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

ROBERT E. STAFFORD, JR., MELISSA BONETTI, MICHELLE LAYTON, HERBERT MALLET, JACQUELINE JOHNSON, CATHRINE ALLEN, DEVRON JONES, LAURA SHOPE, TABITHA DANIEL, DAMIAN PRENTICE, DEBRA CALL, LAQUASHA OSAGHEE, RONDA COLE, MARQUITA SMITH, AND JENNIFER WESTER, on behalf of themselves and all others similarly situated, Plaintiffs, v. BOJANGLES' RESTAURANTS, INC. Defendants.	**JURY TRIAL DEMANDED** **SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT**

Plaintiffs Robert E. Stafford, Jr., Melissa Bonetti, Michelle Layton ("North Carolina Plaintiffs"), Herbert Mallet and Jacqueline Johnson ("South Carolina Plaintiffs"), Cathrine Allen and Devron Jones ("Kentucky Plaintiffs"), Laura Shope and Debra Call ("Virginia Plaintiffs"), Tabitha Daniel and Damian Prentice, ("Tennessee Plaintiffs"), Laquasha Osaghee and Ronda Cole ("Georgia Plaintiffs"), and Marquita Smith and Jennifer Wester ("Alabama Plaintiffs") (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, by and through their attorneys, bring this Collective and Class Action Complaint against Defendant Bojangles' Restaurants, Inc. ("Defendant" or "Bojangles"), and state as follows:

NATURE OF THIS ACTION

1. This Complaint involves the collective claims asserted under the Fair Labor Standards Act, ("FLSA"), 29 U.S.C. § 201 et seq., and the Fed. R. Civ. P. 23 claim asserted

under North Carolina state law asserted in previous iterations of this Amended Complaint. It also involves those claims presently brought pursuant to Fed. R. Civ. P. 23 by Plaintiffs, individually and on behalf of all similarly situated persons employed by Defendants, arising from Defendants' willful violations of:

a. The North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.1 et. seq.

b. The South Carolina Payment of Wages Act ("SCWA"), S.C. Code Ann. §§ 41-10-10, et seq;

c. The Kentucky Wage and Hours Act ("KWHA"), KRS §§ 337.010, et seq.

d. The Virginia Minimum Wage Act ("VMWA"), Va. Code Ann. §§ 40.1-28.8, et seq.; 40.1-28.10, et seq. And the Virginia Wage Payment Act ("VWPA"), Va. Code Ann. § 40.1-29.

e. The Tennessee Wage Regulation Act ("TWRA"), T.C.A. §§ 50-2-101 to 50-2-113.

f. The Georgia Minimum Wage Law ("GMWL"), O.C.G.A. §§ 34-4-1 to 34-4-6; and the Georgia Wage Payment Law ("GWPL"),O.C.G.A. § 34-7-2 and 34-2-11.

2. This Complaint also involves the individual claims of Plaintiff Robert Stafford to recover damages against Defendant for:

a. Discrimination on the basis of sexual orientation in violation of Title VII of the Civil Rights Act of 1964, as amended'

b. 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.*;

c. interference with rights under the Family Medical Leave Act, as amended, 29 U.S.C. § 2601, *et seq*. ("FMLA");

d. violation 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.

3. Defendant requires its hourly Shift Managers to work a full-time schedule, plus overtime. However, Defendant does not compensate their Shift Managers for all hours worked; instead, Defendant requires its Shift Managers to perform compensable work tasks before and after their scheduled shifts, during their unpaid meal periods, on their way to and from work, and on their days off, when they are not clocked into Defendant's timekeeping system. These policies result in Shift Managers not being paid for all time worked, including overtime.

4. Plaintiffs and Shift Managers spend significant time performing this off-the-clock work, but Defendant does not compensate them for it. Because much of this time qualifies as overtime within the meaning of applicable state and federal laws, Plaintiffs and Shift Managers are owed overtime pay for this uncompensated, off-the-clock work.

5. The individual Plaintiffs seek to represent in this action are current and former Shift Managers who are similarly situated to each other in terms of their positions, job duties, pay structure, and Defendant's violations of the FLSA and state law.

6. Plaintiffs seek a declaration that their rights, the rights of the Collective, and the rights of the Class members, were violated, an award of unpaid wages and liquidated damages, injunctive and declaratory relief, attendant penalties, and an award of attorneys' fees and costs to make them whole for damages they suffered, and to ensure that they and future workers will not be subjected by Defendant to such illegal conduct in the future.

PARTIES

7. Plaintiff Robert Stafford ("Plaintiff Stafford") is an adult individual who is a resident of Waxhaw, Union County, North Carolina Wilmington, and worked as a non-exempt hourly employee for Defendant in North Carolina from April 2018 until February 2020 when he was unlawfully terminated.

8. Plaintiff Melissa Bonetti is an adult individual who is a resident of Lawndale, North Carolina, and worked as a non-exempt hourly Shift Manager for Defendant in North Carolina from 2016 to May of 2018.

