

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA**

LUCIA BLANCA TREJO and JOSE A.
JIMENEZ, on behalf of themselves and others
similarly situated,

Civil No. ...

Plaintiffs and Proposed Collective and
Class Action Representatives,

COMPLAINT

-v-

**CLASS ACTION AND COLLECTIVE
ACTION**

TOWNSENDS, INC.,

(DEMAND FOR JURY TRIAL)

Defendant.

COMPLAINT

Lucia Blanca Trejo and Jose A. Jimenez, on behalf of themselves and others similarly situated, by and through their attorneys, state and allege:

PRELIMINARY STATEMENT

1. Named Plaintiffs and proposed collective action and class action representatives Lucia Blanca Trejo and Jose A. Jimenez (hereinafter referred to as the “Named Plaintiffs”) are current or former production workers who are or were employed by Defendant Townsends, Inc, (“Townsends”) at its North Carolina poultry processing plants located in Siler City and Pittsboro. The Named Plaintiffs seek relief on a collective and a class-wide basis relating to Townsends’ practice and policy of not fully compensating employees for all the time they have spent or will spend working at Townsends’ poultry processing plants. In particular, the Named Plaintiffs spent and/or will spend time donning, doffing, and sanitizing gear and equipment, and walking to and from the production floor. These activities are or were necessary and indispensable to Plaintiffs’ principal work but are not compensated by Townsends.

2. Certain of the Plaintiffs and opt-ins in this action were previously part of a lawsuit entitled *Ford et al v. Townsends of Arkansas, Inc., et al.*, Case No. 4:08-CV-00509-BSM) (hereinafter "*Ford Action*") pending in the United States District Court for the Eastern District of Arkansas. In that action, the plaintiffs alleged in their complaint and amended complaint, federal and state overtime claims arising out of the failure to pay for donning, doffing and related time in processing plants in various states, including North Carolina.

3. Pursuant to *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), the claims of North Carolina employees have been tolled during the pendency of the *Ford Action*.

4. In the *Ford Action*, Townsends, Inc. argued, and moved to dismiss, the claims of North Carolina claimants in Arkansas, asserting various procedural and jurisdictional arguments, contending that the Eastern District of Arkansas was an inappropriate venue to resolve the claims of North Carolina employees. North Carolina Plaintiffs and opt-ins have now have filed papers in the Eastern District of Arkansas agreeing to have their claims dismissed without prejudice in the Eastern District of Arkansas.

5. The Named Plaintiffs bring this action on behalf of themselves and all persons who were, are or will be employed by Townsends as hourly production and support employees in Townsends' poultry processing plants, at any time within the three years prior to the filing of Plaintiffs' initial Complaint on June 10, 2008 of the *Ford Action* through the date of the final disposition of this action (the "FLSA Period"), and who have not received full compensation for all hours worked under the Fair Labor Standards Act ("FLSA"). This group is hereinafter referred to as the "FLSA Class."

6. The Named Plaintiffs also bring this class/collective action on behalf of themselves and all persons who were, are or will be employed by Townsends as hourly production and support employees in Townsends' Pittsboro, North Carolina and Siler City, North

Carolina poultry processing plants, at any time within the two years prior to the filing of Plaintiffs' initial Complaint on June 10, 2008, in the Eastern District of Arkansas in the Ford Action through the date of the final disposition of this action (the "North Carolina Class Period"), and who have not received full compensation for all hours worked. This group is hereinafter referred to as the "North Carolina Class."

7. Each Named Plaintiff has provided his/her written consent to participate in this litigation as required by 29 U.S.C. § 216(b). Copies of the Named Plaintiffs Lucia Blanca Trejo and Jose A. Jimenez's consents to join this action were filed in accordance with 29 U.S.C. § 216(b).

