

Peter Winebrake (PA Attorney No. 80496)
R. Andrew Santillo (PA Attorney No. 93041)
Mark J. Gottesfeld (PA Attorney No. 307752)
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Attorneys for Plaintiff and the Putative Class (additional counsel listed on signature page)

PATRICK HACKMAN, on behalf of himself and others similarly situated Plaintiff,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
v.	:	CLASS ACTION
	:	
J. G. WENTWORTH HOME LENDING LLC,	:	APRIL TERM, 2018
Defendant.	:	NO. 001276
	:	

**PLAINTIFF’S ANSWER IN OPPOSITION TO DEFENDANT’S
PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT**

Plaintiff Patrick Hackman (“Plaintiff”) respectfully submits this answer in opposition to the “Defendant’s Preliminary Objections to Plaintiff’s Complaint” (hereinafter “Preliminary Objections”) and responds to each paragraph alleged in the Preliminary Objections as follows:

1. Admitted in part and denied in part. It is admitted that Plaintiff is a “former loan officer” for Defendant. Plaintiff lacks knowledge or information sufficient to form a belief as to the truth of the remainder of the averments contained in Paragraph 1.
2. Admitted.
3. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff’s Memorandum of Law in Support his Opposition to Defendant’s Preliminary Objections to Plaintiff’s Complaint (“Plaintiff’s Memorandum of Law”).
4. Denied. This paragraph consists of conclusions of law which are incorrect for the

reasons described more fully in Plaintiff's Memorandum of Law.

5. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

6. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

7. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

8. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

9. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

10. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

11. Admitted in part and denied in part. It is admitted that the Defendant accurately quotes a portion of Section VIII(U) of the document attached as Exhibit A to Defendant's Preliminary Objections titled "Loan Officer Compensation and Employment Agreement" (hereinafter "Agreement"), however, Defendant omits pertinent language from the Agreement. The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

12. Admitted in part and denied in part. It is admitted that the Defendant accurately quotes a portion of Section VIII(U) of the Agreement, however, Defendant omits pertinent language from the Agreement. The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's

Memorandum of Law.

13. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

14. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

15. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

16. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

17. Admitted in part and denied in part. It is admitted that the Defendant accurately quotes a portion of Section VIII(M) of the Agreement. The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

18. Admitted in part and denied in part. It is admitted that the Defendant accurately quotes a portion of Section VIII(M) of the Agreement. The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

19. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

20. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

21. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

22. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

23. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

24. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

25. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

26. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

27. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law are not determined solely by where the "events underlying Plaintiff's wage claim occurred."

28. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law are not determined solely by the Plaintiff's residence or the county where he worked.

29. Admitted in part and denied in part. It is admitted that venue is proper in Philadelphia County pursuant to Pa. R. Civ. P. 2179(a)(2) based on Defendant's servicing of mortgages on real property located in Philadelphia County owned by residents of Philadelphia County. The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

30. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

31. Admitted in part and denied in part. It is admitted that Pennsylvania courts have utilized the quality-quantity test as part of its analysis to determine if venue is proper pursuant to Pa. R. Civ. P. 2179(a)(2). The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

32. Admitted in part and denied in part. It is admitted that Pennsylvania courts have utilized the quality-quantity test as part of its analysis to determine if venue is proper pursuant to Pa. R. Civ. P. 2179(a)(2). The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

33. Admitted in part and denied in part. It is admitted that Pennsylvania courts have utilized the quality-quantity test as part of its analysis to determine if venue is proper pursuant to Pa. R. Civ. P. 2179(a)(2). The rest of this paragraph is denied because it consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

34. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

35. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law is not determined solely by where an employer is "incorporated" or its "principal place of business."

36. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law can be established in a particular county regardless of where an employer has "branch office[s]" or where its employees

are located.

37. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law can be established in a particular county regardless of where an employer "maintain[s] bank accounts," pays local taxes, or operates under a local business license.

38. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law can be established in a particular county regardless of where an employer "target[s] its advertising" or "specifically solicit[s] business."

39. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law can be established in a particular county regardless of where an employer "host[s] or sponsor[s] events."

40. Admitted in part and denied in part. It is admitted that Defendant regularly conducts business in Philadelphia County by providing and servicing mortgage loans to Philadelphia residents for real property located in Philadelphia County; it is denied that Defendant "does not enter Philadelphia County in furtherance of these transactions."

41. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

42. Denied as irrelevant. As discussed more fully in Plaintiff's Memorandum of Law, venue under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law can be established in a particular county regardless of the manner in which a defendant conducts its business in a particular county.

43. Denied. This paragraph consists of conclusions of law which are incorrect for the

reasons described more fully in Plaintiff's Memorandum of Law.

44. Denied. As discussed more fully in Plaintiff's Memorandum of Law, venue in Philadelphia County is proper under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law.

45. Denied. As discussed more fully in Plaintiff's Memorandum of Law, venue in Philadelphia County is proper under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law.

46. Denied. As discussed more fully in Plaintiff's Memorandum of Law, venue in Philadelphia County is proper under the Pa. R. Civ. P. 2179(a)(2) and interpretative case law.

47. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

48. Denied. This paragraph consists of conclusions of law which are incorrect for the reasons described more fully in Plaintiff's Memorandum of Law.

WHEREFORE, Plaintiff respectfully requests that the Court overrule Defendant's Preliminary Objections.

Date: June 27, 2018

Respectfully submitted,

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

Chris Miltenberger
(*pro hac vice motion forthcoming*)
Law Office of Chris R. Miltenberger, PLLC
1340 North White Chapel Boulevard, Suite 100
Southlake, TX 76092
(817) 296-0422

Attorneys for Plaintiff and the Putative Class

Peter Winebrake (PA Attorney No. 80496)
R. Andrew Santillo (PA Attorney No. 93041)
Mark J. Gottesfeld (PA Attorney No. 307752)
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025

Attorneys for Plaintiff and the Putative Class (additional counsel listed on signature page)

PATRICK HACKMAN, on behalf of	:	PHILADELPHIA COUNTY
himself and others similarly situated	:	COURT OF COMMON PLEAS
Plaintiff,	:	
v.	:	CLASS ACTION
	:	
J. G. WENTWORTH HOME LENDING	:	APRIL TERM, 2018
LLC,	:	NO. 001276
Defendant.	:	
	:	

**PLAINTIFF’S MEMORANDUM OF LAW IN
SUPPORT HIS OPPOSITION TO DEFENDANT’S
PRELIMINARY OBJECTIONS TO PLAINTIFF’S COMPLAINT**

Plaintiff Patrick Hackman (“Plaintiff”) pursues this class action lawsuit against Defendant J.G. Wentworth Home Lending, LLC (“Defendant”) asserting a single statutory claim for unpaid overtime wages under the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* On April 10, 2018 Plaintiff filed a Complaint, and on May 24, 2018, Defendant filed preliminary objections pursuant to Pa. R. Civ. P. 1028(a)(1) and (6) based on a “Loan Officer Compensation and Employment Agreement” (“Agreement”) that Defendant failed to sign. Plaintiff responds to the preliminary objections as follows:

I. MATTER BEFORE THE COURT

As our Commonwealth Court observed:

In reviewing preliminary objections, all material facts averred in the complaint, and all reasonable inferences that can be drawn from them, are admitted as true. Vattimo v. Lower Bucks Hospital, Inc., 502 Pa. 241, 244, 465 A.2d 1231, 1232 (1983); Fletcher v. Pennsylvania Property & Casualty Insurance Guaranty Association, 914 A.2d 477, 479 n.2 (Pa. Cmwlth. 2007), aff’d 603 Pa. 452, 985

A.2d 678 (2009). However, a court need not accept as true conclusions of law, unwarranted inferences, argumentative allegations, or expressions of opinion. Portalatin v. Department of Corrections, 979 A.2d 944, 947 (Pa. Cmwlth. 2009). ***“Preliminary objections should be sustained only in cases that are clear and free from doubt.”*** Pennsylvania AFL-CIO v. Commonwealth, 563 Pa. 108, 114, 757 A.2d 917, 920 (2000).

Seitel Data, Ltd. v. Ctr. Twp., 92 A.3d 851, 859 (Pa. Commw. Ct. 2014) (emphasis supplied).

II. STATEMENT OF QUESTIONS INVOLVED

1. Whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that the Agreement is binding on the parties despite Defendant’s failure to execute it?

Suggested Answer: No.

2. Whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that Plaintiff’s statutory claims for overtime wages under the PMWA are covered by the Negotiation of Disputes clause (“Disputes Clause”) at section VIII(U) of the Agreement?

Suggested Answer: No.

3. Whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that Plaintiff’s statutory claims for overtime wages under the PMWA are covered by the Forum and Venue clause (“Venue Clause”) at section VIII(M) of the Agreement?

Suggested Answer: No.

4. If the Court finds that Plaintiff’s statutory claims under the PMWA are covered by the Venue Clause, whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that Defendant has satisfied its burden of demonstrating that the Venue Clause is enforceable.

Suggested Answer: No.

5. If the Court finds that Plaintiff’s statutory claims under the PMWA are covered by the Disputes Clause, whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that Defendant has satisfied its burden of demonstrating that the Disputes Clause is enforceable.

Suggested Answer: No.

6. Whether, accepting as true all material facts averred in his Complaint and all reasonable inferences that can be drawn from them, it is clear and free from doubt that Defendant satisfied its burden of establishing that Plaintiff's chosen venue of Philadelphia County is not appropriate pursuant to Pa. R. Civ. P. 2179?

Suggested Answer: No.

III. FACTS AND LEGAL CLAIMS

According to Plaintiff's Complaint, Defendant is a "direct lender of home mortgages" offering customers home loan options for purchasing property and refinancing existing mortgages. See Complaint ("Cpl.") at ¶ 6. As part of its home mortgage operation, Defendant employs loan officers who work at Defendant's call centers selling home loan products over the telephone and internet to Defendant's customers. Id. at ¶¶ 7-8. Since at least 2015, Defendant has classified its call center loan officers as non-exempt overtime eligible employees. Id. at ¶ 11.

Plaintiff worked as a loan officer for Defendant from approximately December 2015 to approximately March 2017 at its Wayne, Pennsylvania call center. Id. at ¶ 9. According to Plaintiff, he and other loan officers were regularly required to work over 40 hours in a week. Id. at ¶ 15. Plaintiff specifically remembers working up to between 65 and 70 hours a week. Id. at ¶ 16. However, Plaintiff alleges that Defendant failed to credit him and other loan officers for all of their overtime work. Id. at ¶ 17.

Under the PMWA, employers are required to pay their employees "compensation for every hour worked in a workweek." Id. at ¶ 29 (citing 43 P.S. § 333.104(a)). The PMWA also 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." Id. at ¶ 30 (quoting 43 P.S. § 333.104(c)).

