



employment contracts, pursuant to the North Carolina Wage and Hour Act (N.C. Gen. Stat. Ann. § 95-25.1 *et. seq.*), pursuant to the Utah Payment of Wages Act (Utah Code § 34-28-1, *et. seq.*), pursuant to the Utah Minimum Wage Act (Utah Code § 34-40-101, *et. seq.*), and pursuant to the Fair Labor Standards Act (29 U.S.C. § 215).

2. As a direct result, Plaintiffs seek to recover unpaid wages and expenses, liquidated damages, punitive damages, interest, costs and attorneys' fees pursuant to the applicable common and statutory law.

3. Further, AEG and the Alter Ego Defendants should be treated as one enterprise under the alter-ego and instrumentality doctrine. As such, the corporate veil of the entities should be pierced and/or disregarded such to treat all entities as one and the same, and such that one cannot hide behind the corporate veil of another to avoid liability.

4. In the alternative, on information and belief, certain Alter Ego Defendants — including but not limited to, Lumberton Energy Holdings — are mere continuations of their predecessor entities including but not limited to Gladiola Holdings, LLC d/b/a/ AEG CoalSwitch (“**Gladiola**”); or have merged with said predecessor entities; or have otherwise received the transferred assets of said predecessor entities for fraudulent purposes.

## **II. JURISDICTION AND VENUE**

5. This Court has subject-matter jurisdiction over this case based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. Diversity jurisdiction exists because the parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interest and costs. Furthermore, this Court has subject-matter jurisdiction over this case based on the federal question raised.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) by virtue of the physical locations of Defendant Active Energy Renewable Power, LLC and Defendant Lumberton

Energy Holdings, LLC, which are the alter egos and instrumentalities of AEG and Advanced Biomass Solutions, PLC.

7. The Court has personal jurisdiction over all Defendants based both on general and specific jurisdiction:

- a. Defendant AEG's affiliations within the forum state are so continuous and systematic as to render it essentially at home in the forum State by virtue of its first-party operations and alter-ego operations operating within the forum state including but not limited to its continuous and ongoing manufacturing of biomass fuel products in and around Lumberton, North Carolina.
- b. Defendant Advanced Biomass Solutions, PLC's affiliations within the forum state are so continuous and systematic as to render it essentially at home in the forum State by virtue of its first-party operations and alter-ego operations operating within the forum state and is additionally the alter ego of the other AEG Defendants.
- c. Defendants Lumberton Energy Holdings LLC and Active Energy Renewable Power, LLC are organized with a principal address inside the forum state, and on information and belief, are the alter egos of each other and all other defendants.

### **III. PARTIES**

8. Plaintiff **Daniel McCarthy** ("**Plaintiff McCarthy**") is an individual currently residing in Troy, Michigan, and during all times relevant to this action, was residing in Salt Lake County, Utah. He is a degreed Mechanical Engineer, with a Master of Science degree in Manufacturing Management and a background in Engineering Consulting. Between approximately February 1, 2017 through February 21, 2019, Plaintiff McCarthy was employed by

AEG Defendants, within the meaning of N.C. Gen. Stat. Ann. § 95-25.2(4) and Utah Code § 34-28-2(1)(c)(i), as Vice President of Engineering of Active Energy Group, PLC.

9. Plaintiff **Philip Scalzo (“Plaintiff Scalzo”)** is an individual currently residing in South Jordan, Salt Lake County, Utah, and was during all times relevant to this action, residing in Salt Lake County, Utah. He is a technologist, with degrees in physics, mathematics and an MBA with a concentration in corporate finance, with a background in biofuels and energy. Between no later than February 1, 2017 through February 22, 2019, Plaintiff Scalzo was employed by AEG Defendants, within the meaning of N.C. Gen. Stat. Ann. § 95-25.2(4) and Utah Code § 34-28-2(1)(c)(i), as Chief Technology Officer of Active Energy Group, PLC.

