

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

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FREDERICK VANORDEN, <i>on behalf</i>	:	
<i>of himself and others similarly situated,</i>	:	CIVIL ACTION
	:	
Plaintiff,	:	FILED ELECTRONICALLY
	:	
v.	:	CLASS/COLLECTIVE ACTION
	:	
LEBANON FARMS DISPOSAL, INC.,	:	JURY TRIAL DEMANDED
	:	
Defendant.	:	

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**COMPLAINT - CLASS/COLLECTIVE ACTION**

Plaintiff Frederick VanOrden (“Plaintiff”) brings this lawsuit against Defendant Lebanon Farms Disposal, Inc. (“Defendant”), asserting claims 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 his FLSA claim as a collective action under 29 U.S.C. § 216(b) and asserts his PMWA claim as a class action under Federal Rule of Civil Procedure 23.

**JURISDICTION AND VENUE**

1. Subject matter jurisdiction over the FLSA claim exists pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Subject matter jurisdiction over the PMWA claim exists pursuant 28 U.S.C. § 1367.

3. Venue in this Court is proper under 28 U.S.C. § 1391.

### **PARTIES**

4. Plaintiff resides in Grantville, PA (Dauphin County).
5. Plaintiff is an employee covered by the FLSA and the PMWA.
6. Defendant is a corporation headquartered in Schaefferstown, PA (Lebanon County).
7. Defendant is an employer covered by the FLSA and the PMWA.

### **FACTS**

8. Defendant operates a waste disposal business that services customers in Central Pennsylvania.
9. Plaintiff is employed by Defendant as a driver/loader.
10. Plaintiff and other and other driver/loaders often work over 40 hours per week.
11. Defendant requires Plaintiff and other driver/loaders to report to work at 4:00 a.m. each day.
12. Defendant requires Plaintiff and other driver/loaders to submit time sheets that purportedly are used to determine their weekly pay.
13. When the time sheets submitted by Plaintiff and other driver/loaders record over 40 hours of work per week, Defendant often fails to pay for some or all of the recorded overtime hours. For example, for the week ending February 25,

2017, Plaintiff's time sheet recorded 57.25 hours. Yet, Defendant paid Plaintiff for only 12 – rather than 17.25 – overtime hours.

14. With respect to those recorded overtime hours that are paid, Defendant determines the amount of overtime pay by utilizing the “half-time” methodology applicable to “day-rate” employees. See 29 C.F.R. § 778.113; 34 Pa. Code § 231.43(b). This methodology – which is very beneficial to employers – is available only if the employee is paid a flat sum for each day's work “without regard to the number of hours worked in the day.” 29 C.F.R. § 778.113; 34 Pa. Code § 231.43(b).

15. The above “half-time” methodology is not permissible in this case because Plaintiff and other driver/loaders are not paid a flat sum for each day's work “without regard to the number of hours worked in the day.” For example, Plaintiff and other driver/loaders are not paid a flat sum during days in which they are sent home early.

16. In addition to failing to pay Plaintiff and other driver/loaders for all recorded overtime hours, Defendant also prohibits Plaintiff and other driver/loaders from even recoding work hours attributable to gassing-up, cleaning, and detailing their assigned garbage trucks at the end of the shift. On a typical Monday-Thursday, these post-shift activities take approximately 30-45 minutes to complete, and, on a typical Friday, these activities take approximately 60-90

minutes to complete. Plaintiff and other driver/loaders receive no payroll credit – and thus no overtime compensation – for these post-shift activities.

17. In engaging in the conduct described above, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

### **COLLECTIVE AND CLASS ALLEGATIONS**

18. Plaintiff brings his FLSA claim pursuant to 29 U.S.C. § 216(b) on behalf of all individuals, who, during any time within the past three years, have been employed by Defendant (or any affiliated business entity) as drivers or loaders.

19. Plaintiff's FLSA claim should proceed as a collective action because Plaintiff and other putative collective members, having worked pursuant to the common timekeeping and compensation policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

20. Plaintiff brings his PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all individuals, who, during any time within the past three years, have been employed by Defendant (or any affiliated business entity) as drivers or loaders.

21. 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.

22. The class, upon information and belief, includes over 100 individuals, all of whom are readily ascertainable based on Defendant's payroll records and are so numerous that joinder of all class members is impracticable.

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

24. Plaintiff and his lawyers will fairly and adequately represent the class members and their interests.

25. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendant's common timekeeping and compensation practices, as described herein. The legality of these policies will be determined through the application of common legal principles to common facts.

26. 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 Violations of the FLSA)**

27. All previous paragraphs are incorporated as though fully set forth

herein.

28. The FLSA requires that employees receive overtime compensation calculated at 150% of their regular pay rate for hours worked over 40 per week.

29. Defendant violated the FLSA by (i) failing to pay Plaintiff and other driver/loaders for all overtime work and (ii) with respect any paid overtime hours, utilizing the half-time methodology in determining the amount of pay.

30. In violating the FLSA, Defendant has acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, has willfully violated the FLSA.

**COUNT II**  
**(Alleging Violations of the PMWA)**

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

32. The PMWA requires that employees receive overtime premium compensation calculated at 150% of their regular pay rate for all hours worked over 40 per week.

33. Defendant violated the PMWA by (i) failing to pay Plaintiff and other driver/loaders for all overtime work and (ii) with respect any paid overtime hours, utilizing the half-time methodology in determining the amount of pay.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and other members of the

class/collective, seeks the following relief:

- A. Orders permitting this action to proceed as a collective and class action;
- B. Unpaid wages (including overtime wages) and prejudgment interest;
- C. Liquidated damages;
- D. Litigation costs, expenses, and attorney's fees; and
- E. Such other and further relief as the Court deems just and proper.

Date: July 24, 2017

Respectfully,



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

*Attorneys for Plaintiff*

JS 44 (Rev. 08/16)

### CIVIL COVER SHEET

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**  
 Frederick VanOrden  
 10224 Jonestown Road, Lot 8  
 Grantville, PA 17028

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

**(c)** Attorneys (Firm Name, Address, and Telephone Number)  
 Peter Winebrake, Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025: (215) 884-2491.

**DEFENDANTS**  
 Lebanon Farms Disposal, Inc.  
 P.O. Box 380  
 Schaefferstown, PA 17088

County of Residence of First Listed Defendant Lebanon  
 (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

**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)

(For Diversity Cases Only)

	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	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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 <b>IMMIGRATION</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <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 - 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 overtime.

**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 7/24/17    SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY    RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IFP \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_