

FILED

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE  
COUNTY OF MECKLENBURG SUPERIOR COURT DIVISION

JOSE SANCHEZ-LOPEZ, on behalf  
of himself and all others similarly  
situated,

Plaintiff,

v.

NATIONAL DELIVERY SYSTEMS,  
INC., SANTI MULTISERVICES,  
INC., SANTI STAFFING  
SOLUTION, INC., HUMAN LINK  
STAFFING, LLC,

Defendants.

C.S.C.

FILE NO:

18CV515066

COLLECTIVE ACTION COMPLAINT

NOW COMES Named Plaintiff, on behalf of himself and all others similarly situated,  
and alleges as follows:

**PRELIMINARY STATEMENT**

1. This action is brought individually and as a collective action for unpaid overtime compensation, liquidated damages, and all related penalties and damages under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* Defendants had a systemic policy, pattern, or practice of failing to pay their employees at the appropriate statutory rate for hours worked in excess of forty (40) each week at a rate of one and one-half (1.5) their regular rate of pay.
2. This action is also brought individually for payment of all owed and promised wages, and for other relief as appropriate, under the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. § 95-25.1 *et seq.*
3. Defendants' pay practices and policies were in direct violation of the FLSA and the NCWHA. Accordingly, Named, Opt-In, and Putative Plaintiffs seek unpaid overtime

compensation in addition to liquidated damages, attorneys' fees and costs, prejudgment interest, and other damages permitted by applicable law.

4. In addition, Named Plaintiff seeks to recover additional economic, non-economic, and punitive damages, as well as equitable relief and all other relief deemed appropriate, for his individual claim of FLSA retaliation, 29 U.S.C. § 215(a)(3), following complaints with Defendant related to the underlying facts of this lawsuit.
5. Finally, Named Plaintiff seeks to recover additional economic, non-economic, and punitive damages, as well as equitable relief and all other relief deemed appropriate, for his individual claim of wrongful discharge in violation of North Carolina public policy embodied in the NCWHA, N.C. Gen. Stat. § 95-25.1 *et seq.*

#### JURISDICTION AND VENUE

6. Jose Sanchez-Lopez (hereinafter "Named Plaintiff" or "Plaintiff") is, and at all times relevant to this complaint has been, a resident of Wake County, North Carolina.
7. Named Plaintiff worked as an hourly security guard and dock worker for Defendants.
8. The FLSA collective action Opt-In and Putative Plaintiffs consist of individuals who have worked for Defendants (either as separate or joint employers), at any time within the three (3) year period prior to joining this lawsuit under 29 U.S.C. § 216(b) until the filing of this Complaint, who were non-exempt employees paid their direct hourly wage for hours worked in excess of forty (40) hours instead of the required rate of one and one half (1.5) their regular rate of pay.
9. Defendant National Delivery Systems, Inc. ("NDS") is a corporation organized and existing under the laws of Maryland, with its principal place of business located at 6011 University Boulevard, Suite 470, Ellicott City, Maryland 21043.
10. Defendant Santi Multiservices, Inc. ("Santi Multiservices") is a corporation organized

and existing under the laws of Maryland, with its principal place of business located at 900 Crain HWY S., Glen Burnie, Maryland 21061. At all times relevant to this Complaint, Santi Multiservices was a corporation through which Plaintiff received payment for his work at NDS from approximately 2015 until some point in the middle of 2017.

11. Defendant Santi Staffing Solution, Inc. ("Santi Staffing") is a corporation organized and existing under the laws of Maryland, with its principal place of business located at 322 Highland Drive, Apartment T2, Glen Burnie, Maryland 21061. At all times relevant to this Complaint, Santi Staffing was a corporation through which Plaintiff received payment for his work at NDS from sometime in the middle of 2017 until early 2018.

12. Defendant Human Link Staffing, LLC ("Human Link") is a corporation organized and existing under the laws of Virginia, with its principal place of business located at 5713 Virginia Pine Court D, Henrico, Virginia 23228. At all times relevant to this Complaint, Human Link was a corporation through which Plaintiff received payment for his work at NDS from sometime in early 2018 until Plaintiff's termination from his position of employment with NDS.

13. Upon information and belief, during the time period relevant to this action, each Defendant was an employer, joint employer, or member of an integrated, common enterprise, that employed Named, Opt-In, and Putative Plaintiffs, pursuant to the FLSA and NCWHA, in that each Defendant, or its agents, held or implemented the power, *inter alia*, to control the work performance of Named, Opt-In, and Putative Plaintiffs, and each Defendant received the benefit of Named, Opt-In, and Putative Plaintiff's labor. More information about the nature and role of each Defendant within the enterprise is provided below.

14. Venue is proper before this Court pursuant to N.C. Gen. Stat. § 1-80(1) as Defendants regularly carried on business in Mecklenburg County. Personal and subject matter jurisdiction are similarly proper before this Court.
15. At all times material to this action, Defendants were employers within the defined scope of the FLSA, 29 U.S.C. § 203(d), and the NCWHA, N.C. Gen. Stat. § 95-25.2(5).
16. At all times material to this action, Named, Opt-In, and Putative Plaintiffs were individual employees within the scope of the FLSA, 29 U.S.C. § 207, and the NCWHA, N.C. Gen. Stat. § 95-25.2(4).
17. At all times material to this action, Defendants were an enterprise engaged in related activities performed through a unified operation or common control for a common business purpose, as defined by the FLSA, 29 U.S.C. § 203(r).
18. At all times material to this action, Defendants were joint employers pursuant to 29 C.F.R. § 791.2.
19. At all times material to this action, Defendants were an enterprise engaged in commerce or the production of goods for commerce as defined by the FLSA, 29 U.S.C. §§ 203(s) and 203(r), in that said 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 material that have been moved in or produced for commerce by any person, and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000.

#### **GENERAL ALLEGATIONS**

20. NDS is a warehousing, line haul, and logistics company operating in eleven (11) states along the Eastern Seaboard.
21. Upon information and belief, Santi Multiservices, Santi Staffing, and Human Link are

staffing firms that provide NDS with employees to work at their warehouse terminals along the Eastern Seaboard.

22. Upon information and belief, these staffing firms, and other now defunct iterations of the same, are operated for the benefit of Defendant NDS.
23. Named Plaintiff worked as both a security guard and a dock hand for Defendants.
24. Named Plaintiff first started as a dock hand in February 2015 and then also took on the role of security guard after September 2015. Named Plaintiff worked for Defendants until his termination on March 19, 2018.
25. As a security guard, Named Plaintiff was responsible for ensuring that the warehouse floor was cleared of boxes, checking incoming shipping containers, and generally ensuring that drivers were arriving at and departing from the facility on schedule. Additionally, three times each week, Named Plaintiff would ensure that a delivery of diesel fuel was made to the warehouse from Defendants' supplier.
26. Named Plaintiff also served as a dock hand for Defendants, unloading incoming trucks and then loading new trucks. Upon information and belief, these newly loaded trucks then made deliveries to Defendant NDS's clients in the surrounding area.
27. Named Plaintiff did not have any authority or discretion over the hiring and firing of other employees, nor could he have effectively recommended the hiring, firing, advancement, promotion, or other change of status of other employees. Named Plaintiff's duties also did not include management of the business or any subdivision thereof, and he did not evaluate or discipline, set hours of work or rates of pay, or direct the work of other employees.
28. Named Plaintiff typically worked seven (7) days per week, equating to between sixty (60) and one hundred and twenty (120) hours per week, depending on the week, during

the course of his employment by Defendants. Named Plaintiff routinely worked in excess of eighty (80) hours each week.

29. Upon information and belief, Opt-In and Putative Plaintiffs also typically worked in excess of forty (40) hours per week.
30. Named, Opt-In, and Putative Plaintiffs worked as non-exempt employees at Defendants' shipping facility(ies), regardless of how they were misclassified by Defendants.
31. Defendants controlled the work schedule and rate of pay for Named, Opt-In, and Putative Plaintiffs.
32. At all times relevant to this Complaint, Terry O'Keefe, Defendant NDS's terminal manager in Raleigh, North Carolina, directed the work of Named Plaintiff.
33. Named Plaintiff received his schedule and submitted his hours to Defendant NDS. Named Plaintiff also used Defendant NDS's materials to complete his work assignments. The receiving and security work provided by Named Plaintiff were integral to the functionality of Defendant NDS's Raleigh terminal.
34. Defendants deliberately and willfully misclassified Named Plaintiff as an independent contractor in order to avoid paying him overtime wages.
35. Named Plaintiff received his pay from Defendants Santi Multiservices, Santi Staffing, and Human Link for the work performed on behalf of Defendant NDS.
36. Throughout the term of his employment, Named Plaintiff always received his wages from various staffing services, often operated out of residential apartment buildings in various states along the Eastern Seaboard, several of which are apparently defunct.
37. Named Plaintiff initially worked at an hourly rate of \$9.00 per hour, but this was increased to \$10.50 shortly after he was hired. Named Plaintiff was paid at this rate for all hours worked during the day shift during his employment with Defendants.