10. Defendant **Active Energy Group, PLC (“AEG”)** is a for-profit public limited company, incorporated under the laws of England, traded on the AIM sub-market of the London Stock Exchange. It has a registered office at the address of 27/28 Eastcastle Street, London, W1W 8DH. According to its annual report for 2019, AEG holds itself out to investors as on its way to becoming “a producer of biomass products focused on the utilization (*sic*) of low cost and waste biomass materials that create higher value, energy efficient and carbon neutral fuels.” On information and belief, AEG operates in U.S. states including but not limited to North Carolina and Utah by virtue of its own first-party actions as well as those of its alter egos, instrumentalities, and subsidiaries.

11. Defendant **Advanced Biomass Solutions, PLC (“ABS”)**, on information and belief, is a for-profit public limited company, incorporated under the laws of England, with a registered office at the address of 27/28 Eastcastle Street, London, United Kingdom W1W 8DH. ABS is the alter ego and instrumentality of AEG, as well as with all other alter egos,

instrumentalities, and subsidiaries of AEG.<sup>1</sup> On information and belief, ABS operates in U.S. states including but not limited to North Carolina and Utah by virtue of its own first-party actions as well as those of its alter egos, instrumentalities, and subsidiaries. On information and belief, at all relevant times, AEG was the sole and dominant owner of ABS. AEG willfully and deceptively concealed its ownership through the veil of a proxy owner: Brian Evans-Jones, AEG's former Chief Financial Officer. On information and belief, and as described in more detail below, AEG and its alter egos willfully and deceptively held assets in ABS to deliberately undercapitalize themselves in an effort to evade liability to creditors such as Plaintiffs.

12. Defendant **Lumberton Energy Holdings, LLC** is a limited liability company organized under North Carolina law, formed on February 28, 2019, with a registered address at 575 Military Cutoff Rd. Ste. 106, Wilmington, NC 28405 and a registered principal office at 1885 Alamac Road, Lumberton, NC 28358. On information and belief, it is the alter ego and instrumentality of the other AEG Defendants named in this Complaint. Upon information and belief, at all relevant times, AEG is and was the sole owner of Defendant Lumberton Energy Holdings LLC.

13. Defendant **Active Energy Renewable Power, LLC** is a limited liability company organized under North Carolina law, formed on October 10, 2018, with a registered address at 575 Military Cutoff Rd. Ste. 106, Wilmington, NC 28405 and a registered principal office at 1885 Alamac Road, Lumberton, NC 28358. On information and belief, it is the alter ego and instrumentality of the other AEG Defendants named in this Complaint. Upon information

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<sup>1</sup> For example, a visit to ABS's own website (<http://abs-plc.com/>) displays AEG's name and logo and redirects the viewer to AEG's website: "Please visit our main site at <https://www.aegplc.com/>."

and belief, at all relevant times, AEG is and was the sole owner of Defendant Active Energy Renewable Power, LLC.

14. Plaintiffs are unaware of all potential defendants in this lawsuit and may seek leave of this Court to amend its Original Complaint with additional defendants, if any, and include an exhaustive list of all defendants.

#### **IV. FACTUAL ALLEGATIONS**

15. At all times relevant to this lawsuit, AEG directly (or in the alternative through one of its Alter Ego Defendants) employed Plaintiffs within the meaning of North Carolina's and Utah's Wage and Hour Acts (*see* N.C. Gen. Stat. Ann. § 95-25.1 *et. seq.*; *see also* Utah Code § 34-28-2(1)(c)(i)) and pursuant to oral and written contracts governed by North Carolina's and Utah's contract law.

16. AEG and the Alter Ego Defendants are in the business of developing and manufacturing a clean-burning wood-based fuel alternative to coal.

17. AEG and the Alter Ego Defendants employ individuals, such as Plaintiffs, residing in multiple states including, but not limited to, Utah and North Carolina. Plaintiffs' work performance was to be performed in said states, as well as other parts of the world including Malaysia, Canada, and Ukraine.

##### **A. Plaintiff Scalzo's Employment Contract & Terms**

18. On or before February 1, 2017, Plaintiff Scalzo began his career with AEG and the Alter Ego Defendants as the Chief Technology Officer ("CTO"). Plaintiff Scalzo remained in that role until he was terminated on February 22, 2019.

