

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

WESLEY KELLEY

PLAINTIFF

v.

NO. 3:12CV00246 JLH

NITROGEN SOLUTIONS, L.L.C.;
MICHAEL STICKLER; MATTHEW MCCAUGHEY;
JOHN MCCAUGHEY; JOAN KHILLING;
and MICHAEL JACQUES

DEFENDANTS

ORDER

Wesley Kelley has filed a motion to dismiss the counterclaim of Nitrogen Solutions, reiterating arguments that he made when Nitrogen Solutions requested leave to file a counterclaim. In granting the motion for leave to file the counterclaim, the Court stated:

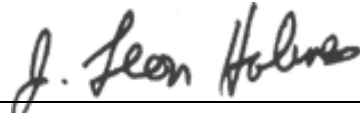
Nitrogen Solutions is correct that Kelley's complaint includes a claim under state law for breach of contract based on deductions from his bonus compensation that allegedly were improper. Assuming, without deciding, that the proposed counterclaim would be improper in a case that alleged only claims under the FLSA, here it is appropriate to permit the counterclaim in response to the claim for breach of contract alleged in Kelley's complaint.

Document #21 at 2.

Inasmuch as this is a bench trial, there is no need for bifurcated proceedings. Kelley's alternative request that the trial be bifurcated is likewise denied.

Finally, the Court believes that the counterclaim states a claim upon which relief can be granted. Therefore, Kelley's alternative request for a not more definite statement is denied.

IT IS SO ORDERED this 3rd day of September, 2013.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE