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IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

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**CHARLES FLEMING**, Individually  
and on behalf of all others similarly situated, and  
**MICHAEL WEBB**, Individually  
and on behalf of all others similarly situated,

Plaintiffs and Putative  
Class Representatives,

v.

Civil Action No: 12-C-122  
(Hon. William S. Thompson, Judge)

**ALPHA NATURAL RESOURCES SERVICES, LLC,**  
**HIGHLAND MINING COMPANY,**  
**SPARTAN MINING COMPANY d/b/a**  
**MAMMOTH COAL COMPANY,** and  
**JOHN DOE WEST VIRGINIA COMPANIES**  
**1 THROUGH 4,**

Defendants.

#### AMENDED CLASS ACTION COMPLAINT

1. This is an action filed by Plaintiffs Charles Fleming and Michael Webb, individually and as putative class representatives, against Defendants Alpha Natural Resources Services, LLC (“Defendant Alpha”), Highland Mining Company (“Defendant Highland”), Spartan Mining Company d/b/a Mammoth Coal Company (“Defendant Mammoth”), and John Doe West Virginia Companies 1 through 4 arising out of Defendants’ breach of the duty owed to their former employees under the West Virginia Wage Payment and Collection Act (“WPCA”), *W. Va. Code* § 21-5-1, *et seq.*

#### PARTIES

2. At all times relevant herein Plaintiff Charles Fleming has been a resident of Logan County, West Virginia, and was employed by Defendants.
3. At all times relevant herein Plaintiff Michael Webb has been a resident of Fayette County,

West Virginia, and was employed by Defendants.

4. Defendant Alpha is a Delaware corporation and at all times relevant herein, conducted business in Boone County, West Virginia.
5. Defendant Highland is a West Virginia corporation and at all times relevant herein, conducted business in Boone County, West Virginia.
6. Defendant Mammoth is a West Virginia corporation and at all times relevant herein, conducted business in and has its office located in Boone County, West Virginia.
7. Defendants John Doe West Virginia Companies 1 through 4 are the remaining subsidiaries of Defendant Alpha involved in the layoff of more than 180 West Virginia employees. These layoffs occurred in 2012. Once the identities of Defendants John Doe West Virginia Companies 1 through 4 are obtained through discovery, Plaintiffs will move to amend this **AMENDED CLASS ACTION COMPLAINT** by substituting the actual names of the subsidiaries of Defendant Alpha in place of Defendants John Doe West Virginia Companies 1 through 4.
8. Defendants are jointly liable for Plaintiffs' claims because Defendant Alpha issued the layoff notices for its subsidiaries, including but not limited to Defendants Highland and Mammoth and, upon information and belief, Alpha controls all relevant layoff and wage payment decisions of its subsidiaries and related companies that are at issue in this action, and there is a unity of interest and ownership between and among Defendants such that they are indistinguishable from one another and the corporate veil between them should be pierced and/or because they are entities who engaged in conduct in violation of West Virginia law.

## FACTS

9. Plaintiffs were employed by the Defendants.
10. In 2012, Defendants announced realignments and reductions in their employee workforce.
11. Defendants are, and have always been required to pay their employees working in West Virginia in accordance with the WPCA.
12. Defendants engaged in the following pay practice that violated the WPCA.

### **FAILURE TO PAY ALL WAGES DUE BY NEXT REGULAR PAYDAY**

13. This paragraph incorporates by reference all of the preceding paragraphs as if they were set forth fully herein.
14. Pursuant to *W. Va. Code* § 21-5-4, Defendants are required to pay all wages owed their employees in full no later than the next regular payday when an employee is laid off.
15. In 2012, Defendants laid off Plaintiffs and over one hundred (100) other West Virginia employees, who are putative members of this class action. Plaintiff Fleming was laid off on February 3, 2012 (effective date April 3, 2012) and Plaintiff Webb was laid off March 30, 2012 (effective date May 29, 2012).
16. Consistent with Defendants' pay practices, Defendants failed to pay Plaintiffs their wages by the next regular payday following the effective dates of their layoffs.
17. Defendants did not pay Plaintiff Charles Fleming all of his final wages owed in full until on or about April 20, 2012, and May 18, 2012, and Defendants did not pay Plaintiff Michael Webb all of his final wages until on or about June 15, 2012. Plaintiffs' wages were not paid to Plaintiffs until after their next regular payday following the effective dates of the layoffs.