19. In the formation of his employment, Plaintiff Scalzo orally negotiated the terms of his employment with Richard Spinks, AEG's Chief Executive Officer ("CEO") at the time. The employment agreement included that Plaintiff Scalzo's title would be Chief Technology Officer with compensation of fifteen-thousand dollars (\$15,000.00) per month in addition to

reimbursement for the lease of an automobile in Utah and all business-related expenses incurred in addition to various customary benefits such as health insurance. For approximately two years until it ultimately breached this agreement, AEG honored these terms.

20. At the outset of Plaintiff Scalzo's employment, AEG paid Plaintiff Scalzo as an independent contractor "because of the complications associated with paying [him] through a U.K. company," according to Brian Evans-Jones in the capacity of Active Energy Group CEO. Notwithstanding that internal characterization, Plaintiff Scalzo was in fact an employee (rather than a contractor) of AEG throughout the work relationship:

- a. Plaintiff Scalzo was a highly integrated employee of AEG, to the degree of being on AEG's chief-level executive management team. For instance, in that role, Plaintiff Scalzo presented on behalf of AEG at investor meetings, he was responsible for the development and management of AEG's Utah operation including overseeing the design and construction of the company's research and development systems and a five (5)-ton-per-hour CoalSwitch plant that was started, but never completed due to a lack of funds. Plaintiff Scalzo also served on AEG's Operating Committee, which was responsible for, among other things, establishing the firm's work plans, schedules, budgets and for prioritizing the firm's activities.
- b. Plaintiff Scalzo was required to work on the premises of AEG and/or of the Alter Ego Defendants.
- c. Plaintiff Scalzo's tools and equipment were owned, provided by, and paid for by AEG and the Alter Ego Defendants.
- d. Plaintiff Scalzo did not perform services for any company other than AEG and the Alter Ego Defendants.

- e. Plaintiff Scalzo did not have any profit-or-loss concern other than that of AEG and the Alter Ego Defendants.
- f. Plaintiff Scalzo generated business for AEG and the Alter Ego Defendants including ABS and for no other companies.
- g. Plaintiff Scalzo was under the direct control and supervision of AEG's management team on a daily basis, including but not limited to Richard Spinks (CEO, AEG), Brian Evans-Jones (CFO, AEG, *in addition to* CEO, ABS), Charles Fritz (CEO, Gladiola, now deceased), Daniel Shaw (CEO, Gladiola), and Michael Rowan (CEO, AEG); each of said individuals directed Plaintiff Scalzo's work on specific projects, determined priorities, approved purchase requisitions, and set budgets.
- h. AEG's management team provided training to Plaintiff Scalzo.
- i. AEG's management team set the schedule and timeline for all of Plaintiff Scalzo's projects.
- j. AEG required Plaintiff Scalzo to perform his work on site at the premises of AEG and the Alter Ego Defendants, including at 870 Gladiola St, Salt Lake City, UT.
- k. Plaintiff Scalzo could not have assigned, contracted, or subcontracted his duties to any another individual or entity, both due to AEG disallowing such assignment, contracting, or subcontracting as well as the same being not functionally possible; his duties could only have been performed personally.
- l. Plaintiff Scalzo had a continuous work-service relationship with AEG and the Alter Ego Defendants. He performed work for AEG and the Alter Ego

Defendants on a regular full-time, salaried, basis, and his work performance was not limited in time or to specific projects.

m. Plaintiff Scalzo was expected to work a minimum of forty (40) hours per week, but routinely worked more than sixty (60) hours per week, without additional compensation.

n. Plaintiff Scalzo was paid on a regular monthly or semi-monthly basis via the method of payment controlled and established by AEG.

21. From the time of his engagement until it breached the contract, AEG paid Plaintiff Scalzo his salary, automobile lease, expense reimbursement, and insurance benefits.

22. AEG instructed and effectuated the formation of Gladiola Holdings, LLC — a now-dissolved entity organized under Utah law for the sole and exclusive purpose of establishing a United-States-based bank account into which AEG could transfer money to fund its Utah-based operations and facilitate its payroll payments to its Utah-based employees such as Plaintiffs.

