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JAMES HATTEN, Clerk
By: [Signature] Deputy Clerk

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

DANNY HARRIS, CEDRIC DANIELS,)
and WILLIAM ABBOTT on behalf of)
themselves and all those similarly)
situated who consent to representation,)

Plaintiffs,)

v.)

PROFESSIONAL STAFFING –)
A.B.T.S., INC., a Florida Corporation,)

Defendant.)

4:09-CV-59

Civil Action Number:

-HLM

FLSA Collective Action
Jury Trial Demanded

COLLECTIVE ACTION COMPLAINT

COMES NOW Plaintiffs Danny Harris, Cedric Daniels, and William Abbott (hereinafter "Plaintiffs") by and through their undersigned counsel, and file this lawsuit against Defendant Professional Staffing – A.B.T.S., Inc. (hereinafter "Defendant") on behalf of themselves and all others similarly situated, pursuant to § 216(b) of the Fair Labor Standards Act of 1938, and in support thereof would further state as follows:

INTRODUCTION

1. The instant action arises from Defendant's violations of Plaintiffs' rights under the Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq., as amended

(hereinafter “FLSA”), and specifically the collective action provisions of the FLSA found at § 216(b) to remedy violations of the FLSA by Defendant which have deprived Plaintiffs, as well as others similarly situated to Plaintiffs, of their lawful hourly and overtime wages.

2. The above-named Plaintiffs bring this action as a collective action on behalf of themselves and all other similarly situated employees who consent to representation, pursuant to 29 U.S.C. § 216(b).

3. Plaintiffs and any collective group similarly situated were or are employed by Defendant working at various times during their employment by Defendant as temporary workers based at one of Defendant’s Georgia Locations including but not necessarily limited to the following: Cartersville – at 738 Joe Frank Harris Pkwy., Cartersville, Bartow County, Georgia 30120; Doraville – at 6043-A New Peachtree Rd., Doraville, DeKalb County, Georgia 30340; and, Atlanta – 670 Northside Dr., Atlanta, Fulton County, Georgia 30318 (hereinafter “Defendant’s Georgia Locations”).

4. Other current and former employees of Defendant are also entitled to receive their hourly wage and overtime compensation for the reasons alleged in this Complaint. The above-named Plaintiffs may be permitted to maintain this action “for and in behalf of [themselves] . . . and other employees similarly

situated.” 29 U.S.C. § 216(b). Any similarly situated employees of Defendant wishing to become a party plaintiff to this action must provide “his consent in writing to become such a party,” and such consent must be filed with this Court. 29 U.S.C. § 216(b).

5. This action is brought to recover unpaid wages and overtime compensation owed to Plaintiffs and similarly situated employees of Defendant pursuant to the FLSA.

6. During the employment of Plaintiffs, and for at least three years prior to the filing of this Complaint in the case of any collective group similarly situated, Defendant committed widespread violations of the FLSA by failing to compensate employees for all hours worked and/or by failing to compensate employees at the legally appropriate overtime rate for hours worked in excess of 40 hours in a given workweek.

7. Plaintiffs and all similarly situated employees of Defendant who elect to participate in this action seek unpaid wages and overtime compensation for work performed, an equal amount of liquidated damages, attorneys’ fees, costs, and other appropriate relief pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and 29 U.S.C. § 216(b) (FLSA).

9. Venue is proper in the Northern District of Georgia under 28 U.S.C. § 1391 (a) and (c) because some of the acts complained of occurred within the State of Georgia and the jurisdiction of this Court and because Defendant is subject to personal jurisdiction in this District.

PARTIES

10. Plaintiff Danny Harris (“Plaintiff Harris”) resides in Cartersville, Georgia (within this District) and is a citizen of the United States. Plaintiff Harris was employed by Defendant from on or about 2003 as a temporary laborer.

11. Plaintiff Cedric Daniels (“Plaintiff Daniels”) resides in Cartersville, Georgia (within this District) and is a citizen of the United States. Plaintiff Daniels was employed by Defendant from on or about June of 2008 as a temporary laborer.

12. Plaintiff William Abbott (“Plaintiff Abbott”) resides in Cartersville, Georgia (within this District) and is a citizen of the United States. Plaintiff Abbott was employed by Defendant from on or about 2007 as a temporary laborer.

13. At all times material to this action, Plaintiffs and any collective group similarly situated were “employees” of Defendant defined by § 203(e)(1) of the

FLSA, and worked for Defendant within the territory of the United States. These same individuals are further covered by §§ 203, 206, and 207 of the FLSA for the period in which they were employed by Defendant.

14. Defendant is a corporation formed under the laws of the State of Florida and owns and operates temporary laborer staffing locations in the state of Georgia.

