



September 30, 2014

VIA E-MAIL AND CERTIFIED MAIL

Daniel R. Levinson
Inspector General
U.S. Department of Health & Human Services
Office of Inspector General
330 Independence Avenue, SW
Washington, DC 20201
E-mail: daniel.levinson@oig.hhs.gov

**Re: Request for Investigation and Audit into Affordable Care Act Navigator
"Southern United Neighborhoods" and Potential Misuse of Federal Funds**

Dear Mr. Levinson:

I am writing on behalf of Cause of Action ("CoA"), a non-profit, nonpartisan government accountability organization that fights to protect economic opportunity when federal regulations, spending, and cronyism threaten it. CoA respectfully requests that the Department of Health & Human Services ("HHS"), Office of the Inspector General, investigate whether the United Labor Unions Local 100 ("ULU"), a subgrantee of Southern United Neighborhoods ("SUN"), a 501(c)(3) non-profit organization, misused federal funds by directing one or more individuals employed under the Affordable Care Act ("ACA") federal navigator program to perform unrelated work for its benefit.¹

This investigation is within the purview of the HHS Office of the Inspector General. The Inspector General Act establishes in 5 U.S.C. App'x § 4(a)(4) the duty and responsibility of Inspectors General to "conduct, supervise, or coordinate relationships" between the federal agency and nongovernmental entities with respect to "prevention and detection of fraud and abuse in, programs and operations administered or financed by" their agency as well as "the identification and prosecution of participants in such fraud or abuse."

SUN was founded in March 2010 to "combat the poverty, discrimination and community deterioration that keeps low income people from taking advantage of their rights and opportunities." SUN shares offices with ULU in five cities: Houston, Dallas, New Orleans, Baton Rouge, and Little Rock.² As part of its mission, SUN offers affordable housing programs,

¹ Complaint ¶ 13, *Anthony v. S. United Neighborhoods* (S.D. Tex. 2014) (No. 4:14-cv-01787) (attached as Ex. 1). *But see* Answer ¶ 13, *Anthony v. S. United Neighborhoods*, No. 4:14-cv-01787 (S.D. Tex. Sept. 8, 2014) (attached as Ex. 2).

² *Id.* (complaint alleges that SUN and ULU share offices; answer alleges that while such offices are in the same building although such offices are not shared.)

financial literacy services, and support for low and moderate income families.³ ULU, a taxable entity, was founded in 1980 as a labor union.⁴ Its mission is to organize low wage, private sector workers in the hospital and janitorial industries.⁵ SUN has received a total of \$1,356,994 in grant funds from HHS to employ ACA navigators in Louisiana, Arkansas, and Texas.⁶ According to navigator funding data, ULU is a subgrantee of SUN.⁷

On June 16, 2014, plaintiff Cedric Anthony (“Anthony”) filed a class action lawsuit⁸ seeking damages for unpaid overtime against SUN and ULU under the Fair Labor Standards Act.⁹ Anthony alleges that SUN and ULU “shared control of Plaintiff’s activities and the instructions to perform work for both organizations came from the same individual”¹⁰; moreover, SUN and ULU were “substantially in control of the terms and conditions of the Plaintiff’s work in Harris County, Texas” and acted “directly or indirectly in the interest of the other.”¹¹ Anthony alleges he was initially employed by SUN as an ACA federal navigator, visiting community events and enrolling individuals in healthcare.¹² In addition to these duties at SUN, Anthony alleges that he was directed to recruit members for ULU by visiting schools to register cafeteria workers for the union.¹³ On September 8, 2014, defendants SUN and ULU filed an answer to the complaint. SUN and ULU admit that Anthony was employed by ULU.¹⁴ They deny, however, that Anthony was employed by SUN.¹⁵

Public records reflect that Cedric Anthony worked for ULU as an HHS-funded federal navigator.¹⁶ Records made available by HHS show that for every HHS navigator grant SUN received, ULU Local 100 was identified as a sub-grantee/partner organization.¹⁷ SUN disclosed in its 2013 Form 990 to the Internal Revenue Service that \$189,606.45 were spent as part of a contract for services under the navigator award to enroll individuals in the ACA.¹⁸ It is therefore substantially likely that Cedric Anthony, and other similarly situated plaintiffs, were hired by ULU under the federal grant to SUN.

