

WINEBRAKE & SANTILLO, LLC
R. Andrew Santillo, Esq. (NJ ID #025512004)
Mark J. Gottesfeld, Esq. (NJ ID #027652009)
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491
Additional Plaintiff's Counsel
Listed on Signature Page

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

	:	
LUKE BOULANGE, on behalf of himself and all others similarly situated,	:	CIVIL ACTION
Plaintiff,	:	No. _____
v.	:	
	:	JURY TRIAL DEMENDED
FLOWERS FOODS, INC. and FLOWERS BAKING CO. OF OXFORD, INC.,	:	(Document Filed Electronically)
	:	
Defendants.	:	
	:	

COMPLAINT – CLASS/COLLECTIVE ACTION

Plaintiff Luke Boulange (“Plaintiff”) brings this class/collective action lawsuit against Defendants Flowers Foods, Inc. and Flowers Baking Co. of Oxford, Inc. (“Defendants”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*, the New Jersey Wage and Hour Law, N.J.S.A. §§ 34:11-56a, *et seq.*, and the New Jersey Wage Payment Law, N.J.S.A § 34:11-4.1-4.4. Plaintiff’s FLSA claim is asserted as a collective action under 29 U.S.C. § 216(b), while his New Jersey state law claims are asserted as a class action under Federal Rule of Civil Procedure 23. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012) (FLSA collective and Rule 23 class claims may proceed together).

JURISDICTION AND VENUE

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

U.S.C. § 1331.

2. Jurisdiction over the state law claims is proper under 28 U.S.C. § 1367.

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

PARTIES

4. Plaintiff is an individual residing in Levittown, PA.

5. Plaintiff is an employee covered by the FLSA, the New Jersey Wage and Hour Law, and the New Jersey Wage Payment Law.

6. Defendant Flowers Foods, Inc. is a corporate entity headquartered in Thomasville, GA.

7. Defendant Flowers Baking Co. of Oxford, Inc. is a corporate entity headquartered in Oxford, PA.

8. Defendants are employers covered by the FLSA, the New Jersey Wage and Hour Law, and the New Jersey Wage Payment Law.

FACTS

9. Defendants are in the business of producing, selling, and distributing food products throughout the United States, including in New Jersey.

10. Defendants hire Distributors to, *inter alia*, deliver Defendants' products to retail stores, place and organize the products on store shelves, and remove stale or rejected products.

11. Plaintiff worked for Defendants as a Distributor from approximately August 2014 until approximately February 2016 and was assigned to a route in New Jersey.

12. Defendants classify Plaintiff and other Distributors as non-employee "contractors." However, under the New Jersey Wage and Hour Law and the New Jersey Wage Payment Law, as recently interpreted by the New Jersey Supreme Court in *Hargrove v. Sleepy's*,

LLC, 106 A.3d 449 (N.J. 2015), Plaintiff and other Distributors are statutory “employees” for three *independent* reasons:

13. First, Plaintiff and other Distributors were not free from Defendants’ control or direction over the performance of their jobs. Rather, Defendants dictated almost all material aspects of the Distributors’ jobs by, *inter alia*: determining the prices of the delivered products; prohibiting Distributors from negotiating with retail store customers regarding the terms and conditions of the delivery and merchandising services provided by the Distributors; requiring Distributors to follow detailed financial recordkeeping rules; determining which retail store customers could pay for products by credit; requiring Distributors to follow detailed rules and standards concerning the placement, rotation, and removal of products; auditing stores to ensure Distributors’ compliance with Defendants’ detailed rules and standards; prohibiting Distributors from carrying products from Defendants’ competitors or otherwise deemed “unauthorized” by Defendants; requiring Distributors to obtain specific types of insurance in specific policy amounts; requiring Distributors to utilize handheld computer/printers issued by Defendants and to follow specific computer/printer protocols developed by Defendants; requiring Distributors to follow detailed “planograms” and other schematics in stocking store shelves and displaying; prohibiting Distributors from independently maintaining sales and other data pertaining to their delivery routes and sales; requiring Distributors to follow detailed delivery schedules agreed upon between Defendants and the stores without the Distributors’ input; prohibiting Distributors from advertising without Defendants’ prior approval; prohibiting Distributors from selling their delivery routes without Defendants’ prior approval; and dictating the standards applicable to Distributors’ vehicles and attire.

14. Second, the services performed by Plaintiff and other Distributors fell squarely

within the usual course of Defendants' business.

15. Third, Plaintiff and other Distributors are not customarily engaged in an independently established trade, occupation, profession or business. Rather, Plaintiff and other Distributors were dependent on Defendants for their economic survival due to, *inter alia*, the long hours spent working for Defendants and limitations on their ability to distribute competing or unapproved products to the retail stores.

16. Plaintiff and other Distributors regularly worked over 40 hours per week. For example, Plaintiff estimates that he almost always worked over 50 hours and frequently worked over 60 hours.

17. Defendants failed to pay Plaintiff and other Distributors any overtime premium compensation for hours worked over 40 per week.