8. In addition to the Named Plaintiffs, all persons presently or formerly employed by Townsends in similar employment positions which are not exempt from the minimum wage and overtime requirements of the FLSA, are entitled to collectively participate in this action by choosing to "opt in" and submit a written consent to join form. The federal cause of action is brought as a collective action under and pursuant to the statutory requirements of the FLSA, 29 U.S.C. § 216(b). After the commencement of this action and in accordance with the Local Rules of the Middle District of North Carolina, the Named Plaintiffs shall file, pursuant to 29 U.S.C. § 216(b), a motion for certification of their FLSA claims as a collective action, to obtain discovery of potential class members necessary for notice, and for authorization to issue notice to the FLSA Class.

THE PLAINTIFFS

9. The Named Plaintiffs are or were nonexempt production workers employed by Townsends within 3 years of the initial Complaint.

10. Named Plaintiff Lucia Blanca Trejo is or was a production employee who has been employed by Townsends at its Siler City, North Carolina processing plant.

11. Named Plaintiff Jose A. Jimenez is or was a production employee who has been employed by Townsends at its Pittsboro, North Carolina processing plant.

THE DEFENDANT

12. Townsends is a poultry processor which supplies wholesale and retail customers with processed poultry.

13. Upon information and belief, Defendant Townsends is incorporated in Delaware with significant operations throughout the United States, including but not limited to processing plants in Batesville, Arkansas; Mocksville, North Carolina; Siler City, North Carolina; Pittsboro, North Carolina; and Mount Bethel, Pennsylvania.

14. Upon information and belief, Defendant Townsends is an “employer” of Named Plaintiffs, as that term is defined by the federal and North Carolina state laws pled herein. *See* 29 U.S.C. § 203(d) and N.C. Gen. Stat. § 95-25.2.

15. Upon further information and belief, the Named Plaintiffs are or were “employees” of Defendant Townsends as that term is defined by the federal and North Carolina state laws pled herein. *See* 29 U.S.C. § 203(e) and N.C. Gen. Stat. § 95-25.2.

16. Upon information and belief, and at all times relevant hereto, Townsends was aware of the applicable federal and state laws and regulations governing overtime compensation as they relate to the compensability of time its employees spend donning, doffing, and sanitizing gear and equipment.

17. Upon information and belief, and at all times relevant hereto, Townsends was aware of the U.S. Department of Labor’s long-standing position and public pronouncements against the poultry industry-wide practice of not compensating employees for the time they spend donning, doffing, and sanitizing gear at poultry plants violates federal and state wage and hour laws. Upon further information and belief, Townsends obtained explicit notice of the

Department of Labor's position that such practices violate applicable wage and hour laws through its membership in the National Chicken Council.

18. Upon further information and belief, Townsends has previously been involved in litigation involving employee wage and hour claims related to the time employees spent donning, doffing, and sanitizing gear at one of its poultry plants in North Carolina. *See Ford Action*, (North Carolina Plaintiffs' claims dismissed on procedural grounds); *Arturo Escalona-Islas and Ramon Martinez Reyes v. Townsends, Inc.*, No. 1:07-cv-622 JAB/WWD (M.D.N.C.).

19. Townsends' knowledge concerning the compensability of donning, doffing, and sanitation time and its knowledge that it, at all times relevant hereto, failed to compensate employees for all hours worked, including all donning, doffing and sanitation time, renders it responsible and liable in whole or in part for the wage and hour violations alleged herein.

JURISDICTION AND VENUE

20. Jurisdiction over Plaintiffs' federal claims is based upon Section 16(b) of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337.

21. This Court also has original jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d).

22. In addition, jurisdiction over Plaintiffs' claims under North Carolina law is based upon this Court's power to exercise supplemental jurisdiction over these claims under 28 U.S.C. § 1367.

23. The Middle District of North Carolina has personal jurisdiction over Defendant because Defendant (a) does business in North Carolina, and in the Middle District, (b) operates processing plants in North Carolina, and in the Middle District, (c) employs hundreds of workers in North Carolina, and in the Middle District, and (c) because many of the acts complained of

and giving rise to the claims alleged in North Carolina occurred or are occurring in the Middle District. Defendant has purposefully availed itself of the privilege of conducting activities within the State of North Carolina, thus invoking the benefits and protections of its laws.