23. The exclusive purpose of Gladiola Holdings LLC was to facilitate the payment of utility bills, AEG-approved invoices from certain United-States-based vendors, and the monthly transfer of funds from AEG's U.K. bank account (HSBC) to the payroll company engaged to manage the payment of salaries and benefits of its Utah-based employees due to the "complications associated with paying [Plaintiffs] through a U.K. company." At no time was Plaintiff McCarthy or Plaintiff Scalzo an employee of, or contractor for, Gladiola Holdings, LLC.

**B. Plaintiff McCarthy's Employment Contract & Terms**

24. On or about February 1, 2017, Plaintiff McCarthy began his career with AEG as the Vice President of Engineering. Plaintiff McCarthy remained in that role until he was indefinitely furloughed (and effectively terminated) on February 21, 2019.

25. In the formation of his employment, Plaintiff McCarthy negotiated orally with Brian Evans-Jones, the Chief Financial Officer of AEG, in regard to the terms of Plaintiff McCarthy's employment. The agreement was that Plaintiff McCarthy's title would be Vice President of Engineering for AEG and his compensation would be twelve thousand dollars and 00/100 (\$12,000.00) per month in addition to compensation for all business-related expenses incurred and various customary benefits such as health insurance. For approximately 16 months before ultimately breaching this agreement (as further described below), AEG honored these terms.

26. Upon Plaintiff McCarthy's hiring, Plaintiff McCarthy and Defendant AEG entered into an Independent Contractor agreement. Notwithstanding, Plaintiff McCarthy was indeed an employee (rather than an independent contractor) of AEG and/or its alter ego companies. At all times:

- a. McCarthy was a highly integrated employee of AEG, to the degree of being AEG's Vice President of Engineering. For instance, in that role, McCarthy produced mechanical engineering designs of machines and equipment, produced 2-D and 3-D general arrangement models to support AEG's business development activities, and actively participated in the overall development of the CoalSwitch process that AEG incorporated into its core business.
- b. McCarthy's was required to work on the premises of AEG and/or of the Alter Ego Defendants.
- c. McCarthy's tools and equipment were owned, provided by, and paid for by AEG and the Alter Ego Defendants.
- d. McCarthy did not perform services for any company other than AEG and the Alter Ego Defendants.

- e. McCarthy did not have any loss or profit concerns through any other business activities besides AEG;
- f. McCarthy generated business for AEG and the Alter Ego Defendants including ABS and for no other companies.
- g. McCarthy was under the direct control and supervision of Plaintiff Scalzo, who directed McCarthy's work on specific projects, determined priorities, and set budgets.
- h. AEG's management team set the schedule and timeline for all of McCarthy's projects.
- i. AEG required McCarthy to perform his work on site at the premises of AEG and the Alter Ego Defendants, including at 870 Gladiola St, Salt Lake City, UT.
- j. McCarthy could not have assigned, contracted, or subcontracted his duties to any another individual or entity, both due to AEG disallowing such assignment, contracting, or subcontracting as well as the same being not functionally possible; his duties could only have been performed personally.
- k. McCarthy had a continuous work-service relationship with AEG and the Alter Ego Defendants. He performed work for AEG and the Alter Ego Defendants on a regular full-time, salaried, basis, and his work performance was not limited in time or to specific projects.
- l. McCarthy was expected to work a minimum of forty (40) hours per week.
- m. McCarthy was paid on a regular monthly or semi-monthly basis via the method of payment controlled and established by AEG.

27. Over the following 16 months until it breached the contract, AEG paid McCarthy his salary, reimbursed his expenses, and paid for his insurance benefits.

28. In the same manner and for the same reasons as for Plaintiff Scalzo described above, AEG used Gladiola Holdings, LLC as the passthrough entity to facilitate payment of Plaintiff McCarthy's salary, expense-reimbursement payments, and other benefits.