³ *About*, S. UNITED NEIGHBORHOODS, <http://www.southernunitedneighborhoods.org/> (last visited Sept. 29, 2014).

⁴ *About*, ULU, http://www.unitedlaborunions.org/index.php?option=com_content&view=article&id=46&Itemid=54 (last visited Sept. 29, 2014).

⁵ *Id.*

⁶ *See Navigator Grant Recipients*, CMS, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/navigator-list-10-18-2013.pdf> (last visited July 31, 2014) [hereinafter “Navigator recipients”]. SUN received \$270,193 for its work in Arkansas, \$486,123 for Louisiana; and \$600,678 for Texas. *Id.*

⁷ *Id.*

⁸ Since the filing of the complaint, other individuals have consented to become party plaintiffs. *See, e.g.*, Consent to Become Party Pl. (Winston Burby), *Anthony v. S. United Neighborhoods & Local 100 United Labor Unions* (S.D. Tex. July 3, 2014) (No. 4:14-cv-01787).

⁹ Ex. 1 ¶¶ 1, 10.

¹⁰ *Id.* ¶ 13.

¹¹ *Id.* ¶¶ 10, 13.

¹² *Id.* ¶¶ 5, 13.

¹³ *Id.*

¹⁴ Ex. 2 ¶ 13.

¹⁵ *Id.* ¶ 5.

¹⁶ Carrie Feibel, *Texas Issues Tough Rules For Insurance Navigators*, NAT’L PUB. RADIO (Jan. 23, 2014), available at <http://www.npr.org/blogs/health/2014/01/23/265272504/texas-issues-tough-rules-for-insurance-navigators>.

¹⁷ Navigator recipients, *supra* note 6 at *id.*

¹⁸ SOUTHERN UNITED NEIGHBORHOODS, FORM 990 (2013), available at <http://guidestar.org>.

Under the Internal Revenue Code, SUN's primary purpose cannot be to support a non-charitable purpose.¹⁹ Moreover, OMB Circular A-133 and appropriate HHS regulations require that federal grant money be used for an approved programmatic purpose, which is belied by ULU's alleged direction of a federally-funded navigator to conduct recruiting activities for the benefit of the labor union. Given the amount of federal dollars at issue—over \$1.3 million—the Inspector General should investigate SUN and conduct an audit into the potential misuse of ACA navigator funds. If you have any questions about this request please contact Aram A. Gavoore, Senior Counsel, at 202-499-4232 or aram.gavoore@causeofaction.org.



DANIEL Z. EPSTEIN
EXECUTIVE DIRECTOR

cc: Sen. Tom Harkin, Chairman, U.S. Senate Committee on Health, Education, Labor, and Pensions;
Sen. Lamar Alexander, Ranking Member, U.S. Senate Committee on Health, Education, Labor, and Pensions;
Rep. Joe Pitts, Chairman, U.S. House Committee on Energy and Commerce, Subcommittee on Health;
Rep. Frank Pallone, Jr., Ranking Member, U.S. House Committee on Energy and Commerce, Subcommittee on Health

¹⁹ Ward L. Thomas & Judith E. Kinell, *Affiliations Among Political, Lobbying and Educational Organizations*, EO CPE Text 259 (2000), available at <http://www.irs.gov/pub/irs-tege/eotopics00.pdf>.

EXHIBIT

1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CEDRIC ANTHONY, on behalf of
himself and others similarly situated,

Plaintiffs,

v.

Case No.: 4:14-cv-01787

SOUTHERN UNITED NEIGHBORHOODS
and LOCAL 100 UNITED LABOR UNIONS,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, CEDRIC ANTHONY, (hereinafter sometimes referred to as “Plaintiff”), and others similarly situated, by and through his undersigned counsel, hereby sues Defendants, SOUTHERN UNITED NEIGHBORHOODS and LOCAL 100 UNITED LABOR UNIONS (hereinafter sometimes referred to collectively as “Defendants”), and in support thereof states as follows:

INTRODUCTION

1. This is a collective action by Plaintiff, and others similarly situated, against their employers for unpaid wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.* Plaintiff seeks damages for unpaid overtime, liquidated damages, injunctive relief, declaratory relief, and a reasonable attorney’s fee and costs.