According to Plaintiff's Complaint, by failing to credit Plaintiff and other loan officers

for all of their overtime work: “Defendant *violated the PMWA* by failing to pay Plaintiff and the class any compensation, including overtime premium compensation, for all their hours worked in excess of 40 during the workweek.” Id. at ¶ 31 (emphasis supplied); see also id. at ¶ 17 (“Defendant failed to pay Plaintiff and other [I]oan [o]fficers for all their overtime hours *as required by the PMWA.*”) (emphasis supplied).

Defendant filed preliminary objections based on provisions within its own form Agreement that it required Plaintiff to execute. See Def. Exhibit A at p. 1 (“Standard Loan Officer Agreement Revised December 31, 2013). This agreement was executed by Plaintiff on March 25, 2016. Id. at p. 12. However, Defendant failed to sign the document. Id.

IV. ARGUMENT

As discussed below, Defendant’s preliminary objections should be overruled:

A. The Agreement is not enforceable because Defendant failed to sign it.

Defendant’s legal arguments in support of its preliminary objections focus exclusively on the terms of the Agreement. But these terms are irrelevant if the agreement is not binding on Plaintiff because Defendant failed to execute it.

In Shovel Transfer & Storage v. Pa. Liquor Control Bd., 559 Pa. 56, 739 A.2d 133 (1999) our Supreme Court addressed the standard for determining if an agreement is binding under Pennsylvania law when it is not fully executed by the parties:

The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties with the capacity to contract. Taylor v. Stanley Co. of America, 305 Pa. 546, 553, 158 A. 157 (1932). “If the parties agree upon essential terms and intend them to be binding, ‘a contract is formed even though they intend to adopt a formal document with additional terms at a later date.’” Johnston v. Johnston, 346 Pa. Super. 427, 499 A.2d 1074, 1076 (Pa. Super. 1985); accord Field v. Golden Triangle Broadcasting, Inc., 451 Pa. 410, 305 A.2d 689, 693 (Pa. 1973). *As a general rule, signatures are not required unless such signing is expressly required by law or by the intent of the parties.* L.B. Foster Co. v. Tri-W Construction Co.,

409 Pa. 318, 186 A.2d 18, 19 (Pa. 1962); Pennsylvania Law Encyclopedia, Contracts § 29.

[B]ecause even if the signatures were not required by statute or regulation, they may still be required if the parties intended that a contract would not exist until all the signatures were affixed. Lower Frederick Township v. Clemmer, 518 Pa. 313, 543 A.2d 502, 510 (Pa. 1988) (“[A] fundamental rule in construing a contract is to ascertain and give effect to the intention of the parties.”); Stephens v. Carrara, 265 Pa. Super. 102, 401 A.2d 821, 824 (Pa. Super. 1979) (“Where the written agreement contains the names of certain persons as parties, and one or more do not sign while others do, the question of whether those who sign are bound is to be determined by the intention and understanding of the parties.”). It is firmly settled that the intent of the parties to a written contract is contained in the writing itself. Krizovensky v. Krizovensky, 425 Pa. Super. 204, 624 A.2d 638, 642 (Pa. Super. 1993); accord Steuart v. McChesney, 498 Pa. 45, 444 A.2d 659 (Pa. 1982). When the words of a contract are clear and unambiguous, the intent is to be found only in the express language of the agreement. Steuart, 444 A.2d at 661.

Id. at 136, 137-38 (emphasis supplied). Both federal and state courts have relied on Shovel Transfer to hold that unsigned agreements are not enforceable under Pennsylvania law if they include language evidencing the parties’ intent that the contracts are only binding once they are executed by all parties.

For example, in Commonwealth v. On-Point Tech. Systems, our Commonwealth Court held that an unsigned agreement was not enforceable because it included language that the contract would “not be fully executed and binding on the Parties unless and until all signatures are affixed hereto.” 821 A.2d 641, 648 (Pa. Commw. 2003). According to the On-Point court, this language sufficiently demonstrated the parties’ intent that the contract was only binding if it was fully-executed. Id.

Similarly, in Buzzmarketing, LLC v. Upper Deck Co., LLC, the Eastern District of Pennsylvania relied on Shovel Transfer to hold that an unsigned final proposal was not an enforceable contract under Pennsylvania law because it included the following language in the

counterparts clause: “this Agreement may be executed in counterparts and facsimile signatures shall suffice as originals.” 2004 U.S. Dist. LEXIS 7966, *9 (E.D. Pa. May 5, 2004). In reaching this conclusion, the Buzzmarketing court observed:

By describing the manner in which “signatures shall suffice” to “execute[]” the agreement, this clause clearly indicates the parties’ intent to execute the agreement only by signing it. *Indeed, it is difficult to conceive of any reasonable reading of this term under which the agreement could be executed without the signatures of both parties.* Thus, the writing demonstrates that the parties intended to be bound only by the terms of the written document once signed.

Id. at *9 (emphasis supplied).

Likewise, in Shank v. Fiserv, Inc., the Eastern District of Pennsylvania held that an arbitration agreement was not unenforceable under Shovel Transfer because the employer failed to sign it. See 2016 U.S. Dist. LEXIS 4633, *9 (E.D. Pa. Jan. 14, 2016). According to the Shank court:

[T]he terms of the Agreement here indicate the parties intended for it to be signed to be enforceable. The Agreement states: “In utilizing this process and **signing this agreement**, the employee and the Company relinquish all rights to pursuing through the court the claims covered by this Agreement.” Agreement at 1 (emphasis added). This is “express language” that indicates the “clear and unambiguous” intent of the parties to only give up their right to litigate in court by signing the Agreement.

