orientation.

98. Plaintiff was unlawfully discriminated against on the basis of sex, specifically, his sexual orientation, by Defendant when he was singled out and told to change or control his

appearance and personality traits (both of which were based on his sexual orientation), and he was passed over for promotion, paid less than other employees in his position, and eventually terminated.

99. Plaintiff has suffered damages because of Defendant's unlawful conduct in violation of Title VII of the Civil Rights Act of 1964, in an amount to be determined by a jury.

FOURTH CAUSE OF ACTION
Wrongful Discharge in Violation of Public Policy
(On Behalf of Plaintiff Individually)

100. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

101. Defendant employed at least fifteen (15) employees at all relevant times.

102. In doing the acts alleged above, Defendant violated the public policy of North Carolina as set forth in N.C.G.S. § 143-422.1 by terminating Plaintiff based on his sexual orientation.

103. As an actual, proximate, and foreseeable consequence of Defendant's conduct, Plaintiff has suffered lost income, emotional distress, anxiety, humiliation, expenses, and other damages and is entitled to recover compensatory damages in an amount to be determined at trial.

104. Defendant's actions were done maliciously, willfully or wantonly, and in a manner that demonstrates a reckless disregard for Plaintiff's rights. As a result of Defendant's conduct, Plaintiff is entitled to recover punitive damages in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
Violation of FMLA - Interference
(On Behalf of Plaintiff Individually)

105. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

106. At all times hereinafter mentioned, Defendant has been and is an “employer” as defined by the FMLA, 29 U.S.C. § 2611(4)(A).

107. At all relevant times, Plaintiff was an “eligible employee” with the definition of FMLA, 29 U.S.C. § 2611(2)(A), on the basis that Defendant employed Plaintiff for at least 12 months, and Plaintiff performed at least 1,250 hours of service for Defendant during the 12-month period preceding the termination of her employment.

108. Beginning in October of 2019, Plaintiff suffered an ongoing medical condition involving bleeding from his rectum. The symptoms periodically re-occurred and Plaintiff would seek treatment for the symptoms when they did. His Plaintiff’s supervisors were aware of the condition and his fear and anxiety over it.

109. A “serious health condition” under the FMLA is an “illness, injury, impairment, or physical or mental condition” that involves “inpatient care in a hospital, hospice, or residential medical care facility” or “continuing treatment by a health care provider.” 29 U.S.C. § 2611(11).

110. Plaintiff has a long history of cancer in his family with no male living beyond the age of 65. His bleeding episodes were thus taken seriously by himself and his healthcare practitioners.

111. In February of 2019, Plaintiff suffered another bleeding episode that required hospitalization because his blood pressure became dangerously low.

112. Plaintiff notified Defendant of the recurrence of the bleeding and required hospital visit. He communicated with his supervisor when he was released from the hospital to let her know he would not make his shift at 4:00 p.m.

113. Upon learning that Plaintiff suffered a recurrence of his ongoing rectal bleeding condition, Plaintiff’s supervisor told him she planned to take him off the schedule (terminate

him) for being unreliable due to his medical absences. The supervisor did not provide Plaintiff with notice about FMLA leave or provide him any paperwork to apply for it.

114. Defendant told her not to terminate him and, despite his medical condition and recent release from the hospital, he went to work to meet with the supervisor in person to explain his medical condition and most recent bleeding event and to try to save his job.

115. After he explained his medical circumstances yet again, the supervisor still did not offer FMLA leave. Instead, she terminated Plaintiff for missing work due to his qualifying medical event.

116. As a direct, proximate and foreseeable consequence of Defendant's conduct, Plaintiff has suffered lost income, emotional distress, anxiety, humiliation, expenses, and other damages and is entitled to recover compensatory damages in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
Violation of Equal Protection Act
(On Behalf of Plaintiff Individually)

117. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs.

118. At all relevant times, Defendant was an "employer" under the EPA and acted as Plaintiff's employer.

119. Defendant violated the EPA by providing Plaintiff with lower pay than similarly situated heterosexual employees identified in Paragraph 52 above on the basis his sexual orientation, even though Plaintiff had more seniority and performed similar duties requiring the same skill, effort, qualifications and responsibility as his heterosexual counterparts.

120. Defendant subjected Plaintiff to discriminatory pay practices and discrimination in connection with the ancillary benefits and other terms of employment in violation of the EPA.

121. Plaintiff was not paid less than heterosexual counterpart on the basis of seniority, merit, quantity or quality of production, or a factor other than sex orientation, but was paid less due to his sexual orientation.

122. Defendant was the cause of the unlawful conduct complained of in this action.

123. The foregoing conduct constitutes a willful violation of the EPA within the meaning of that statute.

124. As a result of Defendant's conduct as alleged herein, Plaintiff has suffered and continues to suffer harm, including but not limited to, lost earnings, lost benefits, and other financial loss, and is entitled to statutory, liquidated and other damages.

125. Defendant's unlawful conduct as described in this Complaint has been willful and intentional. Defendant was aware of the employment practices it undertook were unlawful, yet it did not make a good faith effort to comply with the EPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands, on behalf of himself and others similarly situated, the following relief:

1. An Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid back wages due to Plaintiff and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff;

2. An Order pursuant to the NCWHA finding Defendants liable for unpaid back wages, commissions, and liquidated damages equal in amount to the unpaid compensation due to Plaintiff;

3. On behalf of himself only, an Order awarding Plaintiff damages for Defendant's violation of the FMLA, including backpay, lost wages, employment benefits, liquidated damages and any other compensation denied or lost because of Defendant's violation of the FMLA.

4. On behalf of himself only, an Order awarding Plaintiff damages for Defendant's violation of Title VII of the Civil Rights Act of 1964, including backpay, lost wages, employment benefits, and any other compensation denied or lost because of Defendant's violation of Title VII of the Civil Rights Act of 1964;

5. On behalf of himself only, an Order awarding Plaintiff damages for Defendant's violation of the Equal Pay Act, including backpay, lost wages, employment benefits, and any other compensation denied or lost because of Defendant's violation of the Equal Pay Act;

6. An Order awarding compensatory damages in an amount to be proven at trial;

7. An Order awarding punitive damages under N.C. Gen. Stat. § 1D-115 in an amount to be proven at trial;

8. An Order awarding the costs of this action;

9. An Order awarding reasonable attorneys' fees;

10. An Order awarding pre-judgment and post-judgment interest at the highest rates allowed by law; and

11. An Order granting any other necessary or appropriate relief to which Plaintiff is entitled under the law.

JURY TRIAL DEMAND

Plaintiff demands a trial by jury.

/s/ L. Michelle Gessner

L. Michelle Gessner, NCSB#26590

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