JURISDICTION

2. This claim is properly before this Court pursuant to 28 U.S.C. § 1331, since this claim arises under federal law, and by the private right of action conferred in 29 U.S.C. § 216(b).

VENUE

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Plaintiff performed work for Defendants and incurred unpaid overtime while working in Harris County, Texas,

THE PARTIES

4. Plaintiff is an individual residing in Harris County, Texas.

5. Plaintiff was employed by Defendants from December 12, 2013 through April 1, 2014 as a federal navigator. Plaintiff's responsibilities included traveling to school campuses to register cafeteria workers to the labor union and attending community events to register individuals for the Affordable Care Act.

6. Defendant, SOUTHERN UNITED NEIGHBORHOODS, is a nonprofit corporation formed and existing under the laws of the State of Louisiana, and which maintains offices in New Orleans, Louisiana, Baton Rouge, Louisiana, Little Rock, Arkansas, Dallas, Texas, and Houston, Texas.

7. Defendant, SOUTHERN UNITED NEIGHBORHOODS, offers assistance to low income families by creating affordable housing programs, providing financial literacy trainings, hosting community health fairs, and helping individuals obtain affordable health care coverage. SOUTHERN UNITED NEIGHBORHOODS currently provides services in three states, including the state of Texas.

8. Defendant, LOCAL 100 UNITED LABOR UNIONS, is a union formed in the State of Louisiana, and which maintains offices in New Orleans, Louisiana, Baton Rouge, Louisiana, Shreveport, Louisiana, Little Rock, Arkansas, Dallas, Texas, and Houston, Texas.

9. Defendant, LOCAL 100 UNITED LABOR UNIONS, organizes and represents workers in various services industries throughout Louisiana, Arkansas, and Texas.

10. Defendants were substantially in control of the terms and conditions of the Plaintiff's work in Harris County, Texas. Defendants directed Plaintiff, and other similarly situated, in the performance of his duties, handled or caused to be handled various human resources functions, had the ability to hire and/or fire employees, and at all times acted as Plaintiff's, and others similarly situated, "employer" as defined in 29 U.S.C. § 203(d).

11. Defendants have employees subject to the provisions of 29 U.S.C. § 206 in the facility where Plaintiff, and others similarly situated, were employed.

12. Defendants are subject to the FLSA because, during all times relevant to this Complaint, they qualified under 29 U. S. C. § 203(s)(1)(A) as an enterprise engaged in commerce or in the production of goods for commerce because they (a) had employees engaged in commerce or in the production or goods for commerce, or had employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and (b) are enterprises whose annual gross volume of sales made or business done is not less than \$500,000. At all times pertinent to this Complaint, Defendants were enterprises engaged in interstate commerce, conducting transactions through commerce, including the use of cell phones, and electronic mail. At all times pertinent to this Complaint, Defendants regularly owned and operated businesses engaged in commerce or in the production of goods for commerce as defined by §3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and 203(s). Additionally, Plaintiff, and others similarly situated, was individually engaged in commerce and their work was essential to Defendants' business. Specifically, Plaintiff, and others similarly situated, would electronically communicate with the headquarters in Louisiana on

a weekly basis, complete application paperwork for the Affordable Care Act that was transmitted through interstate commerce, and utilize the Internet.

13. Plaintiff was initially hired to work for SOUTHERN UNITED NEIGHBORHOODS. Once Plaintiff began working for SOUTHERN UNITED NEIGHBORHOODS as a federal navigator assisting people with the Affordable Care Act, he was directed to also perform work for LOCAL 100 by visiting schools to speak with cafeteria workers to sign up for the union. Both Defendants shared control of Plaintiff's activities and the instructions to perform work for both organizations came from the same individual. Additionally, both Defendants shared the same offices in Houston, Dallas, New Orleans, Baton Rouge, and Little Rock. Each Defendant acted directly or indirectly in the interest of the other and for that reason are joint employers as defined by 29 C.F.R. §791.2(b).