24. Venue is proper because Defendant resides in this District, a substantial part of the events or omissions giving rise to the claims alleged occurred in this District, and/or Defendant's contacts within this District are sufficient to subject it to personal jurisdiction in this District. 28 U.S.C. § 1391(b), (c).

FACTUAL ALLEGATIONS

25. Upon information and belief, Townsends operates poultry processing plants in or around Siler City, North Carolina and Pittsboro, North Carolina.

26. Upon information and belief, production and support employees at Townsends' processing plants are nonexempt hourly employees, and the work performed by these employees is nonexempt work.

27. Upon information and belief, Townsends has not compensated its nonexempt employees for all hours worked as required by federal and state law:

A. Townsends has not paid their nonexempt employees full overtime compensation for the hours worked as required by the FLSA and applicable state law,;

B. Townsends refuses to fully compensate its hourly production and support employees for the time spent at the beginning of shifts donning and doffing and sanitizing required gear and equipment, including but not limited to, boots, hair nets, beard nets, ear plugs, smocks, safety glasses, liners, gloves, arm guards, plastic sleeves, plastic aprons, and bump caps, and at the end of shifts for removing and cleaning these same items,;

C. Similarly, Townsends does not fully compensate its hourly production and support employees for time spent donning and doffing before and after their unpaid lunch breaks,;

D. Additionally, Townsends does not fully compensate its nonexempt workers for time spent walking to and from changing areas and the production floor,;

E. Failing to fully pay these employees overtime compensation for all walking time and time spent donning, doffing and sanitizing at the plant violates the FLSA and North Carolina's wage and hour laws.

28. Townsends did not exercise good faith in willfully failing to fully compensate its employees under the FLSA. Townsends consciously excluded from "hours worked" all of the time spent by hourly production and support employees donning, doffing, sanitizing, and walking to and from the production lines at its processing plants.

29. At the same time, and for further proof of its failure to exercise good faith, the poultry industry as a whole has continuously been found to violate federal and state wage and hour laws. Despite repeated admonitions by the U.S. Department of Labor that the industry-wide practice of not compensating workers for time spent donning, doffing, and sanitizing at poultry plants violates federal and state law, to date, Townsends adheres to this unlawful practice.

30. Townsends' practices violate, among other things, the FLSA and the North Carolina laws pled herein. Plaintiffs seek overtime compensation for all overtime work required, suffered or permitted by Townsends, liquidated or other damages and penalties permitted by applicable law, interest, and attorneys' fees and costs.

COLLECTIVE ACTION ALLEGATIONS

31. Plaintiffs' first cause of action is brought under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as a collective action on behalf of the FLSA Class.

32. The Named Plaintiffs and members of the FLSA Class are similarly situated in that they have or have had substantially similar job requirements and pay provisions, are subject to Townsends' common practice, policy, or plan of unlawfully failing to pay for all hours worked, including pay at overtime rates.

33. The names and addresses of the FLSA Class are available from Townsends' records. Notice should be provided to the FLSA Class via both first class mail and by posting in Townsends' processing plants as soon as possible.

NORTH CAROLINA CLASS ACTION ALLEGATIONS

34. Plaintiffs bring their second cause of action for violations of North Carolina's statutes as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

35. Members of the putative North Carolina Class are so numerous that joinder of all such members is impracticable. The exact size of the putative North Carolina Class is unknown, but may be determined from records maintained by Townsends. It is believed and alleged that the number of persons currently employed by Townsends at its Siler City and Pittsboro plants collectively numbers in the hundreds. Former employees are also included as putative North Carolina Class members.

36. There are common questions of law and fact applicable to the putative North Carolina Class with respect to the liability issues, relief issues and anticipated affirmative defenses. For example, common questions of fact and law include but are not limited to the compensability of time spent donning and doffing; whether injunctive relief is available to force Townsends into compliance; whether Townsends has acted willfully or in good faith; whether

members of the putative North Carolina Class are entitled to liquidated damages, penalties and attorneys' fees and costs; and whether Townsends has complied with record-keeping obligations under state and federal law.