9. Plaintiff Michelle Layton is an adult individual who is a resident of China Grove, North Carolina, and worked as a non-exempt hourly Shift Manager for Defendant in North Carolina from July 2018 to November 2020.

10. Plaintiff Herbert Mallet is an adult individual who is a resident of Columbia, South Carolina, and worked as a non-exempt hourly Shift Manager for Defendant in South Carolina from 2019 to 2021.

11. Plaintiff Jacqueline Johnson is an adult individual who is a resident of Anderson, South Carolina, and worked as a non-exempt hourly employee for Defendant in South Carolina from May of 2016 to September of 2021.

12. Plaintiff Laura Shope is an adult individual who is a resident of Meadowview, Virginia, and worked as a non-exempt hourly employee for Defendant in Virginia from March of 2019 to March of 2020.

13. Plaintiff Debra Call is an adult individual who is a resident of Saltville, Virginia, and worked as a non-exempt hourly employee for Defendant in Virginia from 2016 to September of 2019.

14. Plaintiff Cathrine Allen is an adult individual who is a resident of Radcliffe, Kentucky, and worked as a non-exempt hourly Shift Manager for Defendant in Kentucky from October 2017 to April 2018.

15. Plaintiff Devron Jones is an adult individual who is a resident of Shelbyville, Kentucky, and worked as a non-exempt hourly Shift Manager for Defendant in Kentucky from September of 2017 to January of 2021.

16. Plaintiff Marquita Smith is an adult individual who is a resident of Birmingham, Alabama, and worked as a non-exempt hourly Shift Manager for Defendant in Alabama from January of 2014 to May of 2019.

17. Plaintiff Jennifer Wester is an adult individual who is a resident of Moody, Alabama, and worked as a non-exempt hourly Shift Manager for Defendant in Alabama from May of 2017 to February of 2019.

18. Plaintiff Tabitha Daniel is an adult individual who is a resident of Sale Creek, Tennessee, and worked as a non-exempt hourly Shift Manager for Defendant in Tennessee from August of 2017 to October of 2021.

19. Plaintiff Damian Prentice is an adult individual who is a resident of Birmingham, Alabama, and worked as a non-exempt hourly employee for Defendant in Tennessee from July 2019 to October 2019.

20. Plaintiff Laquasha Osaghee is an adult individual who is a resident of Snellville, Georgia, and worked as a non-exempt hourly Shift Manager for Defendant in Georgia from August 2018 to March 2019.

21. Plaintiff Ronda Cole is an adult individual who is a resident of Atlanta, Georgia, and worked as a non-exempt hourly Shift Manager for Defendant in Georgia from October of 2017 to July of 2019.

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

23. Upon information and belief, Defendants have employed thousands of Shift Managers – including Plaintiffs – during the applicable time period to perform services that include supervising and overseeing crew members at Defendant's restaurants.

24. 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 Plaintiffs and Class Members for wages earned as required by the FLSA and applicable state law.

JURISDICTION AND VENUE

25. 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*.

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

27. 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.

28. All 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

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

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

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

FACTUAL ALLEGATIONS

Facts Related to Class and Collective Wage and Hour Claims

32. Defendant owns and operates Bojangles restaurants in several states across the United States, including Tennessee, Alabama, Virginia Kentucky, Georgia, South Carolina, and North Carolina, during all times relevant to this Collective Action Complaint.

33. Defendant is and/or has been the "employer" of the Plaintiffs and those similarly situated within the meaning of 29 U.S.C. § 203(d), during all times relevant to this Collective Action Complaint.

34. Plaintiffs and all other similarly situated persons are current or former hourly-paid Shift Managers of Bojangles restaurants.

35. Defendant employed Plaintiffs and those similarly situated and was responsible for establishing and administering pay policies and practices, including pay classifications and overtime pay rates, during all times relevant to this Collective Action Complaint.

36. Defendant has had a centralized plan, policy, and practice (scheme) of establishing and administering pay practices for its employees classified as hourly-paid Shift Managers.

37. Plaintiffs and those similarly situated are or have been "employees" of Defendant as defined by Section 203(e)(1) of the FLSA and, worked for Defendant within the territory of the United States within three (3) years preceding the filing of this lawsuit and, during all times material to this Collective Action Complaint.

38. Defendant has been an enterprise engaged in commerce or in the production of goods for commerce as defined by Section 203(s)(1) of the FLSA, with annual revenue in excess of $500,000.00 during all times material to this Collective Action Complaint.

39. At all times material to this action, Defendant has been subject to the pay requirements of the FLSA because they are an enterprise in interstate commerce and their employees are engaged in interstate commerce.

40. Defendants employ individuals classified as hourly-paid Shift Managers whose primary duties are to assist management members and prepare and serve food and beverage items to Bojangles' customers.