29. At no time was Plaintiff McCarthy an employee of, or contractor for, Gladiola Holdings, LLC.

**C. AEG Breach the Plaintiffs' Employment Agreements**

30. On or around June 2018, approximately eight months prior to Plaintiffs' terminations, AEG and/or the Alter Ego Defendants announced to employees, including but not limited to Plaintiffs, that they had cash-flow problems and had to delay payroll until AEG raised additional funds. Such announcements were specifically made by Richard Spinks, AEG's CEO at the time via a videoconference call. In that announcement, Spinks assured employees that they would be eventually paid their full amounts due and instructed them to continue working.

31. On October 10, 2018, AEG formed Active Energy Renewable Power, LLC under the laws of North Carolina as the sole owner.

32. During this period of alleged financial hardship, on at least two occasions, AEG successfully raised capital to fund the completion of the five (5) ton-per-hour-plant in Utah and the firm's operating expenses, which ostensibly included the payment of back wages and employee expenses. Notwithstanding the cash infusion, AEG willfully refused to pay Plaintiffs' wages and to reimburse Plaintiffs' expenses. In fact, in at least one instance, funds raised by AEG ostensibly for the purpose of funding completion of the Utah plant and to provide, in the words of AEG's CEO, "headroom," were instead redirected to settle a lawsuit, the details of which were a closely held secret and never publicly disclosed.

33. Despite their delayed wages and reimbursement, and at the instruction of AEG, Plaintiffs continued to perform services and incur additional expenses. For instance, Plaintiffs traveled across the world on behalf of, at the direction of, and for the benefit of AEG and the Alter Ego Defendants. In doing so, Plaintiffs conducted business negotiations, produced a conceptual design of a CoalSwitch plant that was to be installed at an existing palm oil mill in Jerantut Malaysia including the completion of preliminary engineering and a financial feasibility study. In fact, Plaintiffs Scalzo and McCarthy successfully completed their assignment to the satisfaction of AEG's client. Said AEG client was expecting to proceed with the next phase of project development when Plaintiffs Scalzo and McCarthy were terminated. Plaintiff McCarthy paid his own ways for trans-Pacific flights, hotels, and other travel expenses. Plaintiff Scalzo's travel was paid by Ronald Cella, another AEG employee ostensibly as a loan to the company.

34. On February 21, 2019, Plaintiff McCarthy was indefinitely furloughed, and effectively terminated, in writing by Jason Owens, who had assumed the role of *de facto* Controller of AEG's Utah business activities pursuant to instructions from AEG's CEO at the time, Michael Rowan, and under the guidance and supervision of AEG's then-CFO, Duncan Nealey. That writing acknowledged that Plaintiff McCarthy was owed \$101,599.54 in unpaid wages, backpay, and expense reimbursement. At no time were these concededly owed wages and expenses paid or tendered to Plaintiff McCarthy.

35. On February 22, 2019, Plaintiff Scalzo was terminated by AEG's then-CEO, Michael Rowan over the phone. The termination was subsequently memorialized by an email. In a subsequent email dated February 26, 2019 from Rowan to Scalzo, a spreadsheet prepared by the AEG CFO, Duncan Nealey, acknowledged that AEG owed Scalzo \$58,956.93. The spreadsheet also contained certain misrepresentations crediting AEG with illegitimate and illegal offsets. Further, Nealey's spreadsheet omitted \$1,159.82 owed to Scalzo for expenses incurred in

2019. All told, AEG owes \$ 60,116.75 in principal unpaid wages and unreimbursed expenses to Scalzo. At no time were any of the concededly owed wages and expenses paid or tendered to Plaintiff Scalzo.

36. AEG failed to tender to Plaintiff McCarthy and Plaintiff Scalzo wages and expense reimbursements upon their terminations.

37. On information and belief, on or around the same dates, all other employees and operations which AEG funded through the passthrough entity of Gladiola Holdings, LLC were terminated and discontinued as well. Thereafter, Gladiola Holdings, LLC remained a dormant entity until its eventual administrative dissolution.

38. Within one week of the Plaintiffs' terminations, AEG formed the Gladiola-successor-entity in North Carolina (Defendant Lumberton Energy Holdings, LLC), removed all assets from Utah, and retitled them into North Carolina entities.