2016 U.S. Dist. LEXIS 4633, at *9 (citing Shovel Transfer).

Here, the Agreement is replete with evidence that the parties did not intend to be bound by its terms until it had been executed by each of them. First, the Agreement includes several provisions with express language evidencing the intention that the Agreement was only binding once it was fully-executed by the parties. These sections include:

F. Counterparts. *This Agreement may be executed* in any number of counterparts, and each such counterpart shall be deemed an original instrument.

P. Terms of Agreement Understood. Each Party to this Agreement represents and warrants to each other Party that such Party has read and fully

understands the terms and provisions hereof, has had an opportunity to review this Agreement with legal counsel, and *has executed this Agreement* based upon such Party's own judgment and if sought, the advice of independent legal counsel.

T. Entire Agreement. This Agreement and all documents incorporated by reference contain the entire agreement of the Parties with regard to the subject matter set forth herein. This Agreement supersedes any and all prior *agreements executed between the Parties* related to the subject matter set forth herein. No representations were made or relied upon by either Party, other than those that are expressly contained herein. *No amendment, modification, supplement or waiver of any provision of this Agreement may be made unless it is in writing and signed by the Parties.*

V. Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER OF THE PARTIES, THEIR HEIRS, EXECUTORS, ADMINISTRATORS, PERSONAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS, MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENTS DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF THE PARTIES RELATED HERETO. ***THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE EXECUTION OF THIS AGREEMENT BY THE PARTIES.***

See Def. Exhibit A at Sections VIII(F), (P), (T), (V) (emphasis supplied).

In addition, the Agreement has designated lines on each page for the initials of each party as well as full signature blocks for all parties on the last page of the agreement. See Def. Exhibit A. Notably the initial lines on each page of the agreement and the signature block on the last page Agreement for "Roger W. Jones, President of J.G. Wentworth Home Lending, Inc." are blank and unexecuted. Id. Pennsylvania courts have held that the mere presence of the initial and signature lines alone does not does not evidence the parties' intention that they would only be bound by the Agreement once it was executed by all parties. See Shank, 2016 U.S. Dist. LEXIS 4633, at *8. However, when considered in combination with the express language of

other provisions of the Agreement above, it is clear under Pennsylvania law¹ that the parties intended that the Agreement would not be binding until it was fully-executed.

B. Even if the Agreement is binding on the parties, Plaintiff's statutory PMWA claims are independent of the Agreement and not covered by the Disputes and Venue Clauses.

Even if the Court were to hold that the Agreement is binding on Plaintiff despite Defendant's failure to execute it, Defendant's preliminary objections regarding the Disputes and Venue Clause should still be overruled because Plaintiff's unpaid overtime claims under the PMWA are not covered by the express language of these provisions.

The Disputes Clause states:

U. Negotiation of Disputes. Prior to initiating any action or proceeding for monetary damages *that arises out of or relates to this Agreement*, the initiating Party shall provide the other party with written notice of its claim or claims (the "Initial Notice") in accordance with the Notice Section of this Agreement (Article VIII, Section C). Following the receipt of the Initial Notice, the Parties shall attempt to amicably resolve the claim or claims for a period of sixty (60) days. Each Party shall appoint a representative of its management to be a point of contact during the negotiating period. Nothing in the foregoing shall prevent either Party from amending claims and/or asserting counterclaims in any action or proceeding that is initiated if negotiations relating to the Initial Notice are unsuccessful. This provision shall not be construed as limiting J.G. Wentworth

¹ The Agreement includes a choice of law provision designating the laws of the Commonwealth of Virginia as governing the contract. See Def. Exhibit A at Section VIII(L). While Plaintiff asserts that the entire Agreement (including the "Governing Law" provision) is unenforceable for the reasons discussed above, the end result would be the same if the choice of law provision was applied. "Under Virginia law, everything relating to the making of the contract is to be governed by the law of the place where it is made; everything relating to the performance of the contract is to be controlled by the law of the place of performance." Seneca Speciality Ins. Co. v. Dockside Dolls, Inc., 2012 U.S. Dist. LEXIS 116476, *9 (E.D. Va. June 22, 2012) (internal quotations omitted). Defendant has failed to provide any evidence that the Agreement was either made or performed outside of Pennsylvania to preclude the application of Pennsylvania law. Moreover, Virginia's substantive law of contracts mirrors that of Pennsylvania. Thus, even under Virginia law, the Court would look at whether the parties intended to be bound by the terms of the Agreement in the absence of it being fully executed. See Innotec LLC v. Visiontech Sales, Inc., 2018 U.S. Dist. LEXIS 84287, *14-16 (W.D. Va. May 18, 2018). This analysis would be performed under the presumption that no contract exists absent a fully signed formal writing. See Moorman v. Blackstock, Inc., 276 Va. 64, 76-77 (Va. 2008).

Home Lending's right to seek injunctive relief against Loan Officer.

Def. Exhibit A at Section VIII(U) (emphasis supplied). Similarly, the Venue Clause states:

M. Forum and Venue. Any action or proceeding *arising under or relating to this Agreement* shall be brought in either the federal or state courts in Prince William County, Virginia. Each party irrevocably submits to the jurisdiction of the federal or state courts in Prince William County, Virginia for the purposes of resolving any dispute or claim *arising thereunder or relating to this Agreement*, and waives any objection to venue laid therein. The Parties agree that this provision shall not act to limit J.G. Wentworth Home Lending's right to seek injunctive relief in any other forum or venue with jurisdiction to grant such relief.

Def. Exhibit A at Section VIII(M) (emphasis supplied). Despite its construction clause, Defendant drafted the Agreement and purposely chose to expressly limit the reach of these provisions to only those claims that "arise" or "relate" to the Agreement. Id.

As discussed in section III, *supra*, Plaintiff's unpaid overtime claims do not arise out of this Agreement. Rather they are wholly independent of the Agreement and based entirely on the PMWA statute which requires employers to pay all non-exempt Pennsylvania employees 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 Cpl. at ¶ 30 (quoting 43 P.S. § 333.104(c)). These statutory PMWA rights protect workers regardless of whether there is a contract with their employer.

At least one Pennsylvania court has recognized this distinction and held that the plaintiffs' PMWA claims were independent of and not covered by an ADR provision in an agreement with the purported employer. See Watson v. Prestige Delivery Systems, Inc., 2013 Pa. Dist. & Cnty. Dec. LEXIS 65 (Allegheny Cty. Feb. 7, 2013). Therein, the Watson court observed:

[I]n this case, plaintiffs' recovery, is not dependent upon the provisions of its Agreement with [the defendant]. To the contrary, it is plaintiffs' contention that regardless of what the Agreement states, as a matter of public policy, plaintiffs are

entitled to payments as provided for in the ... [PMWA]. Consequently, this lawsuit does not involve any “disagreement or litigation” over the terms of the parties’ Agreement.

Id. at *9-10.

Moreover, both this Court and our Superior Court have held that legal claims grounded in Pennsylvania statutes are independent of contracts governing those parties’ relationships and are not covered by ADR provisions using similar language to the Disputes Clause. See In re L & S IBC, 2013 Pa. Super. Unpub. LEXIS 984 (Pa. Super. Jan. 23, 2013) reported at 64 A.3d 286, 2013 Pa. Super. LEXIS 429 (Pa. Super. 2013); Csuha v. Limoges, 2008 Phila. Ct. Com. Pl. LEXIS 16 (Phila. Cty. Jan. 4, 2008) (Bernstein, J.).

In L&S IBC, the Superior Court examined whether an arbitration clause in a partnership agreement covered one party’s efforts to dissolve the partnership pursuant to Pennsylvania statute. See 2013 Pa. Super. Unpub. LEXIS 984, at *2-3. Specifically, the ADR provision in L & S IBC stated that: “[a]ll disputes *arising under this Agreement* shall promptly be submitted to arbitration by any Member.” Id. at *3 n.2 (emphasis supplied). Even though the agreement in L & S IBC “contemplate[d] events of dissolution,” the dissolving partner’s complaint relied on an independent statutory basis for its claim not cited in the partnership agreement. Id. at *7-8. As a result, the Superior Court held that the arbitration clause did not cover the dispute because “the manner of dissolution sought by [the dissolving partner] *did not arise out of or relate to the terms of the Agreement.*” Id. at *9 (emphasis supplied).

Similarly in Csuha v. Limoges, Judge Mark Bernstein had to determine if an arbitration clause covering “any controversy or claim *arising out of* this Partnership Agreement” included statutory claims for accounting and breach of fiduciary duty asserted by one of the partners. 2008 Phila. Ct. Com. Pl. LEXIS 16, at *6-9 (emphasis supplied). In denying the defendant

partner's attempts to compel arbitration under this clause, Judge Bernstein held:

Although the law favors arbitration, it would be improper for the Court to compel arbitration in this case. A proper reading of the Eureka agreement shows that the arbitration provision is not intended to cover *all disputes*. Paragraph 28 limits arbitration to “any controversy or claim *arising out of* the partnership agreement.” Obviously claims which do not arise out of the Eureka agreement are not subject to mandatory arbitration. . . . Plaintiff's claim for an accounting does not arise out of the partnership agreement. The claim for an accounting is statutory and arises out of 15 Pa.C.S. § 8335.

Furthermore, plaintiff's claim that defendants breached their fiduciary duty also does not arise out of the partnership agreement. This claim is statutory and arises out of 15 Pa.C.S. § 8334(a).

Csuha, 2008 Phila. Ct. Com. Pl. LEXIS 16, at *9, 11 (emphasis supplied).

Likewise, federal courts have held that employees asserting claims for unpaid wages under the PMWA (and its federal counterpart the Fair Labor Standards Act) are able to go directly to court without first exhausting the arbitration procedures in a collective bargaining agreement because their claims are based on independent statutory rights and do not involve an interpretation of the contract. See e.g., Bell v. Se. Pa. Transp. Auth., 733 F.3d 490, 496 (3d Cir. 2013); Phila. Metal Trades Council v. Konnerud Consulting West, A.S., 2016 U.S. Dist. LEXIS 35829, *11-13 (E.D. Pa. Mar. 21, 2016); Rolon v. Lacawanna County, 1 F. Supp. 3d 300, 305 (M.D. Pa. 2014).

Defendant chose to expressly limit the scope of the Disputes and Venue Clauses to only those claims that “arise” or “relate” to the Agreement. Plaintiff's claims for unpaid overtime are not discussed anywhere in the Agreement and do not involve any contractual rights under the

Agreement.² In fact, Plaintiff's counsel was unaware of the Agreement's existence until Defendant attached a copy to its preliminary objections. Instead, Plaintiff is asserting his claim for unpaid overtime based entirely on the PMWA and its regulations. Thus, the Court should reject Defendant's attempt to expand the scope of the Disputes and Venue Clause beyond the express limitations that it chose to place on them and overrule the preliminary objections.

C. The Venue Clause is not enforceable under Pennsylvania law.

Plaintiff is a Pennsylvania resident who is asserting claims under Pennsylvania statutes on behalf of employees who worked at a single location in Pennsylvania. See generally Complaint. Yet, Defendant wishes to have this case transferred to the "federal or state courts in Prince William County, Virginia" pursuant to the Venue Clause. At least one Pennsylvania trial court has refused to enforce a similar forum selection under the factors identified by our Superior Court in Patriot Commercial Leasing Co., Inc. v. Kremer Rest. Enters., LLC, 915 A.2d 647, 651 (Pa. Super. 2006).

In Watson v. Prestige Delivery Systems, Inc., the defendant attempted to move a lawsuit brought by two plaintiffs asserting PMWA claims to Ohio based on a forum selection clause in a contract signed by the parties. See 2013 Pa. Dist. & Cnty. Dec. LEXIS 65, *3-4 (Allegheny Cty. Feb. 7, 2013) (Wettick, J.). After reviewing each of the three Patriot Commercial factors, the court refused to transfer the case to Ohio and overruled the preliminary objections. Id. at *3-10.

First, Judge Wettick held that the forum selection clause was unenforceable under Pennsylvania case law because it was "buried in a take-it-or-leave-it form agreement drafted by the party seeking to enforce the clause" and "even if aware of the clause and what it means, [the

² Since Plaintiff's unpaid overtime wage claims are completely independent of the Agreement, Plaintiff was not required to attach a copy of the Agreement to his pleading pursuant to Pa. R. Civ. P. 1019 as Defendant suggests. See Def. P.O.s at ¶ 5.

plaintiffs] would not believe that they had a choice over whether their Agreement with [the defendant] would ultimately include a forum selection clause.” Id. at *6. According to Watson, a forum selection clause should only be recognized ““when the parties have freely agreed that the litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation.”” Id.

Second, the Watson court held that the forum selection clause was unenforceable because it violated Pennsylvania public policy. Id. at *8-10. According to Judge Wettick:

This lawsuit is based on allegations that defendants failed to comply with Pennsylvania laws protecting wage earners. These laws specifically state that their protections cannot be avoided. Wage Payment and Collection Law, 43 P.S. § 260.7 (no provision shall be contravened by a private agreement), and Pennsylvania Minimum Wage Act, 43 P.S. § 333.113 (agreement between employer and employee to work for less than minimum wage is no defense in an action for damages).

These anti-waiver provisions should be viewed as reaching any contractual provisions that interfere with enforcement of the legislation. Thus, the Pennsylvania courts shall not enforce any provisions in an agreement drafted by an employer that make it more difficult for workers to enforce their statutory rights. In this case, the legislative goal of securing prompt payment of wages is thwarted if a worker must sue in Ohio rather than commencing an action before the local Magisterial District Court.

Id. at *8-9.

Third, the Watson court held that the selected forum was inconvenient for the parties and not enforceable. Id. at *9. “There is no reason why the Pennsylvania courts would allow any party to select the courts of another state to decide claims of Pennsylvania workers based on Pennsylvania legislation enacted to protect these workers.” Id.

As in Watson, the Venue Clause in the Agreement here should not be enforced under each of the three Patriot Commercial factors. First, the Venue Clause was presented to Plaintiff as part of Defendant’s fill-in-the-blank “Standard Loan Officer Agreement” that he was required

to sign as part of his employment. See Def. Exhibit A. Second, the Venue Clause interferes with Plaintiff's attempt to enforce the protections provided to him by under the PMWA.³ The legislative goal of securing prompt payment of his wages would be thwarted if he had to sue in Virginia rather than Pennsylvania. Finally, the Forum Clause creates an inconvenient forum for Plaintiff's lawsuit which asserts claims under Pennsylvania law on behalf of Pennsylvania employees who worked in Pennsylvania for Defendant. As Judge Wettick observed, "[t]here is no reason why the Pennsylvania courts would allow any party to select the courts of another state to decide the claims of Pennsylvania workers based on Pennsylvania legislation enacted to protect these workers." Watson, 2013 Pa. Dist. & Cnty. Dec. LEXIS 65, at *9. Thus, Defendant's preliminary objections seeking to enforce the Forum Clause should be overruled.

D. Defendant's Disputes Clause violates public policy.

The Court should also overrule Defendant's preliminary objections regarding the Disputes Clause which Defendant claims requires the parties to "attempt to amicably resolve the claim or claims for a period of sixty (60) days. See Exhibit A at Section VIII(U). Plaintiff would be agreeable to staying this case for sixty (60) days if Defendant is willing to have good faith settlement discussions on a class-wide basis. Notably, this option has never been offered by Defendant. However, as discussed below, dismissal of this lawsuit based on the Disputes Clause would be improper because this provision of the Agreement violates public policy.

³ Courts in Pennsylvania and elsewhere frequently recognize that a state has a strong public policy interest in enforcing its own employment statutes. See Cottman Transmission Systems v. Kershner, 492 F. Supp. 2d 461 (E.D. Pa. 2007) (franchise agreement's choice-of-law provision violated public policy of California, Wisconsin, and New York); McIlvaine Trucking, Inc. v. Worker's Compensation Appeal Board, 570 Pa. 662, 671-72 (2002) (refusing to honor contractual choice of law provision in worker's compensation as it offended public policy); Roll Systems, Inc. v. Shupe, 1998 U.S. Dist. LEXIS 3142, *5-9 (D. Mass. Jan. 22, 1998) (refusing to enforce a Choice of Law provision where doing so would conflict with a fundamental policy of the state of California regarding the enforcement of restrictive covenants in employment).