41. Defendant has a centralized plan, policy and practice (scheme) of strictly enforcing restricted hours of compensable work per day and per week ("budgeted labor") by

providing special and favorable recognition to restaurant managers to stay within or below such "budgeted labor" on the one hand and, threatening and impacting the job security of those managers who failed to stay within such "budgeted labor" on the other hand, even though such budgeted labor was/is inadequate to meet the operational demands and needs of its restaurants which "budgeted labor," in turn, forced managers to expect, encourage, entice, condone, induce, permit and/or require Plaintiffs and those similarly situated to perform unpaid "off the clock" work, as described herein.

42. At all times material to this action, Defendant has had a centralized plan, policy, and practice (scheme) of working Plaintiffs and similarly situated class members "off the clock" to stay within its "budgeted labor" matrices. Accordingly, Plaintiffs' and Class Members' claims are unified by a common ("off the clock" claims) theory of Defendant's FLSA statutory violations.

43. Defendant has and continues to employ a uniform electronic timekeeping system for tracking and reporting employee hours worked at each of its restaurants.

44. At all times relevant to this action and, pursuant to Defendant's centralized, unified and uniform "budgeted labor" plans, policies and practices, Defendant has expected, encouraged, induced, condoned, required and, suffered and permitted, Plaintiffs and others similarly situated to perform work "off the clock" without compensating them at the applicable FLSA minimum wage rates of pay and overtime compensation, including for the following "off the clock" work:

a. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to perform job duties "off the clock" before clocking-in to their scheduled shifts;

b. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to perform job duties (including the processing and submitting of "end-of-day" reports) "off the clock" after clocking-out of their scheduled shifts;

c. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to conduct and receive job-related training "off the clock";

d. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to attend mandatory meetings "off the clock";

e. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to pick up and deliver restaurant-related food, supplies, bank documents, etc. while "off the clock";

f. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to take deposits to the bank and/or pick up change, etc. while "off the clock";

g. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to do other errands such as go to grocery stores, hardware stores, post office, UPS/FedEx, etc. while "off the clock";

h. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to pick up and drop off other employees for their shifts while "off the clock";

i. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to help out at other Bojangles' locations while "off the clock";

j. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to work special community events while "off the clock";

k. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to get behind the counter and help out if they came in on their day off and it was busy, which "off the clock";

l. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to clean the restaurant before inspections or corporate visits "off the clock"; and

m. Expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs and others similarly situated to receive and handle emails, text messages, internet searches and other such communications from and to management members, employees, and customers while "off the clock."

n. Automatically clocking Shift Managers out for breaks they did not take.

45. Defendant also subjected Plaintiffs and others similarly situated to a "rounding practice" pursuant to which the hours that Plaintiffs and others similarly situated where clocked in and working were systematically removed from their paid hours. Most often, all overtime hours were systematically deleted.

46. Defendant fraudulently misrepresented to Plaintiffs and others similarly situated that their missing pay would be paid on the "next" paycheck and/or that they would be paid in "Bo-Star" points for off-the-clock work and/or shaved hours. This was a false promise and would be illegal in any event.

47. Defendant also fraudulently misrepresented to Plaintiffs and others similarly situated that they would be compensated for their off-the-clock work and/or shaved hours by accumulating vacation time. This was a false promise and would be illegal in any event.

48. As a result of such uncompensated "off the clock" work time and shaved hours, Plaintiff and others similarly situated are entitled to and, seek to recover, from Defendant at least the applicable FLSA minimum wage rate of pay for all such unpaid "off the clock" hours and, also, for any applicable overtime hours at one and one-half times their regular hourly rate of pay for all hours in excess of 40 within weekly pay periods during all relevant times to this action, as required by the Fair Labor Standards Act.

49. Defendant's timekeeping records do not reflect the aforementioned "off the clock" hours and shaved hours of Plaintiffs and others similarly situated.

50. As a consequence of Bojanlges' timekeeping records not reflecting actual hours worked, when the unpaid "off the clock" work time and shaved off work time is added to their recorded time, Plaintiffs and other members of the class who have worked in excess of forty (40) hours per week, within weekly pay periods during all times relevant, are entitled to overtime compensation at one and one-half times their regular hourly rate of pay for all hours in excess of 40 within said weekly pay periods, as required by the FLSA.

51. The net effect of Defendant's aforementioned plan, policy and practice of expecting, encouraging, inducing, condoning, requiring and, suffering and permitting, Plaintiffs

and others similarly situated to work "off the clock" without being compensated for such work and of shaving off the time Plaintiffs and others similarly situated were clocked in, is that Defendant willfully failed to pay Plaintiffs and other members of the class for all straight time work, minimum wages, and premium pay for overtime work in order to save payroll costs and payroll taxes.

52. As a consequence, Defendant has violated the FLSA and, thereby has enjoyed ill gained profits at the expense of Plaintiffs and others similarly situated.

53. Plaintiffs and others similarly situated are entitled and, hereby seek, to recover back pay, liquidated damages, attorneys' fees, interest, and other cost, fees and expenses from Defendant for all such unpaid "off the clock" work and shaved hours, that is available under the Fair Labor Standards Act

Facts Related to Plaintiff Stafford's Individual Discrimination Claims

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

55. 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.