15. Defendant conducts business within this State and District.

16. Defendant maintained either actual or constructive control, oversight and direction of its employees, including the employment and pay and other practices.

17. Defendant is subject to personal jurisdiction in the State of Georgia for purposes of this lawsuit and can be served through its registered agent, National Registered Agents, Inc., 3675 Crestwood Parkway, Suite 350, Duluth, Georgia 30096.

18. At all times material to this action, Defendant was an enterprise engaged in commerce or in the production of goods for commerce as defined by § 203 of the FLSA, and had an annual gross volume of sales which exceeded \$500,000.

19. At all times material to this action, Defendant was an "employer" of the named Plaintiffs and of others similarly situated, as defined by § 203(d) of the FLSA.

20. The minimum hourly wage provisions set forth in § 206 of the FLSA apply to Defendant.

21. The overtime provisions set forth in § 207 of the FLSA apply to Defendant.

FACTUAL ALLEGATIONS

22. Upon information and belief, Defendant employed, at Defendant's Georgia Locations, over 100 separate individuals as temporary laborers at various times in the past three years prior to the filing of this Complaint

23. Upon information and belief, Defendant's employment practices and policies regarding compensation are the same for all of Defendant's Georgia Locations.

24. Plaintiffs' duties and the duties of other similarly situated employees included working as temporary unskilled laborers for client companies of Defendant, including but not limited to providing cleaning and janitorial services.

25. At all times relevant to this action, Plaintiffs' primary duty and the primary duty of other similarly situated employees was not the management of the

enterprise in which they were employed, nor of a customarily recognized department or subdivision thereof.

26. At all times relevant to this action, Plaintiffs and similarly situated employees were not responsible for supervising or directing the work of any other employees.

27. At all times relevant to this action, Plaintiffs and similarly situated employees did not possess the authority to hire or fire other employees.

28. At all times relevant to this action, Plaintiffs' suggestions and recommendations, if any, as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

29. At all times relevant to this action, the suggestions and recommendations, if any, of similarly situated employees as to the hiring, firing, advancement, promotion or any other change of status of other employees were not given particular weight.

30. At all times relevant to this action, Plaintiffs and similarly situated employees did not possess discretion or exercise independent judgment with respect to matters of significance in the daily activities they performed.

31. At all times relevant to this action, Plaintiffs and similarly situated employees were not paid for all hours worked.

32. At all times relevant to this action, Defendant did not pay any wages to Plaintiffs and those similarly situated for some of the hours they actually worked.

33. At all times relevant to this action, Plaintiffs and those similarly situated employees were required to report to one of Defendant's Georgia Locations prior to proceeding on to the work site of one of Defendant's client customers.

Defendant Required "Repeaters" To Arrive Prior To Shift And Take Company Transportation On Some Projects

34. For some projects, Defendant required "repeaters" to arrive at one of the Georgia Locations prior to the shift beginning and take company mandated transportation to Defendant's client's worksite, including Defendant's client Deep South.

35. For example, for Deep South, Defendant provided laborers typically in two (2) twelve (12) hour shifts available per day. The day shift typically began at 7:00 a.m. and typically ended at 7:00 p.m. that same day. The night shift typically began at 7:00 p.m. and typically ended at 7:00 a.m. the next morning.

36. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to report to one of Defendant's Georgia Locations as early as 4:30 a.m. for the day shift and as early

as 4:30 p.m. for the night shift on the day they were to perform temporary labor for some of Defendant's projects, including its projects with Deep South.

37. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to report to one of Defendant's Georgia Locations as early as 4:30 a.m. for the day shift or as early as 4:30 p.m. for the night shift on the day they were to perform temporary labor for Defendant's client(s), including Deep South, even when they were classified as a "repeater" and knew from at least one day prior from Defendant and/or Defendant's client, including Deep South, that they would be working that day at the client's work site.

38. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to use company provided transportation to travel from Defendant's Georgia Locations to some of Defendant's client's work sites, including Deep South's work site.

39. Plaintiffs and similarly situated employees were required to board Defendant's company provided transportation at approximately 6:00 a.m. (6:00 p.m. for the night shift) and were not permitted by Defendant to travel directly from their homes to some of the client's work sites, including Deep South's work site.

40. Plaintiffs and similarly situated employees were not allowed to leave Defendant's Georgia Locations in the time between their required arrival of as early as 4:30 a.m. (or as early as 4:30 p.m. for the night shift) and the time they were required to board Defendant's transportation at approximately 6:00 a.m. (or 6:00 p.m. for the night shift).