39. Between June 2018 and the dates of their termination, Plaintiffs were not regularly paid their salary for duties performed, nor were they reimbursed for business expenses incurred on behalf of AEG and the Alter Ego Defendants, nor were they compensated minimum wages under state and federal law.

40. On information and belief, it was AEG's and the Alter Ego defendants' conscious design, plan, and scheme to undercapitalize its Utah passthrough entity, and then to suddenly abandon all Utah operations, while taking its valuable assets to North Carolina, and leaving its employees, creditors, and liabilities behind.

41. After Scalzo's and McCarthy's termination, on information and belief, Gladiola Holdings LLC's bank accounts were emptied, and the Utah assets and operations that Plaintiff McCarthy and Plaintiff Scalzo had designed and built had been pulled from the state and re-emerged in North Carolina with the newly formed Lumberton Energy Holdings, LLC.

42. By failing to compensate Plaintiffs for their earned wages and by failing to reimburse Plaintiffs for their business-related expenses incurred, AEG and the Alter Ego Defendants breached the parties' employment agreements.

43. As a result of AEG's breach of the parties' employment agreements, Plaintiffs have incurred and continue to incur damages.

44. On May 12, 2019, Plaintiffs made a formal written demand for payment of all unpaid wages and business-related expenses described herein.

45. AEG's and the Alter Ego Defendants' failure to pay Plaintiffs wages and expenses was conducted knowingly, willfully and/or with the reckless disregard of Plaintiffs' employee rights.

46. On information and belief, the same failures to pay were performed pursuant to a conscious plan wherein AEG and the Alter Ego Defendants would induce Plaintiffs to continue their performance of work duties through promises of future payment which AEG's internal managers knew would not be honored.

47. The work performed by Plaintiffs was within AEG's and the Alter Ego Defendants' knowledge, control and direction.

48. AEG's and the Alter Ego Defendants' wrongfully directed Plaintiffs to perform services on their behalf without proper compensation.

49. As a result of AEG's and the Alter Ego Defendants' willful violations, Plaintiffs are entitled to unpaid wages, reimbursement of business-related expenses, liquidated damages, interest, and attorneys' fees and costs incurred in this action pursuant to N.C. Gen. Stat. Ann. § 95-25.22 and other applicable law.

**D. Piercing the Corporate Veil**

50. AEG is the sole and/or dominant shareholder of each of the Alter Ego Defendants, and it operates and controls the Alter Ego Defendants such that they are its mere instrumentalities

or alter egos. Specifically, AEG has complete dominion and control over Active Energy Renewable Power, LLC, Lumberton Energy Holdings, LLC, and Advanced Biomass Solutions, PLC, not only over each of said company's finances, but also over each company's policy and business practices such that they have no independent identity, separate mind, will or existence of their own.

51. Furthermore:

- a. Each Alter Ego Defendant was at all relevant times inadequately capitalized.
- a. Each Alter Ego Defendant on information and belief have failed to comply with corporate formalities.
- b. Each Alter Ego Defendant comprises the same, shared, and interchangeable corporate identity.
- c. AEG and the Alter Ego Defendants tactically practice excessive fragmentation.
- d. AEG siphoned funds, if ever available, from Alter Ego Defendants.
- e. Each Alter Ego Defendant functions in practice as though wholly owned, directed, and managed by the management of AEG such that their own officers and directors were nonfunction.
- f. On information and belief, each Alter Ego Defendant fails to adequately keep corporate records.

52. Defendant AEG used the aforementioned domination and control Active Energy Renewable Power, LLC, Lumberton Energy Holdings, LLC, and Advanced Biomass Solutions, PLC to commit fraud or wrong, by inducing Plaintiffs' performance of work and intentionally violating its corollary and affirmative legal duty to compensate Plaintiffs for said work.

53. The aforesaid control and breach of duty were the proximate causes to the injury and unjust losses of which Plaintiffs complain.

**E. Successor Liability**

54. AEG and the Alter Ego Defendants, as a common enterprise, or in the alternative each individually, are mere continuations of its predecessor entities, including but not limited to Gladiola.

