

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SILVIA BARRIENTOS MOLINA, on behalf
of herself and all other similarly situated

Plaintiff,

v.

PERFECTION FOODS COMPANY, INC.,
MAXIMUM LABOR, INC., HAHN TRAN,
and CHAVEZ GLADY,

Defendants.

CIVIL ACTION

NO. 16-00859

**DEFENDANTS MAXIMUM LABOR, INC. AND GLADYS CHAVEZ'S
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT –
CLASS/COLLECTIVE ACTION AND CROSSCLAIM**

Defendants Maximum Labor, Inc. (“**Maximum Labor**”) and Gladys Chavez, incorrectly captioned as Chavez Gladys (“**Chavez**”)¹, by their attorneys, Semanoff Ormsby Greenberg & Torchia, LLC, files their Answer and Affirmative Defenses to the Complaint – Class/Collective Action and Crossclaim, and in support thereof, avers as follows:

JURISDICTION AND VENUE

1. Denied. The averments of this paragraph are conclusions of law to which no response is required.
2. Denied. The averments of this paragraph are conclusions of law to which no response is required.
3. Denied. The averments of this paragraph are conclusions of law to which no response is required.

¹ Maximum Labor and Chavez are collectively referred to herein as “**Defendants.**”

PARTIES

4. Denied. After reasonable investigation, Defendants are without information sufficient to admit or deny the averments of this paragraph.

5. Denied. The averments of this paragraph are conclusions of law to which no response is required.

6. Admitted.

7. Admitted.

8. Denied. After reasonable investigation, Defendants are without information sufficient to admit or deny the averments of this paragraph.

9. Admitted in part, denied in part. It is admitted the Pennsylvania Department of State lists “Chavez Gladys” as the “President” of Maximum Labor, although she is misidentified on those records. The remaining averments of this paragraph are denied.

10. Denied. The averments of this paragraph are conclusions of law to which no response is required.

FACTS

11. Denied. After reasonable investigation, Defendants are without information sufficient to admit or deny the averments of this paragraph.

12. Admitted.

13. Denied. After reasonable investigation, Defendants are without information sufficient to admit or deny the averments of this paragraph.

14. Admitted in part, denied in part. It is admitted Plaintiffs were paid an hourly rate of \$7.25 per hour. The remaining averments of this paragraph are conclusions of law to which no response is required.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Denied. The averments of this paragraph are conclusions of law to which no response is required. To the extent factual, the averments are denied.

CLASS/COLLECTIVE ACTION ALLEGATIONS

22. Admitted in part, denied in part. It is admitted Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of all Facility Employees who worked during any work week within the past three years. It is denied, however, Plaintiffs are entitled to a collective action.

23. Denied. It is denied Plaintiffs' FLSA claims should proceed as a collective action, because Plaintiffs and other potential members of the collective are not "similarly situated" employees entitled to a collective action, or that Plaintiffs and any purportedly "similarly situated" employees were subjected to unlawful pay practices and policies.

24. Admitted in part, denied in part. It is admitted Plaintiffs bring their PMWA claim pursuant to Federal Rule of Civil Procedure 23 as a class action on behalf of all Facility Employees who worked during any work week within the past three years. It is denied, however, Plaintiffs and any purportedly "similarly situated" employees are entitled to a class action, or that Plaintiffs and any purportedly "similarly situated" employees were subjected to unlawful pay practices and policies.

25. Denied. It is denied class action treatment of Plaintiffs' PMWA claim is appropriate because Federal Rule of Civil Procedure 23's class action requisites are not satisfied in this instance.

26. Denied. Strict proof of the averments of this paragraph are demanded at time of trial.

27. Denied. Strict proof of the averments of this paragraph are demanded at time of trial.

28. Denied. Strict proof of the averments of this paragraph are demanded at time of trial.

29. Denied. Strict proof of the averments of this paragraph are demanded at time of trial.

30. Denied. Strict proof of the averments of this paragraph are demanded at time of trial.

COUNT I
(Alleging FLSA Violations)

31. Defendants incorporate all previous paragraphs as if set forth at length herein.

32. Denied. The averments of this paragraph are conclusions of law to which no response is required.

33. Denied. The averments of this paragraph are conclusions of law to which no response is required.

34. Denied. The averments of this paragraph are conclusions of law to which no response is required.

35. Denied. The averments of this paragraph are conclusions of law to which no response is required.

36. Denied. The averments of this paragraph are conclusions of law to which no response is required.

37. Denied. The averments of this paragraph are conclusions of law to which no response is required. To the extent factual, the averments of this paragraph are denied.