41. Once Plaintiffs and similarly situated employees arrived at their required arrival time as early as 4:30 a.m. (or as early as 4:30 p.m. for the night shift), they were told by Defendant that if they left Defendant's premises they would be bumped from the "ticket" to work that day at Defendant's client's worksite, including Deep South's worksite.

42. If Plaintiffs and similarly situated employees arrived after the required arrival time sometimes as early as 4:30 a.m. (or as early as 4:30 p.m. for the night shift), Defendant would have replaced them on the "ticket" to work that day at some of the clients' worksites, including Deep South's worksite.

43. At all times relevant to this action, Plaintiffs and similarly situated employees were required to wait at Defendant's client's worksite after their shift ended until Defendant's transportation arrived to transfer them back to their respective Defendant's Georgia Location.

44. Plaintiffs and similarly situated employees were required to travel back to their respective Defendant's Georgia Location in Defendant's transportation.

45. At all times relevant to this action, Defendant had a practice of only paying Plaintiffs and similarly situated employees for the hours of work beginning with the time their shift started at Defendant's client's worksite until the time their shift ended at Defendant's client's worksite.

46. At all times relevant to this action, Defendant did not pay Plaintiffs and similarly situated employees for the total amount of hours worked from the time they were required to report to work at one of Defendant's Georgia Locations until the time they were returned to such location.

**Defendant Required "Repeaters" To Arrive Prior To Shift And
Required To Wait For Work Ticket On Some Projects**

47. For some projects, Defendant required "repeaters" to arrive at one of the Georgia Locations prior to the shift beginning and wait for a work ticket before allowing them to proceed using their own transportation to Defendant's client's worksite.

48. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to report to one of

Defendant's Georgia Locations as early at 5:30 a.m. for the day shift on the day they were to perform temporary labor on some of Defendant's projects.

49. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to report to one of Defendant's Georgia Locations as early as 5:30 a.m. for the day shift on the day they were to perform temporary labor for some of Defendant's clients, even when Defendant classified the employee as a "repeater" and knew from at least one day prior from Defendant and/or the client, that they would be working that day at the client's work site.

51. At all times relevant to this action, Defendant had a practice of requiring Plaintiffs and similarly situated employees to wait at one of Defendant's Georgia Locations for a work ticket prior to allowing them to proceed to the work site.

52. Plaintiffs and similarly situated employees were not allowed to leave Defendant's Georgia Locations in the time between their required arrival of approximately 5:30 a.m. and the time Defendant distributed to them their repeat work tickets for that day which would normally take place at approximately 6:30 a.m. or later.

53. Once Plaintiffs and similarly situated employees arrived at their required arrival time of 5:30 a.m. at one of Defendant's Georgia Locations, they were told by Defendant that if they left Defendant's premises they would be bumped from the "ticket" to work that day at Defendant's client's worksite.

54. If Plaintiffs and similarly situated employees arrived after the required arrival time of 5:30 a.m. Defendant would have replaced them on the "ticket" to work that day at the client's worksites.

55. After their shifts, Plaintiffs and similarly situated employees were required to travel back to their respective Defendant's Georgia Location to turn in the work ticket regardless of whether or not they wanted to get paid for that day's work by Defendant.

56. At all times relevant to this action, after their shifts, Plaintiffs and other current and former employees of Defendant were not allowed to go directly home.

57. At all times relevant to this action, Defendant would only pay Plaintiffs and similarly situated employees for the hours of work beginning with the time their shift started at Defendant's client's worksite until the time their shift ended at Defendant's client's worksite.

58. At all times relevant to this action, Defendant did not pay Plaintiffs and similarly situated employees for the total amount of hours worked from the time they were required to report to work at one of Defendant's Georgia Locations until the time they returned to such location as required by Defendant.

59. At all times relevant to this action, Plaintiffs and similarly situated employees were non-exempt employees for purposes of overtime compensation.

60. At all times relevant to this action, Plaintiffs and similarly situated employees similarly situated of Defendant were at times required to work in excess of forty (40) hours a week.

61. At all times relevant to this action, Defendant did not compensate Plaintiffs and similarly situated employees for time worked in excess of forty (40) hours per week on a basis of one and one-half times the regular rate of pay at which they were by law required.

62. The records, if any, concerning the number of hours actually worked by Plaintiffs and similarly situated employees and the compensation actually paid to Plaintiffs and similarly situated employees are in the possession of Defendant.

63. Defendant failed to meet the requirements for paying Plaintiffs and similarly situated employees for all hours worked as required under the FLSA.

64. Defendant failed to meet the requirements for any of the exemptions from application of the overtime compensation requirements of the FLSA under 29 U.S.C. § 207 or § 213 with respect to Plaintiffs and similarly situated employees.