The PMWA not only provides Pennsylvania employees with statutory wage protections, but also equips them with essential tools to enforce these rights. These include, *inter alia*:

- The right to promptly bring a civil suit to recover unpaid minimum and overtime wages. See 43 P.S. §333.113;
- The ability to recovery unpaid wages for three (3) years prior to filing suit. See Curtis v. Cargill Meat Sols. Corp., 2006 U.S. Dist. LEXIS 64634, *8 (M.D. Pa. June 16, 2006) (citing 43 P.S. §333.108); and
- Prohibition of an employer’s ability to bargain away an employee’s rights under the PMWA. See 43 P.S. §333.113.

Defendant is attempting to contravene these very important protections through the Disputes Clause. For example, if Defendant has its way, Plaintiff and the putative class will lose at least five to six months off their statute of limitations.

Furthermore, courts have refused to enforce contract provisions that obstruct an employee’s ability to assert claims under similar protective statutes for public policy reasons. See, e.g., Freedman v. Tozzoli, 2005 Pa. Dist. & Cnty. Dec. LEXIS 59, *20 (Lehigh Cty. Feb. 17, 2005) (“A contract provision that impedes a party’s ability to seek redress for violations of this important remedial statute is contrary to public policy and therefore null and void.”). This includes employer created administrative proceedings that are not otherwise required by the statute. See, e.g., Hurley v. Atlantic City Police Department, 174 F.3d 95, 118 (3d Cir. 1998) (“an employer cannot use its own policies to insulate itself from liability by placing an increased burden on a complainant to provide notice beyond that required by law”) (internal citation omitted); Zipf v. American Telephone and Telegraph Co., 799 F.2d 889, 894 (3d Cir. 1986) (plaintiff “not required first to exhaust her benefit plan’s internal procedures before bringing her claim that her employer fired her to prevent her from obtaining disability benefits”); Falcone v. Teamsters Health & Welfare Fund, 489 F. Supp. 2d 490, 496 (E.D. Pa. 2007) (same); Langlois v.

City of Deerfield Beach, 370 F. Supp. 2d 1233, 1239 (S.D. Fla. 2005) (“an employer cannot develop internal policies that circumvent the rights guaranteed its employees under the FMLA”).

Moreover, the Disputes Clause is not applicable to Plaintiff as a former employee of Defendant because it requires each party to appoint a member of Defendant’s management to represent them during the negotiation period. See Exhibit A at Section VIII(U) (“Each Party **shall** appoint a representative of its management to be a point of contact during the negotiating period.”) (emphasis supplied). Thus, it is apparent that the Dispute Clause was only meant to apply to current employees since it is not feasible for Plaintiff to select a member of management to represent him as he no longer works for Defendant. More importantly, Courts have held that such mandatory pre-suit dispute resolution provisions should not be enforced because they give defendants a “free peek” at a plaintiff’s claims. See Pokorny v. Quixtar, Inc., 601 F.3d 987 (9th Cir. 2010); Nyulassy v. Lockheed Martin Corporation, 120 Cal. App. 4th 1267, 1282-83 (2004). Thus, Defendant’s preliminary objection regarding the Disputes Clause should be overruled.

E. Defendant fails to demonstrate that venue in Philadelphia County is improper.

Defendant, as the moving party, bears the burden of demonstrating that “a change in venue *is necessary*.” See Purcell v. Bryn Mawr Hosp., 525 Pa. 237, 579 A.2d 1282, 1284 (1990) (emphasis supplied). However, as the Pennsylvania Supreme Court has observed, a “Plaintiff’s choice of forum is entitled to weighty consideration and should not be disturbed lightly.” See Zappala v. Brandolini Prop. Mgmt., 589 Pa. 516, 909 A.2d 1272, 1281 (2006) (quoting Walker v. The Ohio River Co., 419 Pa. 149, 205 A.2d 43, 45 (1964)); see also Purcell, 579 A.2d at 1284 (“[A] plaintiff generally is given the choice of forum so long as the requirements of personal and subject matter jurisdiction are satisfied.”); Gilfor v. Altman, 770 A.2d 341, 343 (Pa. Super. 2001) (“A plaintiff’s choice of forum is given great weight and a defendant has the burden in asserting

a challenge to plaintiff's choice of venue.”).

In a case involving defendants that are “corporation[s] or similar entit[ies]” (as with Defendant here) a plaintiff may establish venue through one of the five methods provided in Pa.

R. Civ. P. 2179:

Venue.

(a) Except as otherwise provided by an Act of Assembly, by Rule 1006(a.1) or by subdivision (b) of this rule, a personal action against a corporation or similar entity may be brought in and only in

(1) the county where its registered office or principal place of business is located;

(2) a county where it regularly conducts business;

(3) the county where the cause of action arose;

(4) a county where a transaction or occurrence took place out of which the cause of action arose, *or*

(5) a county where the property or a part of the property which is the subject matter of the action is located provided that equitable relief is sought with respect to the property.

Pa. R. Civ. P. 2179 (emphasis supplied).⁴ Plaintiff asserts that venue is proper pursuant to Rule 2179(a)(2).