56. 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.

57. When Plaintiff would get his nails manicured, several coworkers would make statements and question supervisors whether it was appropriate for Plaintiff to have manicured fingernails and whether that was the "look" Defendant should be presenting to customers.

58. 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.

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

60. 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.

61. 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.

62. 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.

63. 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.

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

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

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

71. 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.

72. For instance, Plaintiff earned $10.00 per hour while Marcy Parker and Cathy Richardson earned $13.20 per hour and Heaveny Tim earned $12.00 per hour.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

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

80. 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.

81. 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.

82. 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.

83. 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."

84. 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.

85. 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.

86. 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.

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

88. 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.

FLSA COLLECTIVE ACTION ALLEGATIONS

89. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on their own behalf and on behalf of:

> **All similarly situated current and former Shift Managers who work or have worked for Defendants at any of their retail locations at any time on or after July 14, 2017 through judgment.**

90. Defendant is liable under the FLSA for, inter alia, failing to properly compensate Plaintiff Stafford and other similarly situated Shift Managers.

91. Consistent with Defendant's policy and pattern or practice, Plaintiff Stafford and the FLSA Collective were not paid minimum wage for all hours worked and were not paid premium overtime compensation when they worked beyond 40 hours in a workweek.

92. Defendant assigned and/or was aware of all of the work that Plaintiff Stafford and the FLSA Collective performed.

93. As part of its regular business practices, Bojangles intentionally, willfully, and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA with respect to Plaintiffs and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

a. Willfully failing to pay their employees, including Plaintiffs and the FLSA Collective, minimum wage for all hours worked;

b. Willfully failing to pay their employees, including Plaintiffs and the FLSA Collective, premium overtime wages for hours worked in excess of 40 hours per workweek; and

c. Willfully failing to record all of the time that their employees, including Plaintiffs and the FLSA Collective, worked for the benefit of Defendant.

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

95. This is not the first lawsuit of its kind against Defendant. As such, Defendant is aware or should have been aware that federal law required it to pay Plaintiffs and the FLSA Collective minimum wage for all hours worked and overtime premiums for hours worked in excess of 40 per workweek.

96. A collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiffs under 29 U.S.C. § 216(b). The employees on behalf of whom Plaintiffs bring this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are performing the same or similar job duties; (c) they were or are subject to the same or similar unlawful practices, policy, or plan; and (d) their claims are based upon the same factual and legal theories.

97. The employment relationships between Defendant and every proposed FLSA Collective member are the same. The key issues - the amount of uncompensated pre-shift, meal period, post-shift time, other off-the-clock work, and the amount of time spent reading and responding to work-related smartphone communications during non-work hours - do not vary substantially among the proposed FLSA Collective members.

98. Many similarly situated current and Shift Managers have been underpaid in violation of the FLSA.

99. Court-supervised notice of this lawsuit went out in November (by email)/ December (by U.S. Mail) 2020 and approximately 553 individuals opted into this action.

RULE 23 CLASS ACTION ALLEGATIONS

100. Plaintiffs bring this proceeding pursuant to Fed R. Civ. P. 23(b)(2) and (b)(3) on behalf of the following putative Classes (hereinafter collectively referred to as the "Rule 23 Classes"):

The Rule 23 North Carolina Class is defined as follows:

> **All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in North Carolina at any time during the applicable statutory period.**

The Rule 23 South Carolina Class is defined as follows:

> **All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in South Carolina at any time during the applicable statutory period.**

The Rule 23 Virginia Class is defined as follows:

> **All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in Virginia at any time during the applicable statutory period.**

The Rule 23 Kentucky Class is defined as follows:

> **All similarly situated current and former Shift Managers who work or have**

worked for Bojangles at any of their restaurant locations in Kentucky at any time during the applicable statutory period.

The Rule 23 Alabama Class is defined as follows:

All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in Alabama at any time during the applicable statutory period.

The Rule 23 Georgia Class is defined as follows:

All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in Georgia at any time during the applicable statutory period.

The Rule 23 Tennessee Class is defined as follows:

All similarly situated current and former Shift Managers who work or have worked for Bojangles at any of their restaurant locations in Tennessee at any time during the applicable statutory period.

101. **Numerosity.** The putative Class members from North Carolina, South Carolina, Virginia, Kentucky, Alabama, Georgia, and Tennessee are so numerous that joinder of all members in the case, or even by each state class, would be impracticable.

