

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

	:	
SILVIA BARRIENTOS MOLINA, on behalf	:	CIVIL ACTION
of herself and all others similarly situated	:	
	:	NO. _____
Plaintiff,	:	
v.	:	
	:	
PERFECTION FOODS COMPANY, INC.,	:	
MAXIMUM LABOR INC., HAHN TRAN,	:	
and CHAVEZ GLADY,	:	
	:	
Defendants.	:	
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Plaintiff Silvia Barrientos Molina (“Plaintiff”), on behalf of herself and similarly situated employees, brings this class/collective action lawsuit against Defendants Perfection Foods Company, Inc., Maximum Labor Inc., Hahn Tran, and Chavez Gladly (collectively “Defendants”), 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’s FLSA claim is asserted as a collective action under FLSA Section 16(b), 29 U.S.C. § 216(b), while her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012) (FLSA collective actions and Rule 23 class actions may proceed together in same lawsuit). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.
3. Venue is proper under 28 U.S.C. § 1391.

PARTIES

4. Plaintiff is an individual residing in Philadelphia, PA (Philadelphia County).
5. Plaintiff is an employee covered by the FLSA and the PMWA.
6. Defendant Perfection Foods Company, Inc. (“Perfection Foods”) is a corporate entity headquartered in Philadelphia, PA (Philadelphia County).

7. Defendant Maximum Labor Inc. (“Maximum Labor”) is a corporate entity headquartered in Philadelphia, PA (Philadelphia County).

8. Defendant Hanh Tran (“Tran”) is an individual who, according to the Pennsylvania Department of State and Perfection Food’s website, is the “President” and/or “Owner” of Perfection Foods and has personally implemented and overseen the compensation policies and practices challenged in this lawsuit. Upon information and belief, Tran resides in Philadelphia, PA (Philadelphia County).

9. Defendant Chavez Glady (“Glady”) is an individual who, according to the Pennsylvania Department of State, is “President” of Maximum Labor and has personally implemented and overseen the compensation policies and practices challenged in this lawsuit. Upon information and belief, Tran resides in Philadelphia, PA (Philadelphia County).

10. Defendants are employers covered by the FLSA and the PMWA.

FACTS

11. According to its website, Perfection Foods “specializes in manufacturing gourmet foods serving food distributors” and operates “a high-tech manufacturing facility . . . [e]mploying over 100 people.”

12. Perfection Foods' manufacturing facility ("the Facility") is located at 3901 Old York Road, Philadelphia, PA.

13. From approximately 2011 until approximately January 2015 Plaintiff worked at the Facility for Defendants performing manual labor surrounding the production and/or packaging of food products.

14. Plaintiff was paid on an hourly basis of purportedly \$7.25 per hour and was not exempt from the mandates of the FLSA and/or PMWA.

15. Plaintiff was regularly required to work at least 40 hours in a workweek as part of her employment for Defendants. In fact, Plaintiff recalls that she sometimes worked up to 72 hours in a week.

16. Defendants failed to record and pay Plaintiff for all of the time Plaintiff spent performing work activities at the Facility. This included regular hours (below 40 hours in a workweek) and overtime hours (above 40 hours in a workweek).

17. Defendants also failed to pay Plaintiff overtime premium compensation for hours worked over 40 in a workweek.

18. In addition to Plaintiff, Defendants have employed many other non-exempt employees at the Facility ("Facility Employees"). These employees:

- (a) were supervised and directed by Perfection Foods' managers in the performance of their work at the Facility;
- (b) were subject to employment terms and work conditions established by Perfection Foods' managers;
- (c) worked on a permanent and full-time basis for lengthy periods of time for Defendants at the Facility;
- (d) performed manual labor for Defendants at the Facility surrounding Perfection Foods' production and/or packaging of food products that was repetitive and required little or no training; and

- (e) performed manual labor that was integral to Perfection Foods' production and/or packaging of food products.

19. Like Plaintiff, Facility Employees have been regularly scheduled to work approximately 40 hours or more each workweek, and have not been compensated for all of their work activities.

20. As a result, Defendants have failed to compensate Plaintiff and other Facility Employees for all work hours, and when warranted, the legally mandated overtime premium for hours worked over 40 in a workweek.

21. In failing to properly compensate Plaintiff and other Facility Employees, Defendants have acted willfully and with reckless disregard of clearly applicable FLSA and PMWA provisions.

CLASS/COLLECTIVE ACTION ALLEGATIONS

22. Plaintiff brings her FLSA claim pursuant to 29 U.S.C. §216(b) as a collective action on behalf of all Facility Employees who worked during any workweek within the past three years.

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

24. Plaintiff brings his PMWA claim pursuant to Federal Rule of Civil Procedure 23 as a class action on behalf of all Facility Employees who worked during any workweek within the past three years.

25. Class action treatment of Plaintiff's PMWA claim is appropriate because, as

alleged below, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

26. The class includes hundreds of individuals, all of whom are readily ascertainable based on Defendants' standard payroll records and are so numerous that joinder of all class members is impracticable.

27. 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.

28. 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.

29. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendants' compensation policies at the Facility. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

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

COUNT I
(Alleging FLSA Violations)

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

32. Plaintiff and the collective are employees entitled to the FLSA's protections.

33. Defendants are employers covered by the FLSA.

34. The FLSA entitled employees to minimum hourly compensation of \$7.25. See 29

U.S.C. §207.

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

36. 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).

37. Defendants violated the FLSA by failing to pay Plaintiff and the collective the legally mandated minimum wage and overtime premium compensation.

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

COUNT II
(Alleging Violations of the PMWA)

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

40. Plaintiff and the class are employees entitled to the PMWA’s protections.

41. Defendants are employers covered by the PMWA.

42. The PMWA entitles employees to compensation for equal to the minimum wage rate as established by 43 P. S. § 333.104(a). See 34 Pa. Code § 231.1.

43. The minimum hourly wage rate in the state of Pennsylvania is \$7.25. See 43 P. S. § 333.104(a.1).

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

45. 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).

46. Defendants violated the PMWA by failing to compensate Plaintiff and the class the legally mandated minimum wage and overtime premium compensation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. An order permitting this action to proceed as a collective and class action;
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all members of the FLSA collective informing them of this action and permitting them to join (or “opt-in” to) this action;
- C. Unpaid wages and prejudgment interest to the fullest extent permitted under federal and state law;
- D. Liquidated damages to the fullest extent permitted under the FLSA;
- E. Litigation costs, expenses, and attorneys’ fees to the fullest extent permitted under federal and state law; and
- F. Such other and further relief as this Court deems just and proper.

Date: February 17, 2016



Peter Winebrake
R. Andrew Santillo
Mark J. Gottesfeld
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491

Plaintiff's Counsel