55. Gladiola's transfer of its assets to AEG and the Alter Ego Defendants amounts to a consolidation or merger of Gladiola with the transferee and with AEG and the Alter Ego Defendants as a common enterprise.

56. Gladiola's transfer of its assets to AEG and the Alter Ego Defendants was for the fraudulent purpose of escaping its liabilities, including its wage and expense liabilities owed to Plaintiffs.

**V. CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**Breach of Contract**

57. Plaintiffs hereby incorporate all foregoing paragraphs as though fully alleged herein.

58. AEG and the Alter Ego Defendants entered into an enforceable contract of employment with Plaintiffs pursuant to which the defendants obligated themselves to Plaintiffs' compensation for employment services rendered and expenses incurred.

59. AEG and the Alter Ego Defendants, by and through its agents, have materially breached and failed to perform its duties under the enforceable contract of employment with Plaintiffs by:

- a. Willfully denying Plaintiffs properly due wages for services previously rendered to, and on behalf of, AEG and the Alter Ego Defendants; and
- b. Willfully failing to reimburse Plaintiffs for business-related expenses for services rendered to, and on behalf of, AEG and the Alter Ego Defendants.

60. AEG and the Alter Ego Defendants have failed to compensate Plaintiff McCarthy a total of \$86,181.82 in unpaid wages, excluding interest.

61. AEG and the Alter Ego Defendants have failed to reimburse Plaintiff McCarthy a total sum of \$20,945.37 in business-related expenses, excluding interest.

62. AEG and the Alter Ego Defendants have failed to compensate Plaintiff Scalzo a total sum of \$50,250.00 in unpaid wages.

63. AEG and the Alter Ego Defendants have failed to reimburse Plaintiff Scalzo a total sum of \$9,866.75 in business-related expenses.

64. Plaintiffs have continuously attempted to resolve this matter by demanding payment from AEG and the Alter Ego Defendants for unpaid wages and business-related expenses.

65. AEG and the Alter Ego Defendants admitted liability to Plaintiff McCarthy's for the amount of \$101,599.54; notwithstanding, that amount remains unpaid.

66. As a direct and proximate result of AEG's and the Alter Ego Defendants' material breaches of the contracts of employment and/or wrongful acts or omissions, Plaintiffs have been damaged in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF**

**North Carolina Wage and Hour Act, N.C.G.S. § 95-25.1, et. seq.**

67. Plaintiffs hereby incorporate all foregoing paragraphs as though fully alleged herein.

68. AEG and/or the Alter Ego Defendants entered into enforceable contracts of employment with Plaintiffs pursuant to which the Defendants obligated themselves to Plaintiffs' compensation of wages for employment services rendered and for business-related expenses incurred.

69. Between June 2018 and February 2019, AEG and/or the Alter Ego Defendants willfully failed to compensate Plaintiffs minimum wages in violation of N.C.G.S. § 95-25.3.

70. Between June 2018 and February 2019, AEG and/or the Alter Ego Defendants willfully failed to pay Plaintiffs wages and expenses on the regular payday in violation of N.C.G.S. § 95-25.6.

71. Upon each of Plaintiffs' respective dates of termination, AEG and/or the Alter Ego Defendants willfully failed to pay Plaintiffs all wages due on or before the next regular payday in violation of N.C.G.S. § 95-25.7.

72. At no time did Defendants tender or pay the wages that it conceded were owed to Plaintiffs.

73. Defendants are liable to Plaintiffs for the wages and expenses owed, along with liquidated damages, attorneys fees, costs, and interest pursuant to N.C.G.S. § 95-25.22.

**THIRD CLAIM FOR RELIEF**

**Utah Payment of Wages Act, Utah Code § 34-28-1, et. seq.**

74. Plaintiffs hereby incorporate all foregoing paragraphs as though fully alleged herein.

75. At the time of Plaintiff Scalzo's termination, AEG and the Alter Ego Defendants failed to provide notice of the amounts of wages conceded due and the amounts of wages in dispute.

76. Plaintiffs have continuously attempted to resolve this matter by demanding payment from AEG for unpaid wages and business-related expenses, including in writing.