102. **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 Plaintiffs and other members of the Class were expected and/or required to work hours without compensation;

b. Whether Defendant suffered and permitted Plaintiffs and other members of the Class to work hours without compensation;

c. Whether Defendant failed to pay Plaintiffs and other members of the Class all applicable straight time wages for all hours worked;

d. Whether Defendant failed to pay Plaintiffs and other class members overtime compensation due them for all hours worked in excess of forty per week;

e. Whether Defendant systematically shaved the time of Plaintiffs and other class members;

f. Whether Defendant automatically deducted meal/rest breaks and/or failed to provide meal/rest breaks required by applicable state law;

g. Whether Defendant breached agreements with Plaintiffs and other class members to pay them for all hours worked;

h. Whether Defendant fraudulently induced Plaintiffs and other class members to work "off the clock" and/or continue working when their time was being shaved;

i. The correct statute of limitations for Plaintiffs' claims and the claims of other members of the Class;

j. 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 Plaintiffs, and other Class members;

k. The nature and extent of compensatory damages to the Plaintiffs, and other Class members;

l. How compensatory damages should be allocated to the Plaintiffs and other Class members.

m. The nature and extent of punitive damages to the Plaintiffs and other Class members; and

n. How punitive damages should be allocated to the Plaintiffs and other Class members.

103. **Typicality.** Plaintiffs' claims are typical of claims of the Rule 23 Classes they seek to

represent in that Plaintiffs and all other members suffered damages as a direct and proximate result of Defendant's common and systemic payroll policies and practices. In each respective state, Plaintiffs' claims arise from Defendant's similar policies, practices, and course of conduct as all other Class members' claims and Plaintiffs' legal theories are based on the same or similar facts.

104. **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. Plaintiffs have retained counsel experienced in complex litigation and labor and employment law matters.

105. **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 North Carolina, South Carolina, Virginia, Kentucky, Alabama, Georgia and Tennessee 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.

106. This case will be manageable as a Rule 23 Class action, or sub-classes. Plaintiffs and

their counsel know of no unusual difficulties in this case and Defendant has advanced, networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

107. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) ("[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

108. Because Defendant acted and refused to act on grounds that apply generally to the Rule 23 Classes and declaratory relief is appropriate in this case with respect to the Rule 23 Classes as a whole, class certification pursuant to Rule 23(b)(2) is also appropriate.

COUNT I
Violation of Fair Labor Standards Act – Unpaid Wages
(On Behalf of FLSA Collective)

109. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint.

110. 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).

111. 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).

112. 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).

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

114. At all times hereinafter mentioned, Plaintiffs, 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.

115. Defendant violated the FLSA by not paying Plaintiffs, 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; (3) failed to pay Plaintiffs for training and travel time that was on the clock but unpaid; (4) automatically clocked Plaintiffs out for breaks they did not take; and (5) shaved time off of Plaintiffs clocked in hours.

116. Defendant's violation of the FLSA was willful in that Defendants have already been sued for these same FLSA violations but they failed and refused to correct said violations. In addition, the violations were willful in that Plaintiffs complained to their supervisors about these violations but they were not corrected.

COUNT II
Violation of the North Carolina Wage and Hour Act
(on Behalf of North Carolina Class)

117. The North Carolina Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

118. 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).

119. At all times hereinafter mentioned, the North Carolina Plaintiffs and the North Carolina Class were employees within the meaning of Section 95-25.2(4) of the NCWHA, N.C. Gen. Stat. §§ 95-25.2(4).

120. Defendant violated these statutes by failing to pay the North Carolina Plaintiffs and the North Carolina Class all promised and earned wages on the employee's regular payday for all hours worked.

121. Defendants also violated the rights of the North Carolina Plaintiffs and the North Carolina Class under the NCWHA by failing to pay and diverting from the North Carolina Plaintiffs and the North Carolina Class earned bonuses through the Bo Star Incentive Reward Program.

122. Defendant violated the NCWHA by unlawfully withholding or deducting wages of the North Carolina Plaintiffs and the North Carolina Class in violation of N.C. Gen. Stat. §95-25.8.

123. Defendant willfully violated the rights of the North Carolina Plaintiffs and the North Carolina Class rights under the NCWHA.

124. As a result of Defendant's willful action, the North Carolina Plaintiffs and the North Carolina Class are entitled to recover liquidated damages pursuant to N.C. Gen. Stat. § 95-25.22.

125. The North Carolina Plaintiffs and the North Carolina Class are entitled to recover attorneys fees pursuant to N.C. Gen. Stat. § 95-25.22(d).

COUNT III
Violation of the South Carolina Payment of Wages Act
(on Behalf of South Carolina Class)

126. The South Carolina Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

127. At all relevant times, Defendant has employed, and/or continues to employ, the South Carolina Plaintiffs and the South Carolina Class within the meaning of the South Carolina Payment of Wages Act, S.C. CODE ANN. §§ 41-10-10 to 110.

128. The South Carolina Plaintiffs and the South Carolina Class are "employees" within the meaning of the South Carolina Act and are not free from the control and direction of Defendant.

129. Defendant is the "employers" as defined by the South Carolina Act, S.C. CODE ANN. § 41-10-10(1), because it employs individuals in the State of South Carolina.

130. Pursuant to S.C. CODE ANN. § 41-10-40(C), "[a]n employer shall not withhold or divert any portion of the employee's wages unless the employer is required or permitted to do so by state or federal law." "Wages" means "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis." S.C. CODE ANN. § 41-10-10(2).

131. Defendant did not pay the South Carolina Plaintiffs and the South Carolina Class all wages due to them for non-overtime hours as a result of the illegal rounding and work off-the-clock performed by the South Carolina Plaintiffs and the South Carolina Class.

132. Accordingly, the South Carolina Plaintiffs and the South Carolina Class are entitled to receive all compensation of non-overtime "wages" due and owing to them.

133. Defendant willfully failed to pay the South Carolina Plaintiffs and the South Carolina Class "wages" as defined in section 41-10-10(2) of the South Carolina Act for all work performed, according to the law.

134. Defendant has withheld wages of the South Carolina Plaintiffs and the South Carolina Class without providing advance notice of such amounts and absent any lawfully sufficient reason for such conduct.

135. As a direct and proximate result of Defendant's willful conduct, the South Carolina Plaintiffs and the South Carolina Class have suffered substantial losses and have been deprived of non-overtime compensation to which they are entitled, including monetary damages in the amount of three

(3) times the amount of their unpaid wages as well as costs and reasonable attorneys' fees pursuant to S.C. CODE ANN. § 41-10-80 of the South Carolina Act.

COUNT IV
Violation of the Virginia Minimum Wage Act
(On Behalf of Virginia Class)

136. The Virginia Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

137. Under the Virginia Minimum Wage Act, Code of Virginia, §40-1-28.10, Defendant was required to pay the Virginia Plaintiffs and the Virginia Class time-and-one-half overtime compensation for their hours worked in excess of40 per workweek.

138. Defendant has violated and continues to violate, the overtime compensation requirements of §40.1-28.10 by failing to pay its employees at time and one-half for all hours worked in excess of 40 in a workweek.

139. The Virginia Plaintiffs and the Virginia Class are entitled to be paid at one and one-half their regular rate of pay for those hours worked in excess of40 hours in a workweek.

140. Defendant's actions were willful and not in good faith as evidenced by its failure to pay the Virginia Plaintiffs and the Virginia Class overtime when Defendant knew, or should have known, that such was due.

141. At all times material hereto, Defendant failed to maintain proper time and payroll records as mandated by the Virginia Minimum Wage Act.

142. Defendant has failed to properly disclose or apprise the Virginia Plaintiffs and the Virginia Class of their rights under the Virginia Minimum Wage Act.

143. Due to the intentional, willful, and unlawful acts of Defendant, The Virginia Plaintiffs and the Virginia Class are entitled to an additional equal amount as liquidated damages pursuant to §40.1-28.11 and §40.1-28.12.

144. The Virginia Plaintiffs and the Virginia Class are entitled to an award of her reasonable attorney's fees and costs under §40.1-28.11 and §40.1-28.12.

COUNT V
Violation of the Kentucky Wage and Hour Act
(on Behalf of Kentucky Class)

145. The Kentucky Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

146. Kentucky state law requires that covered employees be compensated for every hour worked in a workweek. See Ky. Rev. Stat. Ann. §§ 337.275, et seq.

147. Ky. Rev. Stat. Ann. § 337.285 requires that employees receive overtime compensation "not less than one and one-half (1-1/2) times" the employee's regular rate of pay for all hours worked over forty in one workweek. See also 803 Ky. Admin. Regs. 1:060. 98.

148. During all times material to this complaint, Defendant was a covered employer required to comply with Ky. Rev. Stat. Ann. § 337.010(1)(d).

149. During all times material to this complaint the Kentucky Plaintiffs and the Kentucky Class were covered employees entitled to the protections of the KWHA. See Ky. Rev. Stat. Ann. § 337.010(1)(e).

150. Defendant failed and continues to fail to pay the Kentucky Plaintiffs and the Kentucky Class at least minimum wage for each week the Kentucky Plaintiffs and the Kentucky Class worked for Defendant.

151. Defendant violated KRS 337.275 by not properly compensating the Kentucky Plaintiffs and the Kentucky Class at least minimum wage for each week worked for Defendant.

152. Defendant willfully violated KRS 337.275 by not properly paying the Kentucky Plaintiffs and the Kentucky Class at least minimum wage for each week worked for Defendant.

153. As a result of Defendant's violations of KRS 337.275, he Kentucky Plaintiffs and the Kentucky Class are entitled to recover unpaid wages dating five (5) years back, pursuant to KRS 413.120 (2), plus an additional equal amount in liquidated damages, reasonable attorneys' fees, and costs of this action.

154. The Kentucky Plaintiffs and the Kentucky Class are not exempt from receiving the KWHA's overtime benefits because they do not fall within any of the exemptions set forth therein. See Ky. Rev. Stat. Ann. § 337.285(2).

155. Defendant has violated the KWHA with respect to the Kentucky Plaintiffs and the Kentucky Class by, inter alia, failing to compensate them for all hours worked in excess of forty per workweek at one and one-half their "regular rate" of pay.

156. Defendant has violated the KWHA with respect to the Kentucky Plaintiffs and the Kentucky Class by, inter alia, imposing unlawful deductions from Plaintiffs and the Kentucky Class in violation of K.R.S. 337.060.