37. The Named Plaintiffs claims are typical of the North Carolina Class. Named Plaintiffs Blanca Trejo and Jimenez, like the other North Carolina Class members, are or have been subjected to Townsends' common practice and policy of not paying its hourly production and support employees for all compensable work to which they were entitled under North Carolina law.

38. The Named Plaintiffs will fairly and adequately protect the interests of the putative North Carolina Class. They have no conflicts with the other putative North Carolina Class members. Their counsel possesses the requisite resources and is experienced in class action litigation.

39. Townsends has acted or refused to act on grounds generally applicable to the North Carolina Class, making appropriate declaratory and injunctive relief with respect to the Named Plaintiffs and the North Carolina Class as a whole. The Named Plaintiffs and the North Carolina Class are entitled to injunctive relief to end Townsends' common and uniform practice of failing to properly compensate them for all hours worked for the benefit of Townsends. Fed. R. Civ. P. 23(b)(2).

40. The questions of law and fact common to the putative North Carolina Class members predominate over any questions affecting only individual class members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). More specifically, members of the proposed North Carolina Class have little or no interest in individually controlling the prosecution of separate actions. Fed. R. Civ. P. 23(b)(3)(A). The Named Plaintiffs are aware of litigation pending in the

Eastern District of Arkansas in the *Ford* Action. Plaintiffs originally sought to join that action but the court denied plaintiffs' motion on procedural grounds. Plaintiffs are unaware of any pending litigation concerning this controversy already commenced by the proposed State Class. Fed. R. Civ. P. 23(b)(3)(B). It is desirable to concentrate the litigation of the claims in this Court because Townsends does a substantial amount of business in this District. Fed. R. Civ. P. 23(b)(3)(C).

41. This action is manageable as a class action because, compared to any other method such as individual interventions or the consolidation of individual actions, a class action is more fair and efficient. Fed. R. Civ. P. 23(b)(3)(D).

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938

42. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

43. The FLSA regulates, among other things, the payment of all hours worked, including overtime compensation by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1). Townsends is, and was, subject to the pay requirements of the FLSA, because it is an enterprise engaged in commerce and its employees are engaged in commerce.

44. FLSA requires employers to pay employees for all hours in which the employee is suffered or permitted to work, including preparatory and concluding time. Hours worked includes time spent preparing for and concluding shifts, *i.e.*, donning and doffing and sanitizing required equipment, as well as donning and doffing and sanitizing equipment before and after meals and other breaks. These types of activities are integral and indispensable parts of Townsends' employees' jobs.

45. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires employers to pay non-exempt employees who work longer than 40 hours in a workweek overtime rates for hours worked in the workweek in excess of 40 hours. Townsends has at all times been subject to this requirement to pay its hourly production and support employees one and one-half times its employees' regular rate of pay for all hours worked in a workweek in excess of 40 hours. Townsends' employees, including the Named Plaintiffs, regularly worked more than 40 hours per week. Townsends has violated and continues to violate the FLSA by requiring hourly production and support employees to perform compensable work in excess of 40 hours without proper compensation.

46. By failing to keep, record, report or preserve records of hours worked by the Named Plaintiffs and members of the FLSA Class, Townsends has failed and continues to fail to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of 29 U.S.C. § 201 *et seq.*

47. Members of the FLSA Class are entitled to damages equal to the amount of all uncompensated time, including overtime premium pay within the three years preceding the filing of the initial Complaint, plus periods of equitable tolling. Townsends' failure to pay overtime to members of the FLSA Class was "willful" within the meaning of Section 6(a) of the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 255(a), because Townsends did not act and continues not to act in good faith in failing to pay proper overtime compensation, and had and has no reason to believe that its failure to do so was and is not a violation of the FLSA, within the meaning of Section 11 of the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 260. Accordingly, the FLSA Class is entitled to an award of liquidated damages in an amount equal to the amount of unpaid overtime compensation described above, pursuant to Section 16(b) of the

FLSA. Alternatively, should the Court find that Townsends did not act willfully in failing to pay overtime compensation, the FLSA Class is entitled to an award of prejudgment interest at the applicable legal rate. Townsends may not withhold or deduct any costs from any plaintiffs or opt-ins' FLSA recoveries to the extent such withholdings or deductions violate 29 C.F.R. sec. 531.35, relating to purchase of any personal protective equipment.