38. Denied. The averments of this paragraph are conclusions of law to which no response is required. To the extent factual, the averments of this paragraph are denied.

COUNT II
(Alleging Violations of the PMWA)

39. Defendants incorporate all previous paragraphs as if set forth at length herein.

40. Denied. The averments of this paragraph are conclusions of law to which no response is required.

41. Denied. The averments of this paragraph are conclusions of law to which no response is required.

42. Denied. The averments of this paragraph are conclusions of law to which no response is required.

43. Denied. The averments of this paragraph are conclusions of law to which no response is required.

44. Denied. The averments of this paragraph are conclusions of law to which no response is required.

45. Denied. The averments of this paragraph are conclusions of law to which no response is required.

46. Denied. The averments of this paragraph are conclusions of law to which no response is required. To the extent factual, the averments of this paragraph are denied.

WHEREFORE, Defendants, Maximum Labor, Inc. and Gladys Chavez demand judgment be entered in their favor and against Plaintiffs, and that Defendants be awarded costs of suit, attorneys' fees and such further relief as this Court may deem just and proper.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state facts sufficient to constitute a cause of action, and/or fails to state a claim against Defendants as a matter of law.
2. Plaintiffs and any purportedly "similarly situated" employees failed, neglected and/or refused to mitigate their alleged damages.
3. At all times Defendants complied with all applicable laws and regulations, including but not limited to, the Fair Labor Standards Act and Pennsylvania's Minimum Wage Act.
4. Plaintiffs and any purportedly "similarly situated" employees are not employees and therefore do not fall within the purview of the Fair Labor Standards Act and Pennsylvania's Minimum Wage Act.
5. Plaintiffs and any purportedly "similarly situated" employees' claims under Pennsylvania state law are pre-empted by applicable federal statutes and regulations.
6. Plaintiffs and any purportedly "similarly situated" employees' claims are barred, in whole or in part, by the doctrine of estoppel.
7. Plaintiffs and any purportedly "similarly situated" employees' claims are barred, in whole or in part, by the doctrine of unclean hands.
8. Plaintiffs and any purportedly "similarly situated" employees' claims are barred, in whole or in part, by the doctrine of waiver.

9. Plaintiffs and any purportedly “similarly situated” employees’ claims are barred, in whole or in part, because the actions to which Plaintiffs and any purportedly “similarly situated” employees complain do not constitute violations of the Fair Labor Standards Act.

10. Plaintiffs and any purportedly “similarly situated” employees’ claims are barred, in whole or in part, because the actions to which Plaintiffs and any purportedly “similarly situated” employees complain do not constitute violations of Pennsylvania’s Wage and Hour Act.

11. Defendants are excused from any and all liability under the facts alleged in the Complaint because at all times Defendants acted in good faith, conducted all material transactions in good faith, and had reasonable grounds for believing that its conduct was in compliance with the law.

12. Plaintiffs and any purportedly “similarly situated” employees’ claims for liquidated damages, penalties or attorneys’ fees are barred, in whole or in part, because Defendants’ conduct does not warrant an award of such damages or attorneys’ fees.

13. Defendants are entitled to the recovery of its attorneys’ fees incurred in defending this action.

14. Plaintiffs and any purportedly “similarly situated” employees’ claims are barred, because they have been compensated for all time worked.

15. Plaintiffs and any purportedly “similarly situated” employees’ claims are barred, based on the doctrine of accord and satisfaction.

16. Plaintiffs have interests that conflict with those of the putative class.

17. Plaintiffs lack standing to assert some or all of their purported claims against Defendants and to represent any putative class with regard to those claims.

18. Class certification is not appropriate because the alleged class members are not so numerous that separate joinder of each member would be impracticable.

19. Class certification is not appropriate because Plaintiffs' purported claims do not raise questions of law or fact which are common to the purported claims of each member of the putative class.

20. Because Defendants have not acted in reckless disregard of the law or in any willful violation of the law, only a two-year statute of limitations period should apply to the FLSA claims of Plaintiffs or any purportedly "similarly situated" employees.

21. To the extent Plaintiffs and any purportedly "similarly situated" employees seek recoupment of wages beyond two years under the FLSA, their claims are barred by the applicable statute of limitations.