157. Defendant has violated the KWHA with respect to the Kentucky Plaintiffs and the Kentucky Class by, inter alia, failing to provide an unpaid meal break between the third and fifth hour of a work shift and/or failing to provide a paid, ten-minute rest break during each four hours of work and/or making automatic deductions for meal or rest breaks not taken, in violation of KRS 337.355 and 337.365.

158. In doing the acts alleged herein, Defendants failed to pay the Kentucky Plaintiffs and the Kentucky Class the full minimum wage as required by KRS 337.275.

159. Defendant, by failing to pay the Kentucky Plaintiffs and the Kentucky Class the full minimum wage at several and various times during their employment, similarly failed to pay

the Kentucky Plaintiffs and the Kentucky Class in full for their work within 18 days of its completion, and thereby violated KRS 337.020.

160. In violating the KWHA, Defendant acted willfully and with reckless disregard of clearly applicable provisions of the KWHA.

161. Pursuant to Ky. Rev. Stat. Ann. § 337.385, Defendant, because it failed to pay he Kentucky Plaintiffs and the Kentucky Class the required amount of wages and overtime at the statutory rate, must reimburse the employees not only for the unpaid wages, but also for liquidated damages in an amount equal to the amount of unpaid wages.

162. Pursuant to Ky. Rev. Stat. Ann. § 337.385, the Kentucky Plaintiffs and the Kentucky Class are entitled to reimbursement of the litigation costs and attorney's fees expended if they are successful in prosecuting an action for unpaid wages.

COUNT VI
Violation of Georgia Minimum Wage Law and Wage Payment Law
(On Behalf of Georgia Class)

163. The Georgia Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

164. The Georgia Code Annotated § 34-7-2 provides that employers shall pay all employees: (i) all wages due on paydays selected by the employer. . . the full net amount of wages or earnings due the employees for the period for which the payment is made.

165. The Georgia Plaintiffs and the Georgia Class are employees of Defendant within the meaning of O.G.C.A § 34-7-2, as such, are entitled to timely payment of all wages due to them.

166. Defendant is an employer within the meaning of the same provision.

167. Defendant failed to comply with O.C.G.A. § 34-4-3 because it did not pay the Georgia Plaintiffs and the Georgia Class the state statutory minimum wage for all hours worked.

168. Thus, any Plaintiff or any hours of a Plaintiff not within the purview of the FLSA is within the purview of the Georgia Act and is compensable thereunder.

169. Accordingly, the Plaintiffs with claims that are compensable only under the GMWL are entitled to a judgment for damages for all hours worked at the state statutory rate, liquidated damages of an equal amount, an award of reasonable attorney's fees and costs.

170. Defendant's policy of subjecting the pay of the Georgia Plaintiffs and the Georgia Class to automatic meal break deductions even when they performed compensable work results in an underpayment in violation of O.G.C.A § 34-7-2.

171. The Georgia Plaintiffs and the Georgia Class have entered into an agreement with Defendant pursuant to which they are to receive certain hourly wages, in compensation for their work for Defendant.

172. More than two weeks have elapsed from the date on which Defendant was required to have paid the wages owed to the Georgia Plaintiffs and the Georgia Class for all hours of work. Defendant has no bona fide reason for withholding the wages owed to The Georgia Plaintiffs and the Georgia Class for their uncompensated for time.

173. In accordance with the Georgia Minimum Wage Law, The Georgia Plaintiffs and the Georgia Class seek recovery of unpaid minimum wages, liquidated damages, attorneys' fees, and costs.

174. In addition to fees that are to be awarded under the GMWL, the Georgia Plaintiffs and the Georgia Class are entitled to an award of attorney fees under O.C.G.A § 13-6- 11, as Defendant has acted in bad faith, have been stubbornly litigious, and has caused the Georgia Plaintiffs and the Georgia Class unnecessary trouble and expense.

COUNT VII
Violation of Tennessee Wage Regulations Act
(On Behalf of Tennessee Class)

175. The Tennessee Plaintiffs reallege and incorporate paragraphs 1 through 108 herein

176. The Tennessee Wage Regulations Act ("TWRA") requires all wages or compensation to be due not less frequently than once per month. Where an employer makes wage payments in two (2) or more periods per month, all wages and compensation of employees shall be due and payable as follows: (A) All wages or compensation earned and unpaid prior to the first day of any month shall be due and payable not later than the twentieth day of the month following the one in which the wages were earned; and (B) All wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than the fifth day of the succeeding month.

177. Defendant was covered by the TWRA as Defendant is a private employer with five or more employees. TCA 50-2-103(b).

178. The Tennessee Plaintiffs and Tennessee Class were not paid all wages, including straight time wages and overtime wages at one and one-half times their regular rate within the required time by the TWRA.

179. he Tennessee Plaintiffs' and Tennessee Class's unpaid wages remain unpaid under the TWRA as "all wages or compensation earned and unpaid prior to the first day of any month shall be due and payable not later than the twentieth day of the month following the one in which the wages were earned" and "[a]ll wages or compensation earned and unpaid prior to the sixteenth day of any month shall be due and payable not later than the fifth day of the succeeding month." TCA 50-2-103(a).

