

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

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MICHEL THOMPSON and GEORGE	:	
HIGGINS, on behalf of themselves and those	:	2:22-cv-01244-JMY
similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
RHOMBUS SERVICES, LLC (d/b/a	:	
BrandPoint Services),	:	
	:	
Defendant.	:	
	:	

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**STIPULATION AND ORDER**

**AND NOW**, this 19th day of July 2022, Plaintiffs Michel Thompson, George Higgins, and four other individuals who have “opted-in” to this collective action<sup>1</sup> (together “Plaintiffs”) and Defendant Rhombus Services, LLC (“Defendant”) hereby **STIPULATE** as follows:

1. The following collective is conditionally certified pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b): **All traveling merchandisers and other individuals (regardless of job title) who, during any week within the past three years, were paid by Defendant or any related business entity to perform rebuilds at Dollar General retail stores during any time since July 18, 2019.**<sup>2</sup> Individuals falling within this definition are referred to as “Putative Collective Members.”

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<sup>1</sup> These individuals include Makayla Fontenot, Sterling Hurst, Jozwick Moten, and Gabrielle Osborn. *See* ECF No. 15.

<sup>2</sup> This July 18, 2019 start-date is derived from the maximum three-year limitations period available under the FLSA. *See* 29 U.S.C. § 255(a). Nothing herein prevents Defendant from arguing, after the close of discovery, that a two-year limitations period applies to this action due to the lack of a “willful” violation. *See Stone v. Troy Construction, LLC*, 935 F.3d 141, 148-50 (3d Cir. 2019) (describing “willfulness” standard). Moreover, the July 18, 2019 start-date does not apply to Plaintiffs, who may seek recovery for the period starting three years prior to the date on which they opted-in to this action by filing consent forms.

2. Nothing herein prevents Defendant from arguing, after the close of discovery, that final certification of the FLSA collective is inappropriate and that the collective should be “decertified” or narrowed. *See Halle v. West Penn Allegheny Health System Inc.*, 842 F.3d 215, 226 (3d Cir. 2016) (describing standard applicable at “final certification” stage of FLSA collective action).

3. Within fourteen (14) calendar days of the Court’s entry of this Order, Defendant will send to Settlement Services, Inc. (“SSI”)<sup>3</sup> an Excel spreadsheet listing the name and last known mailing address of each Putative Collective Member. SSI will maintain such information in confidence. Within twenty-one (21) calendar days of the Court’s entry of this Order, SSI will mail to each Putative Collective Member in an outgoing envelope bearing Plaintiffs’ counsel’s return address finalized copies of the attached “Notice of Collective Action Lawsuit” form (“Notice Form”), “Consent to Join” form (“Consent Form”), and a postage-paid return envelope bearing Plaintiff’s counsel’s address (collectively the “Notice Package”). Within forty-two (42) calendar days of the Court’s entry of this Order, SSI will re-mail the Notice Package to each Putative Collective Member who has not yet returned a Consent Form. Plaintiffs’ counsel will pay all postage and printing costs associated with the preparation and mailing of the Notice Packages. If any Notice Package is returned as undeliverable, Plaintiffs’ counsel, with the assistance of SSI, will make all reasonable efforts to update the address information and re-send the Notice Package.

4. In order to participate in this action, a Putative Collective Member must complete his/her Consent Form and return it in an envelope postmarked on or before the deadline indicated

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<sup>3</sup> SSI is a respected third-party claims administrator and has substantial experience administering Court-approved notice programs in class and collective actions. *See* <https://www.settlementservicesinc.com/>

in the Notice Package, which will be set at seventy (70) calendar days after the initial mailing date.

5. Plaintiff's counsel will file with the Court each completed Consent Form within three (3) business days of receipt. Prior to filing, the parties' counsel will confer in good faith to amicably resolve any disputes concerning the completeness or timeliness of any form.

6. Within seventy (70) calendar days of the Court's entry of this Order, the parties will provide the Court with a proposed schedule for the remainder of this litigation.

7. Within two (2) business days of the entry of this Order, Plaintiffs will file with the Court a notice dismissing without prejudice their claim under the Pennsylvania Minimum Wage Act.