48. The Named Plaintiffs also seek reasonable attorneys' fees and costs, to be paid by Townsends, as provided by Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
VIOLATION OF NORTH CAROLINA WAGE AND HOUR ACT
SECTIONS 95-25.6 AND 95-25.22

49. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

50. Throughout the relevant time period, Townsends has been and continues to be subject to the requirements of the North Carolina Wage and Hour Act ("NCWHA"), N.C. Gen. Stat. §§ 95-25.1 *et seq.*

51. Townsends was and is an employer within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2.

52. Townsends was and is required to pay a minimum wage in accordance with the NCWHA, N.C. Gen. Stat. § 95-25.3, which provides in pertinent part:

Every employer shall pay to each employee who in any workweek performs any work, wages of at least six dollars and fifteen cents (\$6.15) per hour or the minimum wage set forth in [the FLSA], as that wage may change from time to time, whichever is higher[.]

53. Townsends was and is required to pay overtime compensation in accordance with the NCWHA, N.C. Gen. Stat. § 95-25.4, which provides in pertinent part:

Every employer shall pay each employee who works longer than 40 hours in any workweek at a rate of not less than time and one

half of the regular rate of pay of the employee for those hours in excess of 40 per week[.]

54. The Named Plaintiffs and members of the North Carolina Class are or were employees within the meaning of the NCWHA, N.C. Gen. Stat. § 95-25.2, and are entitled to the protections of the NCWHA and its minimum wage and overtime provisions.

55. When walking, donning and doffing time, and sanitation time is included as compensable work during a regular work week, such compensable work time should have been compensated under the minimum wage and overtime provisions of the NCWHA. When such compensable work time is in addition to the more than 40 hours of already compensated work, the Named Plaintiffs and members of the North Carolina Class engaged in each work week, such uncompensated walking, donning and doffing time, and sanitation time should have been compensated at an overtime rate of pay under Section 95-25.4.

56. Townsends did not pay and will not pay all wages due when those wages were and will be due at the rate agreed upon between Named Plaintiffs and members of the North Carolina Class, on one hand, and Townsends, on the other hand. Townsends did not pay and will not pay the minimum and overtime rates required by the NCWHA to the Named Plaintiffs and members of the North Carolina Class for hours worked that Townsends allowed or suffered and/or will allow or will suffer Named Plaintiffs and members of the North Carolina Class to perform.

57. Townsends' failure to pay minimum and overtime rates violates the NCWHA, N.C. Gen. Stat. §§ 95-25.1 *et seq.*

58. By failing to make, keep, and preserve records of all hours worked by the Named Plaintiffs, and members of the North Carolina Class, Townsends has failed and continues to fail to make, keep, and preserve records with respect to each of its employees sufficient to determine

their wages, hours, and other conditions and practices of employment, in violation of the NCWHA, N.C. Gen. Stat. § 95-25.15(b).

59. At all times relevant to this Complaint, Townsends acted and continues to act with reckless disregard of the right of the Named Plaintiffs and members of the North Carolina Class under N.C. Gen. Stat. § 95-25.6 and 95-25.22 to receive all of the wages they were and are due on their regular pay day for all of the hours worked that Townsends has engaged them to perform and for all the time that Townsends suffered, allowed, and/or required them to perform.

60. Townsends' violation of the NCWHA includes its failure to pay all wages accruing due to unlawful wage deductions for items of personal protective equipment ("PPE") which the Named Plaintiffs and putative class members do not wear off the jobsite for use off the job. 13 N.C.A.C. 12.0305(g)(2).

61. Townsends has made and/or will make weekly wage deductions from the weekly wages that were and/or will be due to the Named Plaintiffs and members of the North Carolina Class for replacement items of PPE.