65. Defendant failed to meet the requirements for paying Plaintiffs and similarly situated employees at a rate not less than one and one-half times the regular rate at which Plaintiffs and similarly situated employees were legally required to be paid under the compensation requirements of the FLSA under 29 U.S.C. § 203, § 206, and § 207.

66. Defendant is liable to Plaintiffs and similarly situated employees for compensation for any and all time worked in excess of forty (40) hours per week at the rate of at least one and one-half times the regular hourly rate at which Plaintiffs and similarly situated employees were legally required to be paid under the compensation requirements of the FLSA under 29 U.S.C. § 203, § 206, and § 207.

67. By reason of the said intentional, willful and unlawful acts of Defendant, Plaintiffs and similarly situated employees have suffered damages plus incurring costs and reasonable attorneys' fees.

68. As a result of Defendant's willful violations of the FLSA, Plaintiffs and similarly situated employees are entitled to liquidated damages.

69. Plaintiffs have retained the undersigned counsel to represent them and similarly situated employees in this action, and pursuant 29 U.S.C. § 216(b), Plaintiffs and similarly situated employees are entitled to recover all reasonable attorneys' fees and costs incurred in this action.

70. Plaintiffs demand a jury trial.

COUNT I

Failure To Pay For All Hours Worked In Violation Of The FLSA

71. Plaintiffs repeat and incorporate by reference paragraphs 1-70 herein.

72. By its actions alleged herein, Defendant willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

73. Defendant willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to properly pay compensation for all hours worked, including but not limited to wait time and travel time, to Plaintiffs and similarly situated employees in accordance with the FLSA.

74. As a result of Defendant's violations of the FLSA, Plaintiffs and similarly situated employees have suffered damages by failing to receive wages for all hours worked in accordance with the FLSA.

75. Defendant has not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and similarly situated employees.

76. As a result of the unlawful acts of Defendant, Plaintiffs and similarly situated employees have been deprived of wages for all hours worked in an amount to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation.

COUNT II
Failure To Pay Overtime Compensation In Violation Of The FLSA

77. Plaintiffs repeat and incorporate by reference paragraphs 1-70 herein.

78. By its actions alleged herein, Defendant willfully, knowingly and/or recklessly violated the FLSA provisions and corresponding federal regulations.

79. Defendant has willfully and intentionally engaged in a widespread pattern and practice of violating the provisions of the FLSA, as detailed herein, by failing to properly pay overtime compensation to Plaintiffs and similarly situated employees in accordance with § 203 and § 207 of the FLSA.

80. As a result of Defendant's violations of the FLSA, Plaintiffs and similarly situated employees have suffered damages by failing to receive overtime wages in accordance with § 203 and § 207 of the FLSA.

81. Defendant has not made a good faith effort to comply with the FLSA with respect to its compensation of Plaintiffs and similarly situated employees.

82. As a result of the unlawful acts of Defendant, Plaintiffs and similarly situated employees have been deprived of overtime compensation in an amount to

be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs and other compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons who will opt into this action, pursuant to § 216(b) of the FLSA, pray for the following relief:

A. Certification of a class and any necessary sub-classes pursuant to 29 U.S.C. § 216(b) to be described as and to include all laborers employed at one of Defendant's Georgia Locations within three years of the filing of this Complaint;

B. That, at the earliest possible time, they be allowed to give Notice of this action, or that the Court issue such Notice, to all persons who have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of Court-supervised Notice, been employed by Defendant as a temporary worker at Defendant's Georgia Locations. Such Notice shall inform them that this civil action has been filed and of the nature of the action, and of their right to opt into this lawsuit if they were not paid by Defendant for all hours worked, or they were not paid at least time and a half their regular rate for all hours worked in excess of 40 hours in a work week at any time during the preceding three years;

C. That all Plaintiffs be awarded damages for the three years preceding the filing of this Complaint in the amount of their respective unpaid compensation, plus an equal amount of liquidated damages;

D. That all Plaintiffs be awarded reasonable attorneys' fees;

E. That all Plaintiffs be awarded the costs and expenses of this action; and

F. That all Plaintiffs be awarded any such other, further legal and equitable relief permitted by law, including, but not limited to, any injunctive and/or declaratory relief to which they may be entitled.

Respectfully submitted this 9th day of April, 2008.

MARTIN & MARTIN, LLP

By: Kimberly N. Martin *w/ permission by Thomas F. Martin*

Kimberly N. Martin

kmartin@martinandmartinlaw.com

Georgia Bar No. 473410

Thomas F. Martin

tfmartin@martinandmartinlaw.com

Georgia Bar No. 482595

MARTIN & MARTIN

3481 Lakeside Drive, Suite 805

Atlanta, Georgia 30326

(404) 313-5538 / (770) 837-2678 Fax