22. If this Court were to certify this action as a class or collective action, any award of liquidated, multiple, or punitive damages would deny Defendants due process of law.

23. To the extent during the course of this litigation Defendants acquire any evidence of wrongdoing by any Plaintiffs or purportedly "similarly situated" employee, which wrongdoing would have been grounds for termination of employment, such after-acquired evidence bars such Plaintiffs or any purportedly "similarly situated" employees' claims of liability or damages or shall reduce such claims as provided by law.

24. Defendants never authorized Plaintiffs nor any purportedly "similarly situated" employees' overtime and in fact specifically limited their scheduled hours to avoid having them work in excess of 40 hours per work week.

25. To the extent Plaintiffs and any purportedly “similarly situated” employees worked in excess of 40 hours per work week, it was without Defendants’ knowledge and consent.

26. To the extent Plaintiffs and any purportedly “similarly situated” employees performed tasks while on break, at home, or otherwise “not on the clock,” such “off the clock” work was performed on their own initiative, was in violation of Defendants’ policies and was without the knowledge or consent of Defendants.

27. To the extent there is an award in favor of Plaintiffs or any purportedly “similarly situated” employees, Defendants Perfection Foods Company, Inc. and/or Hahn Tran are the parties responsible for such liability.

28. To the extent there is an award in favor of Plaintiffs or any purportedly “similarly situated” employees, an unknown company or companies, and/or an unknown individual or individuals are the parties responsible for such liability.

29. Defendants presently have insufficient knowledge or information as to whether it may have additional affirmative defenses. Defendants therefore reserve the right to assert additional affirmative defenses in the event discovery or further proceedings indicate such defenses would be appropriate.

WHEREFORE, Defendants, Maximum Labor, Inc. and Gladys Chavez demand judgment be entered in their favor and against Plaintiffs and that Defendants be awarded costs of suit, attorneys’ fees and such further relief as this Court may deem just and proper.

CROSSCLAIM AGAINST DEFENDANTS
PERFECTION FOODS COMPANY, INC. AND HAHN TRAN

1. Defendants incorporate all previous paragraphs as if set forth at length herein.

2. Plaintiffs and any purportedly “similarly situated” employees are independent contractors and therefore do not fall within the purview of the Fair Labor Standards Act and Pennsylvania’s Minimum Wage Act.

3. To the extent Plaintiffs and any purportedly “similarly situated” employees are deemed to be employees, Perfection Foods Company, Inc. (“**Perfection Foods**”) is a joint employer of Plaintiffs and all such purportedly “similarly situated” employees.

4. Defendants never authorized Plaintiffs nor any purportedly “similarly situated” employees’ overtime and in fact specifically limited their scheduled hours to avoid having them work in excess of 40 hours per work week.

5. To the extent Plaintiffs and any purportedly “similarly situated” employees worked in excess of 40 hours per work week, it was without Defendants’ knowledge and consent.

6. To the extent Plaintiffs and any purportedly “similarly situated” employees worked overtime, such overtime was authorized by Perfection Foods and/or its President Hahn Tran (“**Tran**”) and/or any other company for whom the Plaintiffs and any purportedly “similarly situated” employees worked.

7. To the extent Plaintiffs and any purportedly “similarly situated” employees worked overtime, it was for the exclusive benefit of Perfection Foods and/or Tran and/or any other company for whom the Plaintiffs and any purportedly “similarly situated” employees worked.

WHEREFORE, to the extent there is any liability against Maximum Labor, Inc. and/or Gladys Chavez with regard to this matter, such liability is the cause of Perfection Foods

Company, Inc. and/or Hahn Tran, and Perfection Foods Company, Inc. and/or Hahn Tran are liable over to Maximum Labor, Inc. and Gladys Chavez for any such damages.

SEMANOFF ORMSBY
GREENBERG & TORCHIA, LLC

By: 

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ATTORNEYS FOR DEFENDANTS
MAXIMUM LABOR, INC. and
GLADYS CHAVEZ

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below service of a true and correct copy of the attached Answer, Affirmative Defenses and Crossclaim was made via ECF Notification and First Class Mail, postage prepaid upon the following:

Peter Winebrake, Esquire
R. Andrew Santillo, Esquire
Mark J. Gottsfeld, Esquire
The Winebrake Law Firm, LLC
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Dresher, PA 19025



STEPHEN C. GOLDBLUM, ESQUIRE

DATED: 4/7/16