180. The TWRA also requires that any employee who leaves or is discharged from employment shall be paid in full all wages earned by the employee no later than the next regular payday following the date of dismissal or voluntary leaving, or twenty-one (21) days following the date of discharge or voluntary leaving, whichever occurs last.

181. The Tennessee Plaintiffs and Tennessee Class were not paid in full all wages earned by the next regular pay day following the date of dismissal or voluntary leaving.

182. The Tennessee Plaintiffs and Tennessee Class was not paid in full all wages earned by twenty-one (21) days following the date of dismissal or voluntary leaving

183. The Tennessee Plaintiffs and Tennessee Class have been harmed and continue to be harmed by Defendant's acts or omissions described herein.

184. In violating the TWRA, Defendant acted willfully, without a good faith basis and with reckless disregard of clearly applicable Tennessee law.

COUNT VIII
Alabama Breach of Contract
(On Behalf of Alabama Class)

185. The Alabama Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

186. The Alabama Plaintiffs and Alabama Class accepted an offer of employment from Defendant, and completed tax forms and other documents early in their tenure that identified them as employees.

187. There was an implied contract between the Defendants as employers and the Alabama Plaintiffs and Alabama Class as employees for the Defendants to pay the Plaintiffs the agreed upon hourly wages.

188. The Alabama Plaintiffs and Alabama Class substantially performed by appearing on the jobsite and working but the Defendant breached the contract by failing to pay them for all hours worked.

189. Defendant's breach thereby caused the Plaintiffs to incur damages.

COUNT IX
Alabama Quantum Meruit/Unjust Enrichment
(On Behalf of Alabama Class)

190. The Alabama Plaintiffs reallege and incorporate paragraphs 1 through 108 herein.

191. The Alabama Plaintiffs and Alabama Class conferred valuable benefits to Defendant by providing their labor that is outside the purview of the FLSA, vehicles, and advanced costs on behalf of the Defendant.

192. Defendant accepted the benefit conferred by the Alabama Plaintiffs and Alabama Class with knowledge of their expectation of compensation.

193. The Alabama Plaintiffs and Alabama Class did not gratuitously confer the benefit of their labor upon Defendant.

194. The Alabama Plaintiffs and Alabama Class seek recovery of the value of their services under theories of equity, including quantum meruit and unjust enrichment.

COUNT X
Title VII – Discrimination on the Basis of Sex
(On Behalf of Plaintiff Stafford Individually)

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

196. At all relevant times, Defendant 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.

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

198. 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.

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

200. 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.

201. 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.

202. Supervisors also instructed Plaintiff to "watch his mannerisms" - which a reasonable person would interpret as referring to Plaintiff's sexual orientation.

203. 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.

204. 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.

COUNT XI
Wrongful Discharge in Violation of Public Policy
(On Behalf of Plaintiff Stafford Individually)

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

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

207. 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.

208. 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.

209. 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.

COUNT XII
Violation of FMLA - Interference
(On Behalf of Plaintiff Stafford Individually)

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

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

212. 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.

213. 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.

214. 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).

215. 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.

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

217. 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.

218. 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.

219. 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.

220. 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.

221. 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.

COUNT XIII
Violation of Equal Protection Act
(On Behalf of Plaintiff Stafford Individually)

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

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

224. 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.

225. 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.

226. 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.

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

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

229. 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.

230. 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, Plaintiffs demand, on behalf of themselves 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 Plaintiffs and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiffs;

2. For an Order certifying a North Carolina, South Carolina, Tennessee, Alabama, Georgia, Kentucky and Virginia Class as defined in paragraph 100 and designating the Named Plaintiffs as the Class Representatives of the respective state classes;

3. For an Order for unpaid wages, including all minimum wage and overtime compensation, liquidated damages and penalties due under North Carolina law;

4. For an Order for unpaid wages, including all minimum wage and overtime compensation, liquidated damages and penalties due under Kentucky law;

5. For an Order for unpaid wages, including all minimum wage and overtime compensation, liquidated damages and penalties due under Tennessee law;

6. For an Order for unpaid wages, including all minimum wage and overtime compensation, liquidated damages and penalties due under Georgia law;

7. For an Order for unpaid wages, including all minimum wage and overtime compensation, liquidated damages and penalties due under Virginia law;

8. An Order for compensatory damages for breach of contract under Alabama common law, or an Order requiring Defendant to disgorge the profits earned as a result of unjust enrichment and ordering them to make restitution to the Alabama Class under Alabama common law;

9. For Plaintiff Stafford, 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.

10. For Plaintiff Stafford, 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;

11. For Plaintiff Stafford, 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;

12. An Order awarding compensatory and punitive damages in an amount to be proven at trial;

13. An Order awarding the costs of this action;

14. An Order awarding reasonable attorneys' fees;

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

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

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury.

/s/ L. Michelle Gessner
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