

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NICOLE DUNN, on behalf of herself and
others similarly situated,

Plaintiff,

v.

H & J RESTAURANT MANAGEMENT,
INC.,

Defendant.

:
: CIVIL ACTION
:
:
: No. _____
:
: JURY TRIAL DEMANDED
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:
:

CLASS/COLLECTIVE ACTION COMPLAINT

Plaintiff Nicole Dunn (“Plaintiff”) brings this class/collective action lawsuit against Defendant H & J Restaurant Management, Inc. (“Defendant”) seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. § 333.101, *et seq.* Plaintiff asserts her FLSA claim as a collective action under 29 U.S.C. § 216(b) and asserts her PMWA claim as a class action under Federal Rule of Civil Procedure 23.

JURISDICTION AND VENUE

1. Subject matter jurisdiction over the FLSA claim is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Subject matter jurisdiction over the PMWA claim is based on 28 U.S.C. § 1367.
3. Venue is based on 28 U.S.C. § 1391.

PARTIES

4. Plaintiff resides in Doylestown, Pennsylvania (Bucks County).
5. Defendant is a Pennsylvania corporate entity headquartered in Doylestown,

Pennsylvania (Bucks County).

6. Defendant employs individuals, including Plaintiff, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person.

FACTS

7. Defendant operates at least three McDonald's franchises located in southeastern Pennsylvania. This includes locations in Plumsteadville, New Hope, and Warrington,

8. During the relevant time period, Plaintiff was employed by Defendant at its Plumsteadville McDonald's franchise from approximately January 2017 until April 2017 and again from approximately January 2018 until April 2018.

9. Throughout her employment with Defendant, Plaintiff was paid on an hourly basis of approximately \$8.25/hr and was not exempt from the mandates of the FLSA and/or PMWA.

10. Throughout her employment with Defendant, Plaintiff regularly worked in excess of 40 hours in a workweek.

11. Defendants failed to record and pay Plaintiff for all of the time she spent performing her work activities. This included regular hours (below 40 hours in a workweek) and overtime hours when she worked above 40 hours in a workweek.

12. Defendant failed to pay Plaintiff for all of her work activities through various methods including, for example: (a) erasing or modify Plaintiff's recorded time in order to eliminate or reduce her work hours credited by Defendant, and (b) requiring Plaintiff to perform work during unpaid breaks.

13. Even when Defendant credited Plaintiff with working more than 40 hours in a

single week, it failed to pay her overtime premium compensation for her overtime work. Instead, Defendant would only pay Plaintiff overtime premium compensation when she worked over 80 hours in a *two-week* period.

14. In addition to Plaintiff, Defendant employs numerous other non-exempt hourly employees at their franchise locations throughout southeastern Pennsylvania. Like Plaintiff, these individuals: (a) are paid on an hourly basis; (b) have regularly worked more than 40 hours in a single workweek; (c) have not been compensated for all of their work activities; and (d) did not receive overtime premium compensation when they worked over 40 hours in a single week.

15. As a result of these common business practices, Defendant has failed to compensate Plaintiff and similarly situated non-exempt hourly employees for all work hours, and when warranted, the legally mandated overtime premium for hours worked over 40 in a workweek.

16. In failing to properly compensate Plaintiff and similarly situated non-exempt hourly employees, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA and PMWA provisions concerning the payment of minimum wages and overtime premium wages.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

17. Plaintiff brings her FLSA claim pursuant to 29 U.S.C. § 216(b) as a collective action on behalf of all individuals who, during any workweek since July 18, 2015, have worked at one of Defendant's McDonald's franchises in Pennsylvania and were classified as non-exempt from the overtime pay mandates.

18. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies

described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

19. Plaintiff brings her PMWA claim pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals who, during any workweek since July 18, 2015, have worked at one of Defendant’s McDonald’s franchises and were classified as non-exempt from the overtime pay mandates.

20. The putative class, upon information and belief, includes at least 50 individuals, all of whom are readily ascertainable based on Defendant’s payroll records, and, as such, is so numerous that joinder of all class members is impracticable.

21. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other class members.

22. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members’ interests.

23. Questions of law and fact are common to all class members, since, *inter alia*, this lawsuit concerns the legality of Defendant’s standardized compensation practices.

24. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over any questions affecting only Plaintiff and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging Violations of the FLSA)

25. All previous paragraphs are incorporated as though fully set forth herein.

26. Plaintiff and members of the proposed collective are employees entitled to the FLSA's protections.

27. Defendant is an employer covered by the FLSA.

28. The FLSA entitles employees to minimum hourly compensation of \$7.25. See 29 U.S.C. §207

29. The FLSA entitles employees to compensation for every hour worked in a workweek. See 29 U.S.C. §207(a)(1).

30. The FLSA entitles employees to overtime compensation "not less than one and one-half times" their regular rate of pay for all hours worked over 40 in a workweek. See 29 U.S.C. § 207(a)(1).

