

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

GARY RAPCZYNSKI, ANTONIO	:	
PURIFICATO, STEPHEN	:	
RYDZANICH, and ANDREW JAMES,	:	3:14-cv-02441-ARC
	:	
Plaintiffs,	:	FILED ELECTRONICALLY
v.	:	ON MARCH 3, 2015
	:	
DIRECTV, LLC and MASTEC	:	JURY TRIAL DEMANDED
NORTH AMERICA, INC.,	:	
	:	
Defendants.	:	
	:	

AMENDED COMPLAINT

Plaintiffs Gary Rapczynski, Antonio Purificato, Stephen Rydzanich, and Andrew James (“Plaintiffs”)¹ bring this lawsuit against Defendants DIRECTV LLC and MasTec North America, Inc. (collectively “Defendants”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.*, and the Pennsylvania Wage Payment and Collection Law (“PWPCCL”), 43 P.S. §§ 260.1, *et seq.*

¹ Plaintiffs previously filed consents to become party plaintiffs in an FLSA collective action pending in the Eastern District of Missouri and entitled *Arnold v. DIRECTV*, No. 10-0352-JAR. As a result of certain “decertification” proceedings, Plaintiffs Rapczynski, Purificato, and James were dismissed from the *Arnold* litigation without prejudice to their commencing individual lawsuits. Likewise, as a result of a prior discovery order, Plaintiff Rydzanich was dismissed from the *Arnold* litigation without prejudice to his commencing the instant lawsuit.

JURISDICTION AND VENUE

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331; jurisdiction over the PMWA and PWPCL claims is proper under 28 U.S.C. § 1367.
2. Venue in this district is proper under 28 U.S.C. § 1391(b).

PARTIES

3. Gary Rapczynski (“Rapczynski”) is an individual residing in Mountain Top, Pennsylvania (Luzerne County).
4. Plaintiff Antonio Purificato (“Purificato”) is an individual residing in Cresco, Pennsylvania (Monroe County).
5. Stephen Rydzanich (“Rydzanich”) is an individual residing in Throop, Pennsylvania (Lackawanna County).
6. Plaintiff Andrew James (“James”) is an individual residing in Altoona, Pennsylvania (Blair County).
7. Defendant DIRECTV, LLC (“DIRECTV”) is a Delaware corporation with its principal place of business in El Segundo, California. DIRECTV, LLC was formed when, in December 2011, DIRECTV, Inc. merged with DIRECTV Operations, LLC.
8. Defendant MasTec North America, Inc. (“MasTec”) is a Florida corporation with its principal place of business in Coral Gables, Florida.

9. All Defendants do business in Pennsylvania, including within this judicial district.

FACTS

10. Plaintiffs are technicians who installed and repaired DIRECTV satellite television service at customers' homes.

11. DIRECTV oversees a network of Providers (the "Provider Network") that supplies DIRECTV with technicians, either by serving as the technicians' ostensible employer or by "subcontracting" with technicians dubbed "independent contractors."

12. The Provider Network consists of principal intermediaries that DIRECTV dubs Home Service Providers ("HSPs"), secondary intermediaries that DIRECTV dubs "Secondary Providers," and a patchwork of largely captive entities that generally are referred to as subcontractors (collectively "Providers").

13. MasTec and DirectSat USA, LLC ("DirectSat"), a Delaware limited liability corporation, are both HSPs and, therefore, Providers.

14. DIRECTV conceived of, formed, manages, and operates the Provider Network from its headquarters in El Segundo, California.

15. Upon information and belief, DIRECTV has been each Provider's primary, if not only, client and has been the major source of each Provider's income.

16. DIRECTV controls the Providers through a variety of means, including detailed agreements known as Home Services Provider Agreements, Services Provider Agreements, and Secondary Provider Agreement of Equipment Installation and Service (collectively “Provider Agreements”). The Provider Agreements establish virtually identical business relationships between DIRECTV and each Provider. For example, the salient provisions of each Provider Agreement contain the same policies, procedures, performance standards, and payment method requirements.

17. The Provider Agreements specify DIRECTV’s mandatory policies and procedures and obligate Providers to hand them down to the technicians.

18. DIRECTV’s control over its Providers is integral to its fissured employment scheme. So much so that DIRECTV regularly infuses the Providers with what it labels internally as “extraordinary advance payments” in order to keep the Providers’ dependent operations afloat while preserving an outward appearance of independence. When litigation or other circumstances make the purportedly “independent” relationships between DIRECTV and the Providers a negative for DIRECTV, DIRECTV simply absorbs these entities by acquisition.

19. The absorption of Providers by DIRECTV is seamless, simply a resetting of titles without the functional modifications that normally accompany an arms-length acquisition. To date, there are only three “independent” HSPs still in

operation. Since DIRECTV developed its HSP Network, DIRECTV or one of these three remaining HSPs has purchased at least thirteen prior HSPs.²

20. For example, in or about June 2011, MasTec acquired Halsted Communications, Ltd. (“Halsted”), a Provider previously based in Ballston Spa, NY. Thereafter, MasTec conducted business out of Halsted’s locations, and many of Halsted’s employees were hired by MasTec.