38. Named Plaintiff was paid at an hourly rate of \$13.00 per hour for his night shift work, which normally consisted of his security guard duties.
39. Defendants paid Named Plaintiff overtime at a rate of pay equal to the rate of his direct hourly wage, below the statutory minimum of one and one-half (1.5) the normal rate of pay.
40. Upon information and belief, Opt-In and Putative Plaintiffs received similar treatment to that of Named Plaintiff with regard to employment classification and the payment of overtime wages.
41. On or about March 1, 2018, Named Plaintiff made complaints to Terry O'Keefe when he became aware that he should have been receiving overtime pay after noticing that a new coworker, Mike Last Name Unknown ("LNU"), was receiving such compensation. Terry O'Keefe denied that my client was being improperly paid.
42. Two weeks later, on or about March 15, 2018, Named Plaintiff was informed that his employment was being terminated effective March 19, 2018. Up to this point in time, Named Plaintiff had been a longstanding employee of Defendants and had not changed his workplace effort or habits subsequent to his complaint about overtime pay.
43. Members of the proposed FLSA Collective Action are known to Defendants and readily identifiable through Defendants' records.
44. Defendants have willfully violated the statutory rights of Named, Opt-In, and Putative Plaintiffs under the FLSA, and Named Plaintiff under the NCWHA, resulting in damages to Named, Opt-In, and Putative Plaintiffs in the form of unpaid overtime wages, back pay, compensatory damages, in addition to liquidated damages, attorneys' fees and costs, prejudgment interest, and other damages permitted by applicable law.

**FLSA COLLECTIVE ACTION ALLEGATIONS**

45. Named Plaintiff brings the First Claim for Relief of the instant Complaint as a collective action pursuant to 29 U.S.C. § 216(b), on behalf of himself and all similarly situated employees.
46. Similarly situated employees, for purposes of the FLSA collective action claims, include individuals who have worked for Defendants (either as separate or joint employers), at any time within the three (3) year period prior to this lawsuit under 29 U.S.C. § 216(b), who were non-exempt employees paid a direct hourly wage equal to their normal wage for hours worked in excess of forty (40) instead of the appropriate and lawful rate for such hours.
47. Pursuit of this action collectively will provide the most efficient mechanism for adjudicating the claims of Named, Opt-In, and Putative Plaintiffs.
48. Named Plaintiff requests that he be permitted to serve as representative of those who consent to participate in this action, and that this action be conditionally certified as a collective action pursuant to 29 U.S.C. § 216(b).

**FIRST CLAIM FOR RELIEF: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

29 U.S.C. § 207

**(Failure to Pay Proper Overtime Wage)  
(On Behalf of Named, Opt-In, and Putative Plaintiffs)**

49. Named Plaintiff hereby incorporates the foregoing paragraphs as if fully set out herein.
50. Pursuant to the FLSA, 29 U.S.C. § 207, an employer must pay non-exempt employees at one and one-half (1.5) their regular hourly rate for all hours worked over forty (40) in a single workweek.
51. Named, Opt-In, and Putative Plaintiffs regularly worked in excess of forty (40) hours per week.



52. Defendants must pay Named, Opt-In, and Putative Plaintiffs for all overtime hours worked at a rate of one and one-half (1.5) their appropriate regular hourly wages, based upon the time of day and position of employment, per hour respectively for all hours worked over forty (40) each week.
53. Defendants willfully misclassified and failed to pay Named, Opt-In, and Putative Plaintiffs the proper amount for all hours worked over forty (40) in a single workweek for the reasons stated above.
54. The foregoing conduct, as alleged above, constitutes willful violations of the FLSA within the meaning of 29 U.S.C. § 255(a), which permits the recovery of unpaid overtime wages for up to three (3) years, rather than two (2) years.
55. Similarly, for the reasons state above, Defendants cannot affirmatively defend their failure to pay appropriate overtime wages as having been done in good faith, entitling Named, Opt-In, and Putative Plaintiffs to liquidated damages in an amount equal to the amount of unpaid overtime wages under 29 U.S.C. § 216(b).
56. As such, Named, Opt-In, and Putative Plaintiffs have been damaged in excess of \$25,000.

**SECOND CLAIM FOR RELIEF: VIOLATIONS OF THE NORTH CAROLINA  
WAGE & HOUR ACT**  
N.C. Gen. Stat. §§ 95-25.4, 95-25.6  
(Failure to Pay Proper Overtime Wage)  
(On Behalf of Named Plaintiff)

57. Named Plaintiff hereby incorporates the foregoing paragraphs as if fully set out herein.
58. At all relevant times, Defendants have employed Named Plaintiff within the meaning of the NCWHA.
59. Defendants employed Named Plaintiff within the State of North Carolina.
60. As a result of Defendants' unlawful policies and practices, Named Plaintiff has been

deprived of compensation due and owing.