14. Plaintiff has retained the law firm of Ross Law, P.C., to represent him in this action and has agreed to pay said firm a reasonable attorney's fee for its services. Plaintiff has entered into a valid contract with Ross Law, P.C., and has appointed the undersigned counsel to be his sole agent, attorney-in-fact, and representative in this suit, exclusive of all other parties, including Plaintiff/Plaintiffs. To avoid tortious interference with Plaintiff's obligations to his attorneys in this suit, all communications concerning this suit must be made by

Defendants and Defendants' attorneys solely to and through the undersigned counsel. Plaintiff's contract with an representation by the undersigned attorney gives rise to a claim for reasonable and necessary attorney's fees that Plaintiff is entitled to collect against Defendants pursuant to 29 U. S. C. § 216(b).

**VIOLATION OF THE OVERTIME PROVISIONS OF
THE FAIR LABOR STANDARDS ACT**

15. Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 14 above.

16. Throughout the employment of Plaintiff, and others similarly situated, Defendants repeatedly and willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff at a rate not less than one and one-half times his regular rate of pay for each hour worked in excess of 40 in a workweek.

17. Specifically, Plaintiff and all others similarly situated have worked numerous weeks in excess of forty hours per workweek, and were not compensated for all work in excess of 40 hours at a rate not less than one and one-half times the regular rate at which they were employed. Plaintiff and others similarly situated were paid \$799.00 bi-weekly, regardless of the hours worked. Plaintiff and members of the putative class worked 50-55 hours per week.

18. Pending any modifications necessitated by discovery, Plaintiff

preliminarily defines this Class as follows:

ALL CURRENT OR FORMER FEDERAL NAVIGATORS
AND/OR UNION RECRUITERS EMPLOYED BY DEFENDANTS
FOR THE PREVIOUS THREE YEARS AT ANY LOCATION IN
THE UNITED STATES.

19. This action is properly brought as a collective action for the following

reasons:

- a. The Collective is so numerous that joinder of all Collective Members is impracticable.
- b. Numerous questions of law and fact regarding the liability of Defendants are common to the Collective and predominate over any individual issues which may exist.
- c. The claims asserted by Plaintiff are typical of the claims of the Collective Members and the Collective is readily ascertainable from Defendant's own records. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy.
- d. Plaintiff will fairly and adequately protect the interests of Collective Members. The interests of Collective Members are coincident with, and not antagonistic to, those of Plaintiff. Furthermore, Plaintiff is represented by experienced collective action counsel.
- e. The prosecution of separate actions by individual Collective Members would create a risk of inconsistent or varying adjudications with respect to individual Collective Members which would establish incompatible standards of conduct for Defendants.
- f. The prosecution of separate actions by individual Collective Members would create a risk of adjudications with respect to individual Collective Members which would, as a practical matter, be dispositive of the interests of the other Collective Members not parties to the

adjudications or substantially impair or impede their ability to protect their interests.

- g. Defendants acted on grounds generally applicable to the Collective, thereby making appropriate final injunctive relief with respect to the Collective as a whole.

20. For the foregoing reasons, Plaintiff seeks certification of an FLSA “opt-in” collective action pursuant to 29 U.S.C. §216(b) for all claims asserted by Plaintiff because his claims are nearly identical to those of other Collective Members. Plaintiff and Collective Members are similarly situated, have substantially similar or identical job requirements and pay provisions, and are subject to Defendants’ common practice, policy or plan regarding employee wages and hours.

21. In addition to the named Plaintiff, numerous employees and former employees of Defendants are similarly situated to Plaintiff in that they have been denied overtime compensation while employed by Defendants.

22. Defendants’ policy of not paying overtime is company-wide and navigators and recruiters employed by Defendants during the three years prior to the filing of this action have been deprived of overtime, similarly to the Plaintiff.

23. Plaintiff is representative of these other employees and is acting on behalf of their interests as well as Plaintiff’s own interests in bringing this action.

24. Defendants either knew about or showed reckless disregard for the

matter of whether its conduct was prohibited by the FLSA and failed to act diligently with regard to their obligations as employers under the FLSA.