21. Upon information and belief, Halsted technicians’ job duties and working conditions remained substantially the same after MasTec acquired Halsted. There were no broad changes to job functions, job titles, job responsibilities, and/or supervisors, and technicians’ pay remained the same.

DIRECTV’s Control Over Plaintiffs’ Work

22. Rapczynski was employed as a technician by DIRECTV and Halsted (now MasTec) from approximately September 2009 until approximately July 2010.

23. Rapczynski does not have all the documents or records possessed by DIRECTV that bear on his damages. Based on his recollection, Rapczynski estimates that, in a given workweek, he would work 75 hours, 30 of which were unpaid; he would be subject to chargebacks of \$25 per week; and would be paid \$500 per week, which would be reduced by unreimbursed business expenses.

² These acquired HSPs include AeroSat, Bruister, Bluegrass Satellite and Security, ConnectTV, Directech NE, Directech SW, DTV Home Services II, LLC, Halsted Communications, Ironwood Communications, JP&D Digital Satellite, Michigan Microtech, Mountain Satellite and Security, and Skylink.

24. Rapczynski brings his individual claims against DIRECTV only.

25. Purificato was employed by DIRECTV, MasTec, Parabolic Installations LLC, and P&M Insulation from approximately January 2012 until approximately November 2012.

26. Purificato does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Purificato estimates that, in a given workweek, he would work 45 hours, 23 hours of which were unpaid; he would be subject to chargebacks of \$150 per week; and would be paid \$300 per week, which would be reduced by unreimbursed business expenses.

27. Purificato brings his individual claims against DIRECTV and MasTec.

28. Rydzanich was employed by DIRECTV, Halsted, and MasTec from approximately 2008 until approximately June 2013.

29. Rydzanich does not have all the documents or records possessed by Defendants that bear on his damages. Based on his recollection, Rydzanich estimates that, in a given workweek, he would work 60 hours, 20 hours of which were unpaid; he would be subject to chargebacks of \$20 per week; and would be paid \$700 per week.

30. Rydzanich brings his individual claims against DIRECTV and MasTec.

31. James was employed by DIRECTV, DirectSat, and Freedom Communications from approximately September 2011 until approximately April 2012.

32. James does not have all the documents or records possessed by DIRECTV that bear on his damages. Based on his recollection, James estimates that, in a given workweek, he would work 88 hour, 48 hours of which were unpaid; he would be subjected to chargebacks of \$250 per week; and would be paid \$900, which would be reduced by unreimbursed business expenses.

33. James brings his individual claims against DIRECTV only.

34. The Provider Agreements enabled DIRECTV to control nearly every facet of Plaintiffs' work, including, but not limited to, control over what work technicians perform, where that work is performed, when the work is performed, and how the work is performed.

35. Plaintiffs were required to hold themselves out as agents of DIRECTV. For example, Plaintiffs, like other technicians, were required to wear uniforms bearing the DIRECTV insignia, carry DIRECTV identification cards, and display the DIRECTV insignia on their vehicles.

36. At the beginning of each workday, Plaintiffs, like other technicians, received a work order from DIRECTV's dispatching system. DIRECTV used a database program known as SIEBEL to coordinate the assignment of work orders

to each Plaintiff based on his “Tech ID Number.”

37. After receiving the work order, Plaintiffs, like other technicians, were required to telephone the customer contact for each assigned job to confirm the scheduled arrival time. Plaintiffs, like other technicians, were required to travel to their assigned jobs in the order prescribed by DIRECTV. Upon arriving at each job site, Plaintiffs, like other technicians, were required to check-in with DIRECTV via the dispatching system. At the end of each assigned job, Plaintiffs, like other technicians, were required to inform DIRECTV that the installation was complete and were required to work directly with DIRECTV employees to activate the customer’s service.

38. DIRECTV determined whether Plaintiffs’ work merited compensation and dictated the applicable pay rate.

39. DIRECTV required Plaintiffs, like other technicians, to follow detailed installation methods to assure that DIRECTV’s equipment was installed according to DIRECTV’s uniform and nationwide standards. Plaintiffs, like other technicians, had no meaningful discretion over installation methods or procedures.

40. DIRECTV published uniform training materials that Plaintiffs, like other technicians, were required to review and follow.

41. DIRECTV required Plaintiffs, like other technicians, to obtain certifications from the Satellite Broadcasting & Communications Association

before being assigned DIRECTV work orders.

42. DIRECTV utilized a network of quality control personnel and field managers to oversee the work of Plaintiffs and other technicians and to ensure compliance with DIRECTV's uniform standards.