Pennsylvania courts utilize a “quality-quantity” analysis to determine whether venue is proper pursuant to Pa. R. Civ. P. 2179(a)(2). See Purcell, 579 A.2d at 1285. The “quality” component is satisfied if the acts of the defendant in the subject county “further or are directly related or essential to its business objectives. Rogers v. Thomas, 2011 Pa. Dist. & Cnty. Dec. LEXIS 609, *11-12 (Lacka. Cty. June 20, 2011) (citing Purcell, 579 A.2d 1285)). The “quantity” element is satisfied if the defendant’s acts in the subject county “are sufficiently

⁴ Only one of these requirements needs to be satisfied for venue to be established. See Deyarmin v. Consolidated Rail Corp., 931 A.2d 1, 8 (Pa. Super. 2007).

continuous so as to be considered habitual for purposes of venue.” Id. However, as the Pennsylvania Supreme Court has warned, these terms should not be so strictly interpreted to preclude venue in a plaintiff’s chosen location:

It must be remembered that it is the word “regularly” which we are construing and not “principally.” A corporation may perform acts “regularly” even though these acts make up a small part of its total activities. Nor does “regularly” necessarily mean, as defendant contends, that the acts must be performed on a fixed schedule.... The question is whether the acts are being “regularly” performed within the context of the particular business.

Monaco v. Montgomery Cab Co., 417 Pa. 135, 208 A.2d 252, 258 (1965).

In fact, our Superior Court has held that venue in Philadelphia County was appropriate in a similar class action under the PMWA concerning wage practices that occurred entirely at a chicken processing facility located almost 100 miles away in Fredericksburg, Pennsylvania. See Lugo v. Farmers Pride, Inc., 967 A.2d 963 (Pa. Super. 2009). There, the Court held that venue was appropriate under 2179(a)(2)’s quality-quantity analysis merely because the defendant sold a tiny percentage of its perishable chicken products to brokers located in Philadelphia. Id. at 971.

As in Lugo, the quality-quantity analysis in this case supports venue in Philadelphia County. Plaintiff’s Complaint alleges that venue is proper because Defendant regularly conducts business in Philadelphia County pursuant to Pa. R. Civ. P. 2179(a)(2) by:

providing customers with mortgage loans on real property located in Philadelphia County. For example, within the last two years, J.G. Wentworth Home Lending, Inc.⁵ brought two foreclosure actions on separate properties located in Philadelphia County.

Cpl. at ¶ 2. Defendant does not deny this assertion.

In fact, Defendant readily admits that it “is in the business of mortgage lending,” Def. Br. at p. 21, and that it receives revenue from mortgage loans that it provides and servers on real

⁵ According the Pennsylvania Department of State website, “J.G. Wentworth Home Lending, Inc.” is a “Prior Name” of Defendant. Id. at ¶ 2 n.1.

property located in Philadelphia County, *id.* at pp. 22-23 (discussing its gross revenue from mortgages in Philadelphia County). Since its activities within the County are in furtherance of, and not incidental to, its primary corporate objective of providing residential mortgages, the Rule 2179(a)(2)'s quality requirement is satisfied.

Defendant's mortgage lending activities are also continuous and sufficient to satisfy Rule 2179(a)(2)'s quantity requirement. Defendant admits that it received revenue from the mortgages it serviced in Philadelphia County each of the last three years. *See* Def. Br. at p. 22-23; Exhibit B at ¶¶ 11-13. Defendant attempts to downplay this continuous stream of revenue from real property in Philadelphia County by only providing statistics concerning the "total number of mortgages *generating revenue*." *Id.* (emphasis supplied). Noticeably absent from Defendant's preliminary objections are statistics showing the *total* number of mortgages that it has provided to properties in Philadelphia County – revenue generating or not. Regardless, Defendant's revenues percentages in Philadelphia County are in line with the chicken sales that the Superior Court held were sufficient to satisfy Rule 2179(a)(2)'s quantity requirement in *Lugo*. *See* 967 A.2d at 971. In fact, its mortgage lending and servicing activities presumably require monthly mortgage payments from Philadelphia County residents lasting upwards of 30 years or more. Thus, these mortgage servicing and lending activities are much more continuous than the mere selling of perishable chicken products that the Superior Court relied upon in *Lugo*.

V. **RELIEF REQUESTED**

For the reasons set forth above, Plaintiff respectfully requests that the Court overrule Defendant's Preliminary Objections.

Date: June 27, 2018

Respectfully submitted,

/s/ R. Andrew Santillo

Peter Winebrake

R. Andrew Santillo

Mark J. Gottesfeld

WINEBRAKE & SANTILLO, LLC

715 Twining Road, Suite 211

Dresher, PA 19025

(215) 884-2491

Chris Miltenberger

(pro hac vice motion forthcoming)

Law Office of Chris R. Miltenberger, PLLC

1340 North White Chapel Boulevard, Suite 100

Southlake, TX 76092

(817) 296-0422

Attorneys for Plaintiff and the Putative Class

PATRICK HACKMAN, on behalf of himself and others similarly situated Plaintiff,	:	PHILADELPHIA COUNTY
	:	COURT OF COMMON PLEAS
v.	:	CLASS ACTION
	:	
J. G. WENTWORTH HOME LENDING LLC, Defendant.	:	APRIL TERM, 2018
	:	NO. 001276

ORDER

AND NOW this _____ day of _____, 2018, upon consideration of Defendant's Preliminary Objections to Plaintiff's Complaint, Plaintiff's opposition thereto, and all other papers and proceedings herein, it is hereby ORDERED and DECREED that Defendant's Preliminary Objections are OVERRULED.

BY THIS COURT:

J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies subject to the penalty of perjury, that, on this date, the attached documents was served on the Defendant by delivering same to Defendant's counsel listed below via the Court's electronic filing system:

Colin D. Dougherty, Esq.
Fox Rothschild LLP
10 Sentry Parkway, Suite 200
Blue Bell, PA 19422

Date: June 27, 2018

/s/ R. Andrew Santillo
R. Andrew Santillo
WINEBRAKE & SANTILLO, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
Ph: (215) 884-2491
Fx: (215) 884-2492