25. Defendants failed to act reasonably to comply with the FLSA, and so Plaintiff, and all others similarly situated, are entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

26. The acts described in the above paragraphs violate the Fair Labor Standards Act, which prohibits the denial of overtime compensation for hours worked in excess of 40 per workweek.

27. As a result of Defendants' unlawful conduct, Plaintiff, and all others similarly situated, is entitled to actual and compensatory damages, including the amount of overtime which was not paid that should have been paid.

28. Plaintiff, and all others similarly situated, is entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, CEDRIC ANTHONY, and all others similarly situated, demand Judgment against Defendants, jointly and severally, for the following:

- a. Determining that the action is properly maintained as a collective action, certifying Plaintiff as the class representative, and appointing Plaintiff's counsel as counsel for Collective Members;
- b. Ordering prompt notice of this litigation to all potential Collective Members;
- c. Awarding Plaintiff and Collective Members declaratory and/or injunctive relief as permitted by law or equity;
- d. Awarding Plaintiff and Collective Members their compensatory damages, service awards, attorneys' fees and litigation expenses as provided by law;
- e. Awarding Plaintiff and Collective Members their pre-judgment and post-judgment interest as provided by law, should liquidated damages not be awarded;
- f. Awarding Plaintiff and Collective Members liquidated damages and/or statutory penalties as provided by law;
- g. Awarding Plaintiff and Collective Members such other and further relief as the Court deems just and proper.

JURY TRIAL DEMAND

Plaintiff, CEDRIC ANTHONY, and others similarly situated, demands a jury trial on all issues so triable.

Respectfully submitted this 25th day of June, 2014.

ROSS LAW GROUP
1104 San Antonio Street
Austin, Texas 78701
(512) 474-7677 Telephone
(512) 474-5306 Facsimile
Charles@rosslawgroup.com

A handwritten signature in black ink, appearing to read 'CS', is positioned above a horizontal line.

CHARLES L. SCALISE
Texas Bar No. 24064621
Attorney-in-Charge

ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

4:14-cv-01787

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

CEDRIC ANTHONY, on behalf of himself and others similarly situated,

DEFENDANTSSOUTHERN UNITED NEIGHBORHOODS
and LOCAL 100 UNITED LABOR UNIONS,

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Charles L. Scalise, ROSS LAW GROUP,
1104 San Antonio Street, Austin, Texas 78701
(512) 474-7677**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FAIR LABOR STANDARDS ACT

Brief description of cause:
Unpaid overtime wages**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/25/2014

SIGNATURE OF ATTORNEY OF RECORD

/s/ Charles L. Scalise

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

EXHIBIT

2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CEDRIC ANTHONY, on behalf of
himself and others similarly situated,

Plaintiffs,

v.

Case No.:4:14-cv-01787

SOUTHERN UNITED NEIGHBORHOODS
and LOCAL 100 UNITED LABOR UNIONS

Defendants

**ORIGINAL ANSWER OF DEFENDANTS SOUTHERN UNITED NEIGHBORHOODS
AND LOCAL 100 UNITED LABOR UNIONS**

TO THE HONORABLE JUDGE OF THE COURT:

Defendants, Southern United Neighborhoods ("SUN") and Local 100 United Labor Unions ("Local 100") (hereinafter sometimes referred together as "**Defendants**") file this Original Answer to Plaintiff's Complaint and Demand for Jury Trial ("**Complaint**") and in support thereof show as follows:

1. Defendants admit that Plaintiff requests a collective action for relief pursuant to the Fair Labor Standards Act as alleged in Complaint paragraph 1, but deny that the class requested is comprised of similarly situated persons or that the relief requested is recoverable.
2. Defendants admit that jurisdiction of Plaintiff's claims is proper in this Court as alleged in Complaint paragraph 2.
3. Defendants admit that venue of Plaintiff's claims is proper, as alleged in Complaint paragraph 3, but deny that unpaid overtime has been incurred.
4. Defendants can neither admit nor deny that Plaintiff resides in Harris County, Texas as alleged in Complaint paragraph 4.