The Compensation System

43. DIRECTV controlled the pay of Plaintiffs and other technicians through the common policies and practices mandated in the Provider Agreements.

44. Plaintiffs, like other technicians, were paid under a piece-rate system by which Plaintiffs received a fixed payment for satisfactorily completing a DIRECTV-approved installation or other tasks deemed "productive" tasks. They were not paid for other all necessary work they perform.

45. Plaintiffs, like other technicians, did not receive any overtime premium compensation for hours worked over 40 per week.

46. Plaintiffs regularly worked over 40 hours per week. In particular, in the absence of discovery and based on their current recollections, Rapczynski, Purificato, and Rydzanich each estimate that it was not unusual for them to work over 60 hours in a week. James recalls that he typically worked at least 45 hours per week.

47. Plaintiffs work hours included, *inter alia*, time spent performing installations, assembling equipment, driving between job assignments, obtaining

and reviewing work schedules, calling customers to confirm installations, obtaining required supplies, assisting other technicians with installations, performing required customer educations, contacting DIRECTV staff to activate customers' service, working on incomplete installations, and working on "rollback" installations where Plaintiffs had to return and perform additional work on installations previously completed.

48. Defendants did not pay Plaintiffs their piece-rate wages free and clear. Rather, like other technicians, Plaintiffs' total compensation was subjected to "chargebacks" for, *inter alia*, purportedly improper installations, the installation of purportedly faulty equipment, or purportedly inadequate customer satisfaction ratings.

49. In addition to chargebacks, Plaintiffs also were required to purchase supplies necessary to perform installations, such as screws, poles, concrete, and cables.

50. During certain workweeks, Plaintiffs' net pay (the piece-rate wages less all chargebacks and supply expenses) was insufficient to satisfy the FLSA/PMWA mandate that employees receive a minimum wage of \$7.25 for every work hour.

COUNT I – FLSA

51. Plaintiffs re-allege all allegations set forth above.

52. Plaintiffs are employees covered by the FLSA.

53. Defendants are employers required to comply with the FLSA.

54. The FLSA entitles Plaintiffs to a minimum wage of \$7.25 for every work hour.

55. The FLSA entitles Plaintiffs to overtime premium compensation calculated at 150% their regular pay rate for every hour worked over 40 per week.

56. DIRECTV violated each Plaintiff's FLSA rights by failing to pay Plaintiffs the minimum wage for every work hour and by failing to pay them the overtime premium for hours worked over 40 per week.

57. MasTec violated the FLSA rights of Purificato by failing to pay him the minimum wage for every work hour and by failing to pay him the overtime premium for hours worked over 40 per week.

58. Defendants' FLSA violations were willful and undertaken with reckless disregard of clearly applicable FLSA principles.

COUNT II – PMWA

59. Plaintiffs re-allege the allegations set forth above.

60. Plaintiffs are employees covered by the PMWA.

61. Defendants are employers required to comply with the PMWA.

62. The PMWA entitles Plaintiffs to a minimum wage of \$7.25 for every work hour.

63. The PMWA entitles Plaintiffs to overtime premium compensation calculated at 150% their regular pay rate for every hour worked over 40 per week.

64. DIRECTV violated each Plaintiff's PMWA rights by failing to pay Plaintiffs the minimum wage for every work hour and by failing to pay them the overtime premium for hours worked over 40 per week.

65. MasTec violated the PMWA rights of Purificato by failing to pay him the minimum wage for every work hour and by failing to pay him the overtime premium for hours worked over 40 per week.

COUNT III – PWPCCL

66. Plaintiffs re-allege the allegations set forth above.

67. Plaintiffs are employees covered by the PWPCCL.

68. Defendants are employers required to comply with the PWPCCL.

69. The PWPCCL makes it unlawful for any employer to deduct from an employee any part of wages unless as specified in the statute. *See* 43 Pa. Stat. § 260.3; 34 Pa. Code § 9.1; *see also Ressler v. Jones Motor Co., Inc.*, 487 A.2d 424 (Pa. Super. 1985).

70. The chargebacks and supply expenses charged to Plaintiffs constitute wage deductions that do not fall within any exception to the PWPCCL's general prohibition against wage deductions.

71. DIRECTV violated all Plaintiffs' PWPCCL rights by subjecting them

to unauthorized wage deductions.

72. MasTec violated the PWPCL rights of Purificato by subjecting him to unauthorized wage deductions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that the Court enter judgment in their favor and:

a. Award damages for unpaid minimum and overtime wages under the FLSA and PMWA;

b. Award restitution for all improper wage deductions under the PWPCL;

c. Award liquidated damages under the FLSA and the PWPCL;

d. Award reasonable costs attorneys' fees under the FLSA, PMWA, and PWPCL;

e. Award pre-judgment interest under the FLSA, PMWA, and PWPCL;
and

f. Grant such other and further relief that the Court deems just and equitable.

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial as to all claims so triable.

Date: March 3, 2015

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