18. Defendants make many different types of deductions from the wages paid to Plaintiff and other Distributors. These deductions can exceed \$1,000 per week and included, *inter alia*, the following: one-time document fees of approximately \$250; territory note payments (between \$80/week and \$100/week for Plaintiff); truck lease payments (approximately \$130/week for Plaintiff); occasional vehicle tag, license, and registration fees; occasional truck repair and maintenance fees; truck/business insurance fees (approximately \$60/week for Plaintiff); administrative fees (approximately \$25/week for Plaintiff); warehouse fees (approximately \$34/week for Plaintiff); shrink charges (usually totaling hundreds of dollars per week for Plaintiff), and fuel charges (usually totaling hundreds of dollars per week for Plaintiff).

CLASS/COLLECTIVE ACTION ALLEGATIONS

19. Plaintiff asserts his FLSA as a collective action on behalf of himself and all other individuals who, within the past three years, performed work in the United States as Distributors

pursuant to a Distributor Agreement (or similar document) with Flowers Baking Co. of Oxford, Inc., Flowers Foods, Inc., and or any of their affiliated companies.

20. Plaintiff and other putative collective members, having worked pursuant to the common compensation policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

21. Plaintiff asserts his New Jersey Wage and Hour Law claim as a class action on behalf of himself and all other individuals who, within the past two years, performed work in New Jersey as Distributors pursuant to a Distributor Agreement (or similar document) with Flowers Baking Co. of Oxford, Inc., Flowers Foods, Inc., and or any of their affiliated companies.

22. Plaintiff asserts his New Jersey Wage Payment Law claim as a class action on behalf of himself and all other individuals who, within the past six years, performed work in New Jersey as Distributors pursuant to a Distributor Agreement (or similar document) with Flowers Baking Co. of Oxford, Inc., Flowers Foods, Inc., and or any of their affiliated companies.

23. Class action treatment of Plaintiff’s New Jersey state law claims is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

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

25. 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.

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

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

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

COUNT I
(Alleging FLSA Violations)

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

30. The FLSA requires that employees receive overtime premium compensation calculated at 150% of their regular pay rate for all hours worked over 40 per week. *See* 29 U.S.C. § 207(a)(1).

31. Defendants violated the FLSA by failing to pay Plaintiff and the collective overtime premium compensation for hours worked over 40 per week.

32. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions and, as such, willfully violated the FLSA.

COUNT II
(Alleging New Jersey Wage and Hour Law Violations)

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

34. The New Jersey Wage and Hour Law requires that employees receive overtime premium compensation calculated at 150% of their regular pay rate for all hours worked over 40 per week. *See* N.J.S.A. § 34:11-56a4.

35. Defendants violated the New Jersey Wage and Hour Law by failing to pay Plaintiff and the class overtime premium compensation for hours worked over 40 per week.

COUNT III
(Alleging New Jersey Wage Payment Law Violations)

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

37. The New Jersey Wage Payment Law requires that Plaintiff and other class members receive all wages owed. *See* N.J.S.A. § 34:11-4.2.

38. The New Jersey Wage Payment Law generally prohibits all wage deductions except for a few narrowly defined deductions, none of which coincide with the types of deductions Defendants made to the wages of Plaintiff and other class members. *See* N.J.S.A. § 34:11-4.4.

39. Defendants violated the New Jersey Wage Payment Law by failing to pay Plaintiff and the class all wages due and subjecting them to impermissible wage deductions.

JURY DEMAND

Plaintiff demands a jury trial as to all claims so triable.

PRAYER FOR RELIEF

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

- A. An order permitting this action to proceed as a collective and class action;
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all members of the FLSA collective informing them of this action and permitting them to join (or “opt-in” to)

this action;

- C. Unpaid overtime wages and prejudgment interest;
- D. Liquidated damages;
- E. Litigation costs, expenses, and attorneys' fees; and
- F. Such other and further relief as the Court deems just and proper.

Date: March 24, 2016

Respectfully,

s/ Mark J. Gottesfeld

Peter Winebrake (*Pro Hac Vice* Admission Anticipated)

R. Andrew Santillo (NJ ID #025512004)

Mark J. Gottesfeld (NJ ID #027652009)

Winebrake & Santillo, LLC

715 Twining Road, Suite 211

Dresher, PA 19025

(215) 884-2491

James C. Veith, Esq. (NJ ID #038882004)

Veith Law Firm

709 North Easton Road, 2nd Floor

Willow Grove, PA 19090

(215) 657-5100

James J. Hollawell, Esq. (*Pro Hac Vice* Admission Anticipated)

Law Offices of James J. Hollawell, P.C.

8 Millers Road

Newtown, PA 18940

(215) 801-7969

Plaintiff's Counsel

CONSENT TO BECOME PARTY PLAINTIFF

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 the accompanying FLSA action. I understand that I will be bound by the judgment of the Court on all issues in this case.



Signature

Luke Boulangé

Name (Please Print Clearly)