5. Local 100 admits that Plaintiff was employed by Local 100 from December 12, 2013 through April 1, 2014, and admits the allegations regarding work performed by Plaintiff as set forth in Complaint paragraph 5. Defendants deny that Plaintiff was employed by SUN.
6. Defendants admit the allegations set out in Complaint paragraph 6.
7. Defendants admit the allegations set out in Complaint paragraph 7.
8. Defendants admit the allegations set out in Complaint paragraph 8.
9. Defendants admit the allegations set out in Complaint paragraph 9.
10. Local 100 admits that it was substantially in control of the terms and conditions of Plaintiff's work in Harris County, Texas, and had all the authority with respect to Plaintiff's employment and others similarly situated as alleged in Complaint paragraph 10. Defendants deny that SUN ever controlled Plaintiff's employment, directed Plaintiff's work, hired or fired Plaintiff, or acted as an employer of Plaintiff or anyone similarly situated to Plaintiff.
11. Local 100 admits that it has employees subject to the provisions of 29 U.S.C. Section 206 in the facility where Plaintiff, and others similarly situated, were employed, as alleged in Complaint paragraph 11. Defendants deny that SUN has employees in the facility where Plaintiff was employed.
12. Each of Defendants admit that they are separately subject to the FLSA as alleged in Complaint paragraph 12. Defendants deny that any action described in Complaint paragraph 12 was taken collectively between Defendants, or in a manner that would constitute a joint employment by both Defendants of any employee of either of Defendants.
13. Defendants deny: (i) that Plaintiff was initially hired to work for SUN; (ii) that SUN directed Plaintiff to perform work for Local 100; (iii) that Defendants acted directly or indirectly in the interest of the other; (iv) that Defendants shared the same offices in Houston, Dallas, New

Orleans, Baton Rouge and Little Rock; and (v) that Defendants are joint employers, as alleged in Complaint paragraph 13. Defendants admit that Plaintiff performed work for Local 100, and that each of Defendants have offices located in the same building in each of the five named cities.

14. Defendants can neither admit nor deny whether Plaintiff has retained the firm of Ross Law, P.C., or any of the terms or conditions of such engagement, as alleged in Complaint paragraph 14. Defendants admit that 29 U.S.C. Section 216(b) provides for recovery of reasonable and necessary attorney's fees. Defendants will not communicate with Plaintiff except through Ross Law. P.C.

15. Defendants incorporate their answers to Complaint paragraphs 1 -14 in response to the allegations incorporated in Complaint paragraph 15.

16. Defendants deny that either of them repeatedly or willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff at a rate of not less than one and one-half times his regular rate of pay for hours worked in excess of 40 in a workweek, as alleged in Complaint paragraph 16. Defendant Local 100 admits that it discovered an error in compensation paid to Plaintiff and mailed to Plaintiff's last known address the amount of unpaid compensation owing prior to receiving a request for Waiver of the Service of Summons in this case or any other notice that this suit had been filed.

17. Defendants deny: (i) that Plaintiff and others similarly situated have worked numerous weeks in excess of forty hours per workweek without compensation at an overtime rate for hours in excess of forty for a workweek; (ii) that Plaintiff or others similarly situated were paid \$799.00 biweekly, regardless of hours worked; and (iii) that Plaintiff and members of any putative class worked 50 -55 hours per week, as alleged in Complaint paragraph 17.

18. Plaintiff denies: (i) that the notice proposed by Plaintiff in Complaint paragraph 18 is appropriate; (ii) that employees of either of Defendants are similarly situated to the employees of the other of Defendants; and (iii) that any class comprised of employees of Defendants jointly is appropriate, as alleged in Complaint paragraph 18.