31. Defendant violated the FLSA by failing to pay Plaintiff and the proposed collective the legally mandated minimum wage and overtime premium compensation.

32. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT II
(Alleging Violations of the PMWA)

33. All previous paragraphs are incorporated as though fully set forth herein.

34. Plaintiff and members of the proposed class are employees entitled to the PMWA's protections.

35. Defendant is an employer covered by the PMWA.

36. The PMWA entitles employees to minimum hourly compensation of \$7.25. See 43 P.S. § 333.104.

37. The PMWA entitles employees to compensation for every hour worked in a workweek. See 34 Pa. Code § 231.1.

38. The PMWA entitles employees to overtime compensation “not less than one and one-half times” the employee’s regular rate of pay for all hours worked over 40 in a workweek. See 43 P.S. § 333.104(c).

39. Defendant violated the PMWA by failing to compensate Plaintiff and the proposed class the legally mandated minimum wage and overtime premium compensation.

40. In violating the PMWA, Defendant acted willfully and with reckless disregard of clearly applicable PMWA provisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and others, seeks: (a) unpaid minimum wage and overtime premium compensation; (b) prejudgment interest; (c) liquidated damages (available under FLSA only); (d) reasonable litigation costs, expenses, and attorney’s fees; and (e) any other relief as the Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff demands a jury trial as to all claims so triable.

Date: July 18, 2018



Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
WINEBRAKE & SANTILLO, LLC
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Dresher, PA 19025
Phone: (215) 884-2491

Counsel for Plaintiff

JS 44 (Rev. 06.17)

CIVIL COVER SHEET

18-cv-3068

The JS 44 civil cover sheet and the information obtained 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, as 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. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM)*

I. (a) PLAINTIFFS

NICOLE DUNN

(b) County of Residence of First Listed Plaintiff **Bucks County, PA**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Peter Winebrake, Esq., R. Andrew Santillo, Esq., Mark Gottesfeld, Esq.,
Winebrake & Santillo, LLC, Twining Office Center, Suite 211, Dresher,
PA 19025, Ph (215) 884-2491

DEFENDANTS

H & J RESTAURANT MANAGEMENT, INC

County of Residence of First Listed Defendant **Bucks County, PA**
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

18 3068

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

Click here for Nature of Suit Code Descriptions

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	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical 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 checked="" 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"/> 835 Patent Abbreviated New Drug Application <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"/> 376 Qui Tam (31 USC 3729(a)) <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

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 - Transfer
- 8 Multidistrict Litigation - Direct File

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, 29 U.S.C. 201, et seq.

Brief description of cause
Failure to pay minimum wage and overtime premium compensation

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

JUL 23 2018

DATE 07/18/2018 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

CDJ

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

18 3068

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff Doylestown, PA (Bucks County)
 Address of Defendant Doylestown, PA (Bucks County)
 Place of Accident, Incident or Transaction: Plumsteadville, PA (Bucks County)

RELATED CASE, IF ANY:

Case Number _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when **Yes** is answered to any of the following questions.

- | | | | |
|---|---|------------------------------|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case is **not** related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 07/18/2018

R. Santillo
Attorney at-Law / Pro Se Plaintiff

93041

Attorney I D # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1 Indemnity Contract, Marine Contract, and All Other Contracts
- 2 FELA
- 3 Jones Act-Personal Injury
- 4 Antitrust
- 5 Patent
- 6 Labor-Management Relations
- 7 Civil Rights
- 8 Habeas Corpus
- 9 Securities Act(s) Cases
- 10 Social Security Review Cases
- 11 All other Federal Question Cases
(Please specify) Fair Labor Standards Act, 29 U S C. 201

B. Diversity Jurisdiction Cases:

- 1 Insurance Contract and Other Contracts
- 2 Airplane Personal Injury
- 3 Assault, Defamation
- 4 Marine Personal Injury
- 5 Motor Vehicle Personal Injury
- 6 Other Personal Injury (Please specify) _____
- 7 Products Liability
- 8 Products Liability - Asbestos
- 9 All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration)

I, R. Andrew Santillo, counsel of record or pro se plaintiff, do hereby certify

Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs

Relief other than monetary damages is sought.

JUL 23 2018

DATE 07/18/2018

R. Santillo
Attorney at-Law / Pro Se Plaintiff

93041

Attorney I D # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F R C P 38

CDJ

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Nicole Dunn

v.

H + J Restaurant Management Inc.

CIVIL ACTION

18 3068

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus - Cases brought under 28 U.S.C. § 2241 through § 2255. ()
(b) Social Security - Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
(c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
(d) Asbestos - Cases involving claims for personal injury or property damage from exposure to asbestos. ()
(e) Special Management - Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
(f) Standard Management - Cases that do not fall into any one of the other tracks. (X)

7/18/18 Date

R. A. A. Attorney-at-law

Plaintiff Attorney for

215-884-2491 Telephone

215-884-2492 FAX Number

asantillo@winebrake.com E-Mail Address

JUL 23 2018