61. Consistent with the above, Defendants failed to pay Named Plaintiff all owed and earned wages, in violation of N.C. Gen. Stat. § 95-25.6.
62. For the reasons state above, Defendants cannot affirmatively defend their NCWHA violations as having been done in good faith, entitling Named Plaintiff to liquidated damages in an amount equal to the amount of unpaid overtime wages under N.C. Gen Stat. § 95-25.22(a1).
63. As such, Named Plaintiff has been damaged in an amount in excess of \$25,000 and seeks to recover from Defendants the following damages:
  - a. Overtime wages due;
  - b. Liquidated damages in an equal amount;
  - c. Reasonable attorneys' fees and costs;
  - d. Prejudgment interest; and
  - e. All other legal and equitable relief as the Court deems just and proper.

**THIRD CLAIM FOR RELIEF: VIOLATION OF THE FAIR LABOR STANDARDS ACT**

**29 U.S.C. § 215(a)(3)  
(Unlawful Retaliation)  
(On Behalf of Plaintiff Individually)**

64. Plaintiff hereby incorporates the foregoing paragraphs as if fully set out herein.
65. Pursuant to 29 U.S.C. § 215(a)(3), an employer is prohibited from retaliating, or in any manner discriminating, against an employee for complaining, instituting a proceeding, or otherwise exercising their rights under the FLSA.
66. After Plaintiff complained to Defendants for their failure to pay overtime, Defendants terminated Plaintiff's employment.
67. Plaintiff was terminated by Defendants in retaliation against him for his engagement in

protected activity, as described herein.

68. As such, Plaintiff has been damaged in an amount in excess of \$25,000 and seeks to recover from Defendants his full economic, noneconomic, and punitive damages; as well as equitable relief and all other relief deemed appropriate, for his individual claim of retaliation under 29 U.S.C. § 215(a)(3).

**FOURTH CLAIM FOR RELIEF: WRONGFUL DISCHARGE IN VIOLATION OF  
NORTH CAROLINA PUBLIC POLICY**  
(On Behalf of Plaintiff Individually)

69. Plaintiff hereby incorporates the foregoing paragraphs as if fully set out herein.

70. Plaintiff objected to Defendants' policy, pattern, or practice of failing to pay the statutorily mandated overtime wages, in violation of North Carolina law.

71. Plaintiff's termination because of his objection to working without overtime constitutes wrongful discharge in violation of the public policy of North Carolina, as provided in the NCWHA, N.C. Gen. Stat. §§ 95-25.4 and 95-25.6, and the Retaliatory Employment Discrimination Act ("REDA"), N.C. Gen. Stat. § 95-240, *et seq.*

72. As such, Plaintiff has been damaged in an amount in excess of \$25,000 and seeks to recover from Defendants his full economic, noneconomic, and punitive damages, as well as equitable relief and all other relief deemed appropriate, for his individual claim of wrongful discharge in violation of North Carolina public policy.

**PRAYER FOR RELIEF**


WHEREFORE, Named Plaintiff, and all those similarly situated that opt-in, collectively pray the Court:

73. Issue an Order certifying this action as a collective action under the FLSA, and designate Named Plaintiff as a representative of all those similarly situated under the FLSA collective action;

74. Award Named Plaintiff and all those similarly situated actual damages for all unpaid overtime wages found due to Named Plaintiff and those similarly situated and liquidated damages equal in amount, as provided by the FLSA, 29 U.S.C. § 216(b);
75. Award Named Plaintiff actual damages for all unpaid overtime wages found due to Named Plaintiff and liquidated damages equal in amount, as provided by the NCWHA, N.C. Gen Stat. § 95-25.22(a1);
76. Award Named Plaintiff pre- and post-judgment interest at the statutory rate;
77. Award Named Plaintiff attorneys' fees, costs, and disbursements;
78. Award Named Plaintiff and all those similarly situated further legal and equitable relief as this Court deems necessary, just and proper; and

This the 18 day of July, 2018.

**KORNBLUTH GINSBERG LAW GROUP, P.A.**  
*Attorneys for Plaintiffs*

By:   
Michael A. Kornbluth  
N.C. State Bar No. 27928  
Andrew J. Henson  
N.C. State Bar No. 49266  
3100 Tower Boulevard, Suite 800  
Durham, North Carolina 27707  
Telephone: (919) 401-4100  
Facsimile: (919) 401-4104