19. Defendants deny that this action is properly brought as a class action for the reasons alleged in Complaint paragraph 19. With regard to the reasons in support of a collective action asserted in Complaint paragraph 19:

a. Defendants deny: (i) that the "Collective" is so numerous that joinder of all members is impracticable; (ii) that numerous questions of law and fact regarding liability of Defendants are common to the "Collective" contended for by Plaintiff and predominate over individual issues; (iii) that the claims asserted by Plaintiff are typical of the claims of such "Collective" members; (iv) that the prosecution of separate actions by individual "Collective" members would create a risk of inconsistent or varying adjudications with respect to individual members which would establish incompatible standards of conduct of Defendants; (v) that Plaintiff's claims are coincident with those of the Collective contended for by Plaintiff; (vi) that prosecution of separate actions by individual members of the "Collective" contended for by Plaintiff would create a risk of adjudications with respect to individual Collective members which would be dispositive of the interests of other Collective members not parties to the adjudications or substantially impair or impede their ability to protect their interest; and (vii) that Defendants acted on grounds generally applicable to such Collective, thereby making appropriate final injunctive relief with respect to the Collective as a whole.

b. Defendants can neither admit nor deny whether Plaintiff will fairly and adequately protect the interests of "Collective" members. Plaintiff does not share a common employer with all members of the Collective contended for by Plaintiff.

c. Defendants admit: (i) that any appropriate "Collective," if any, is readily ascertainable from Defendants' own records; (ii) that Plaintiff's claims are not antagonistic to the Collective contended for by Plaintiff; and (iii) that Plaintiff is represented by experienced collective action counsel.

20. Defendants deny the allegation set out in Complaint paragraph 20.

21. Defendants deny the allegation set out in Complaint paragraph 21.

22. Defendants deny the allegations set out in Complaint paragraph 22.

23. Defendants deny that Plaintiff is representative of the employees of the contended for "Collective." Defendants admit that Plaintiff purports to act on behalf of the contended for "Collective" as well as Plaintiff's own interests in bringing this action, as alleged in Complaint paragraph 23.

24. Defendants deny the allegations set out in Complaint paragraph 24.

25. Defendants deny the allegations set out in Complaint paragraph 25.

26. Defendants admit that the acts described in the Complaint violate the Fair Labor Standards Act, but deny that Defendants have acted as described in the Complaint.

27. Defendants admit that any similarly situated non-exempt employee found not to have been paid time and one-half for hours worked over 40 hours in a workweek is entitled to the amount of overtime compensation which was not paid and should have been paid. Defendants deny that Defendants engaged in unlawful conduct or that Plaintiff and all others similarly

situated are entitled to actual and compensatory damages as a result of Defendants' unlawful conduct as alleged in Complaint paragraph 27.

28. Defendants deny the allegation set out in Complaint paragraph 28.

29. Defendants deny that Plaintiff and all others similar situated should have judgment for the relief requested by Plaintiff in his prayer for relief.

AFFIRMATIVE DEFENSES

30. Employees of each of Defendants submitted timesheets on a weekly basis indicating the number of hours the employee worked during the workweek. Each of Defendants was entitled to rely and did rely on such records of time worked in determining compensation owing. Plaintiff is estopped from alleging hours worked that vary from the number of hours indicated on timesheets prepared by or signed by Plaintiff and submitted to Local 100. In the event that this case proceeds as a collective action, each similarly situated person consenting to join as a class plaintiff is similarly estopped from alleging hours worked that vary from the number of hours indicated on timesheets prepared by or signed by such person.

31. To the extent that Plaintiff seeks and the Court approves any collective action that includes any professional, executive, or administrative employees treated by either Defendant as exempt from the overtime provisions of the Fair Labor Standards Act, each of Defendants made a determination of the exempt status of each of its employees in good faith and had reasonable grounds for believing each employee treated as exempt was exempt. In the event that any such employee is found not to be exempt and entitled to compensation, each of Defendants is entitled to relief from liability for liquidated damages pursuant to 29 U.S.C. Section 260.

32. Neither of Defendants willfully failed to pay all compensation due to its respective employees.

33. Defendants have never jointly employed Plaintiff or anyone else. SUN exercised no control over the terms or conditions of Plaintiff's employment with Local 100, or of any other employee of Local 100. Local 100 exercise no control over the terms or conditions of any employee of SUN. No employee of either of Defendants is similarly situated to an employee of the other of Defendants.

Respectfully submitted this 8th day of September, 2014.

SCANLAN, BUCKLE & YOUNG, PC

/s/ Doug Young
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Charles L. Scalise
Ross Law Group
1104 San Antonio Street
Austin, Texas 78701

/s/ Doug Young