8. Discovery is **STAYED** pending the completion of the above-described notice and opt-in process.

**FOR DEFENDANTS:**

/s/ Richard L. Hackman  
Richard L. Hackman  
Saxton & Stump LLC  
280 Granite Run Drive, Suite 300  
Lancaster, PA 17601  
(717) 556-1006

**FOR PLAINTIFFS:**

/s/ Peter Winebrake  
Peter Winebrake  
Winebrake & Santillo, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19075  
(215) 884-2491

**SO ORDERED:**

/s/ John Milton Younge  
\_\_\_\_\_  
Hon. John Milton Younge  
United States District Judge

July 19, 2022  
\_\_\_\_\_  
Date

[insert date]

**NOTICE OF COLLECTIVE ACTION LAWSUIT**

*Thompson v. Rhombus Services, LLC (d/b/a. BrandPoint), 2:22-cv-01244-JMY*  
United States District Court, Eastern District of Pennsylvania

**TO:** [INSERT NAME]

**PLEASE READ THIS NOTICE CAREFULLY**

**INTRODUCTION**

This Notice informs you of the existence of a collective action lawsuit seeking unpaid wages under federal law. If this Notice is addressed to you, then you are eligible to participate in the lawsuit.

**DESCRIPTION OF THE LAWSUIT**

In March 2022, Michel Thompson and George Higgins (“Plaintiffs”) started this lawsuit on behalf of traveling merchandisers and other individuals (regardless of job title) who were paid by Rhombus Services, LLC, which operates as “BrandPoint,” to perform rebuilds at Dollar General retail stores. The lawsuit is proceeding in the United States District Court in Philadelphia, PA and is assigned to United States District Judge John Milton Younge.

The lawsuit alleges that BrandPoint violated federal wage law by failing to pay traveling merchandisers overtime wages for hours worked over 40 per week. Plaintiffs allege that this is a result of BrandPoint misclassifying the merchandisers as “independent contractors.” The lawsuit seeks to recover unpaid overtime wages for hours worked over 40 during any week within the past three years. The lawsuit also seeks the recovery of liquidated damages and attorney’s fees and expenses.

BrandPoint denies liability, disputes the validity of the allegations, and asserts that its pay practices are legal. Specifically, BrandPoint contends that Plaintiffs and other traveling merchandisers are properly classified as “independent contractors” who have no right to overtime pay under federal wage law.

The Federal Court has not yet decided who will win.

**RETALIATION PROHIBITED**

If you join the lawsuit, federal law prohibits BrandPoint from retaliating against you as a result of your participation.

**HOW TO JOIN THE LAWSUIT**

You may join the lawsuit by completing the enclosed “Consent to Join” form and returning it in the enclosed envelope to Plaintiffs’ lawyers at the following address:

Winebrake & Santillo, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025

Your return envelope must be postmarked by *[insert date]*. If you fail to meet this deadline, you will not be allowed to participate in the lawsuit.

**EFFECT OF JOINING THE LAWSUIT**

If you join the lawsuit, you will be bound by the judgment of the Federal Court on all issues, including the reasonableness of any settlement. If the Federal Court finds in favor of Plaintiffs and other merchandisers, you may be eligible for a money payment. If the Federal Court finds in favor of BrandPoint, you will receive nothing.

**EFFECT OF NOT JOINING THE LAWSUIT**

If you do not join the lawsuit, you will not be affected by any judgment or settlement resulting from the lawsuit.

**YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you join the lawsuit, you will be jointly represented by the following law firms: (i) The Bunker Law Firm, P.O. Box 10099, Houston, TX 77206; (713) 868-3388; [www.houstonovertimelawyer.com](http://www.houstonovertimelawyer.com) and (ii) Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025; (215) 884-2491; [www.winebrakelaw.com](http://www.winebrakelaw.com).

You will not be required to pay any fees to the above law firms. The firms have taken this case on a “contingency” basis. If the lawsuit is unsuccessful, the firms will receive nothing. If the lawsuit results in a recovery, the firms will ask the Federal Court to award legal fees separate and apart from your recovery.

Please call either of the above law firms if you have any questions or desire any additional information about the lawsuit.

**THIS NOTICE HAS BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT. THE COURT TAKES NO POSITION REGARDING THE LAWSUIT’S MERITS.**

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

_____	:	
MICHEL THOMPSON and GEORGE	:	
HIGGINS, on behalf of themselves and those	:	2:22-cv-01244-JMY
similarly situated,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
RHOMBUS SERVICES, LLC (d/b/a	:	
BrandPoint Services),	:	
	:	
Defendant.	:	
_____	:	

**CONSENT TO JOIN**

I hereby consent, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 216(b), to become a party plaintiff in this FLSA action. I agree to be jointly represented by The Buenker Law Firm (Houston, TX) and Winebrake & Santillo, LLC (Dresher, PA) in this case. I understand that I will be bound by the judgment of the Court on all issues in this action including the fairness of any settlement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Please Print Neatly)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email Address

**RETURN IN ENVELOPE POSTMARKED BY [INSERT DATE] ADDRESSED TO:**

Winebrake & Santillo, LLC  
715 Twining Road, Suite 211  
Dresher, PA 19025  
Fax: (215)-844-2492  
Email: [mtolodziecki@winebrakelaw.com](mailto:mtolodziecki@winebrakelaw.com)