62. Townsends failed to obtain a written authorization for any such wage deductions, failed to obtain a valid authorization for any such wage deductions, and/or obtained an authorization that is invalid for any such wage deductions. *See* N.C. Gen. Stat. § 95-25.8(a)(1)-(2); 13 N.C.A.C. 12.0305(g).

63. Townsends' wage deductions violate the NCWHA, N.C. Gen. Stat. §§ 95-25.1 *et seq.*

64. Townsends did not pay and will not pay all wages due when those wages were and/or will be due to the Named Plaintiffs and members of the North Carolina Class due to the illegal wage deductions.

65. At all times relevant to this Complaint, Townsends acted with reckless disregard of the right of the Named Plaintiffs and members of the North Carolina Class under N.C. Gen. Stat. §§ 95-25.6, 95-25.7, and 95-25.22, and 13 N.C.A.C. 12.0305(g)(2) to receive the wages each such person was due on their regular pay day free of any wage deductions for any replacement item(s) of PPE for which Townsends.

66. As a result of Townsends' actions in disregard of the rights under N.C. Gen. Stat. §§ 95-25.6, 95-25.7, and 95-25.22, and 13 N.C.A.C. 12.0305(g)(2), the Named Plaintiffs and members of the North Carolina Class have suffered and/or will suffer damages in the form of unpaid wages and liquidated damages that may be recovered under N.C. Gen. Stat. §§ 95-25.22(a) and 95-25.22(a1).

67. As a result of Townsends' willful actions in reckless disregard of the rights under N.C. Gen. Stat. §§ 95-25.6 and 95-25.22, the Named Plaintiffs and members of the North Carolina Class have suffered damages in the form of unpaid wages that may be recovered under N.C. Gen. Stat. § 95-25.22.

68. Townsends is liable to the Named Plaintiffs and members of the North Carolina Class for compensatory and liquidated damages, interest, plus costs, disbursements, witness and attorneys' fees, pursuant to the NCWHA, N.C. Gen. Stat. § 95-25.22.

DEMAND FOR JURY

69. The Plaintiffs hereby demand a trial by jury of twelve (12) for all issues in this case.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiffs Lucia Blanca Trejo and Jose A. Jimenez, on behalf of themselves and all members of the FLSA Class, pray for relief as follows:

1. Designation of this action as a collective action on behalf of the proposed FLSA Class and prompt issuance of notice to all similarly situated members, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims by filing individual Consents to Sue;

2. Designation of the Named Plaintiffs as Representatives of the FLSA Class;

3. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

4. An award of damages, according to proof, including liquidated damages, to be paid by Townsends;

5. Costs of the action incurred herein, including expert fees;

6. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

7. Pre- and post-judgment interest, as provided by law; and

8. For any other and further relief the Court may deem just or equitable.

WHEREFORE, Named Plaintiffs Lucia Blanca Trejo and Jose A. Jimenez on behalf of themselves and all members of the North Carolina Class, pray for relief as follows:

9. Certification of this action as a class action on behalf of the proposed North Carolina Class pursuant to Fed. R. Civ. P. 23;

10. Designation of Named Plaintiffs Lucia Blanca Trejo and Jose A. Jimenez as Representative of the North Carolina Class;

11. A declaratory judgment that the practices complained of herein are unlawful under North Carolina law;

12. Appropriate equitable and injunctive relief to remedy Townsends' violations of North Carolina law, including but not necessarily limited to an order enjoining Townsends from continuing its unlawful practices;

13. Appropriate statutory penalties;
14. An award of damages and restitution, including civil penalties, recordkeeping penalties, and overtime wages to be paid by Townsends according to proof;
15. Costs of the action incurred herein, including expert fees;
16. Attorneys' fees and costs of suit, including expert fees;
17. Pre and post-judgment interest, as provided by law; and
18. For any other and further relief the Court may deem just or equitable.

Dated: December 21, 2009

Respectfully Submitted,

LEA, RHINE & ROSBRUGH, PLLC

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