77. Between June 2018 and February 2019, AEG and/or the Alter Ego Defendants willfully failed to pay Plaintiffs wages and expenses on the regular payday in violation of Utah Code § 34-28-3.

78. Upon each of Plaintiffs' respective dates of termination, AEG and/or the Alter Ego Defendants willfully failed to pay Plaintiffs all wages within 24 hours of the time of separation pursuant to Utah Code § 34-28-5.

79. At no time did Defendants tender or pay the wages that it conceded were owed to Plaintiffs.

80. As a direct and proximate result of AEG's failure to compensate and reimburse Plaintiffs, Plaintiffs have been damaged in an amount to be determined at trial and in excess of \$10,000.00.

81. Defendants are liable to Plaintiffs for actual damages, 2.5% of the value of the unpaid wages assessed daily for up to 20 days, and punitive damages pursuant to Utah Code § 34-28-9.5.

**FOURTH CLAIM FOR RELIEF**  
**Utah Minimum Wage Act, Utah Code § 34-40-101, et. seq.**

82. Plaintiffs hereby incorporate all foregoing paragraphs as though fully alleged herein.

83. Plaintiffs qualify for and are entitled to minimum wage under the Utah Minimum Wage Act.

84. As employees of AEG and/or the Alter Ego Defendants, Plaintiffs were entitled to payment minimum wage.

85. On various different periods of time spanning 40 hours, Plaintiffs were paid \$0.00, thereby entitling them to the difference between \$0.00 and the minimum wage per hour for their total hours worked during that timeframe, plus interest and attorneys' fees, pursuant to Utah Code § 34-40-205.

**FIFTH CLAIM FOR RELIEF**  
**Fair Labor Standards Act, 29 U.S.C. § 215**

86. Plaintiffs hereby incorporate all foregoing paragraphs as though fully alleged herein.

87. Between June 2018 and February 2019, AEG and/or the Alter Ego Defendants willfully failed to compensate Plaintiffs minimum wages in violation of 29 U.S.C.A. § 206.

88. Defendants are liable to Plaintiffs for their unpaid minimum wages, liquidated damages, attorneys' fees and costs pursuant to 29 U.S.C. § 216.

**SIXTH CLAIM FOR RELIEF**  
**Attorney's Fees (Utah Code § 34-27-1)**

89. Plaintiff hereby incorporates all foregoing paragraphs as though fully alleged herein.

90. Plaintiffs are former employees of defendants with a cause to bring suit for wages earned and do according to the terms of their employment.

91. The amount for which plaintiffs bring suit is justly due.

92. Plaintiffs have demanded in writing at least 15 days prior to bringing suit for the amount due.

93. Defendants are liable to plaintiffs for a reasonable attorneys fee in addition to the amount found due for wages, as well as the costs of the suit.

**JURY TRIAL DEMAND**

Plaintiff hereby requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court find, hold, and determine the following, and that it consequentially enter a judgment in Plaintiffs' favor and against the Defendants:

- g. That the AEG Defendants be held to have acted as the alter ego and instrumentalities of each other such that each shall be liable for the others' liabilities and responsibilities, including those owed to Plaintiffs;
- h. That the AEG Defendants be held liable to for pre-existing liabilities owed alleged herein by any predecessor entity.

- i. That AEG Defendants be found to have violated North Carolina's contract law, or in the alternative, Utah's contract law.
- j. That AEG Defendants be found to have violated the provisions of N.C. Gen. Stat. Ann. § 95-25.7, or in the alternative, the provisions of Utah Code § 34-28-5(1)(a).
- k. That Plaintiffs be awarded their unpaid wages, reimbursable expenses, liquidated and/or punitive damages in the amount equal to, or in excess of as deemed appropriate and allowable, their unpaid wages and reimbursable expenses, costs, and attorneys' fees pursuant to N.C. Gen. Stat. Ann. § 95-25.22, along with pre- and post-judgment interest at the highest rate allowable by law.
- l. Such other relief as the Court deems just and proper.

Respectfully submitted on this 10th day of February 2021.

**WILLIAMS & RAY, PLLC:**



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