18. Plaintiff Charles Fleming inquired of Defendants when he would receive his final wages, and was told by Defendants that a decision was made to delay payment beyond the next regular payday.
19. Upon information and belief, and consistent with Defendants' decision and pay practices, Defendants failed to pay other laid off employees and putative members of this Class by the next regular payday as required by *W. Va. Code* § 21-5-4.

#### CLASS ALLEGATIONS

20. This paragraph incorporates by reference all of the preceding paragraphs as if they were set forth fully herein.
21. Plaintiffs seek relief pursuant to West Virginia Rule of Civil Procedure 23 on behalf of the following proposed class:

All persons formerly employed by Defendants in West Virginia who were subject to layoffs in 2012 and who were not paid all of their wages by the next regular payday.
22. Plaintiffs reserve the right to refine the class definition in light of discovery and additional investigation.
23. During the relevant layoffs, more than one hundred (100) West Virginia employees were laid off by Defendants, making the putative class so numerous that joinder of all members is impractical.
24. Plaintiffs individually, and on behalf of the putative Class, assert Defendants violated the same statute, *W. Va. Code* § 21-5-4, by failing to pay Plaintiffs and other putative class members by the next regular payday following a series of related layoffs over a discrete time period. The questions of law under *W. Va. Code* § 21-5-4, and questions of fact related to

Defendants' personnel and payroll policies and decisions common to the putative class, predominate over any questions affecting only individual class members.

25. Plaintiffs' claims are typical of those of the putative class and said claims are based on the same legal and factual theories.
26. Plaintiffs will fairly and adequately protect the interests of the class.
27. A class action is a superior method for the fair and efficient adjudication of this particular claim and controversy as it assures a consistent and equitable resolution to the claims of putative Class members.
28. The interest of putative Class members in individually controlling and maintaining the prosecution of separate claims against Defendants are small given the fact that they are unlikely to be aware of their legal rights and the amount of actual damages they are entitled to receive.
29. The management of this Class claim is likely to present no particular difficulties.
30. At least two-thirds of the proposed plaintiff Class, and the primary defendants, are citizens of West Virginia.

**CAUSE OF ACTION  
(Violation of WPCA)**

31. This paragraph incorporates by reference all of the preceding paragraphs as if they were set forth fully herein.
32. Defendants failed to pay Plaintiffs and other members of the Class their final wages by the next regular payday in violation of *W. Va. Code* § 21-5-1, *et seq.*

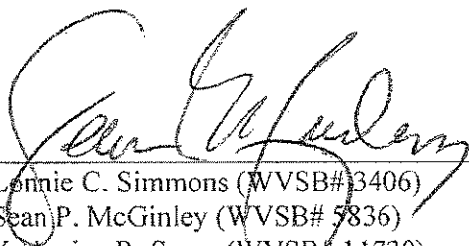
33. Defendants' actions violated the WPCA entitling Plaintiffs and other Class Members to treble damages and to reasonable attorneys' fees and costs pursuant to *W. Va. Code* § 21-5-1, *et seq.*

WHEREFORE, Plaintiffs pray for the following relief for themselves and on behalf of a class of similarly situated individuals:

1. Judgment against Defendants on all counts alleged in this Amended Class Action Complaint;
2. An award to Plaintiffs and each member of the Class the damages set forth in this Amended Class Action Complaint, including all remedies afforded under the WPCA;
3. An award to Plaintiffs and each member of the Class pre- and post-judgment interest as provided by law;
4. Reasonable attorneys' fees and costs; and
5. Such further relief as this Court may deem just and equitable.

TO THE EXTENT THERE ARE ANY FACTUAL ISSUES RAISED, PLAINTIFF DEMANDS A JURY TRIAL

**CHARLES FLEMING**, Individually and on behalf of all others similarly situated, Plaintiff and Putative Class Representative, and **MICHAEL WEBB**, Individually and on behalf of all others similarly situated,  
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