

JLH

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

APR 23 2008

JAMES W. MCCORMACK, CLERK
By: JLH
DEPUTY CLERK

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

SHEILA HELMERT, WILMA BROWN AND
LORI WEST, on behalf of themselves and others
similarly situated,

Plaintiffs and Proposed Collective and
Class Action Representatives,

-v-

BUTTERBALL, LLC,

Defendant.

§ Civil No. 4:08-CV-0342 JLH

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§ **AMENDED COMPLAINT IN**
§ **COLLECTIVE AND CLASS ACTION**

§ **(DEMAND FOR JURY TRIAL)**

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AMENDED COMPLAINT

Plaintiffs Sheila Helmert, Wilma Brown and Lori West, on behalf of themselves and others similarly situated, by and through their attorneys, state and allege as follows:

PRELIMINARY STATEMENT

1. The named Plaintiffs Sheila Helmert, Wilma Brown and Lori West (hereinafter referred to collectively as "Plaintiffs") are former production workers who were employed by Defendant Butterball, LLC at its Ozark, Arkansas processing plant. Plaintiffs seek relief on a collective and a class-wide basis relating to Defendant's practice and policy of not fully compensating employees for all the time they spend working at Defendant's poultry processing plants. In particular, Plaintiffs spent time donning, doffing, and sanitizing gear and equipment, and walking to and from the production floor. These activities were necessary and indispensable to Plaintiffs' principal work but were not compensated by Defendant.

2. Plaintiffs bring this class/collective action on behalf of themselves and all persons who were, are or will be employed by Defendant as hourly production and support employees in Defendant's poultry processing plants, at any time within the three years prior to the filing of Plaintiffs' initial Complaint through the date of the final disposition of this action (the "FLSA

Period”), and who have not received full compensation for all hours worked under the Fair Labor Standards Act (“FLSA”). This group is hereinafter referred to as the “FLSA Class.”

3. Plaintiffs also bring this class/collective action on behalf of themselves and all persons who were, are or will be employed by Defendant as hourly production and support employees in Defendant’s Arkansas poultry processing plants, at any time within the two years prior to the filing of Plaintiff’s initial Complaint through the date of the final disposition of this action (the “Arkansas Class Period”), and who have not received full compensation for all hours worked. This group is hereinafter referred to as the “Arkansas Class.”

4. Plaintiffs also bring this class/collective action on behalf of similarly situated persons currently or formerly employed by Defendant in states other than the State of Arkansas wherein Defendant’s pay practices relating to time employees spend donning, doffing, and sanitizing gear and equipment, and walking to and from the production floor violate state wage and hour law.

5. Each Plaintiff has provided her written consent to participate in this litigation as required by 29 U.S.C. § 216(b). Copies of Plaintiff Sheila Helmert’s and Plaintiff Wilma Brown’s consents to join this action were filed with the Court on April 18, 2008 in accordance with 29 U.S.C. § 216(b). A copy of Plaintiff Lori West’s consent to join this action is attached hereto as Exhibit A, and has likewise been filed with the Court in accordance with 29 U.S.C. § 216(b).

6. In addition to the Plaintiffs named herein, all persons presently or formerly employed by Defendant in similar employment positions which are not exempt from the minimum wage and overtime requirements of the FLSA, are entitled to collectively participate in this action by choosing to “opt in” and submit a written consent to join form. The federal cause of action is brought as a collective action under and pursuant to the statutory

requirements of the FLSA, 29 U.S.C. § 216(b). After the commencement of this action and in accordance with the Local Rules of the Eastern District of Arkansas, Plaintiffs shall file, pursuant to 29 U.S.C. § 216(b), a motion for certification of their FLSA claims as a collective action, to obtain discovery of potential class members necessary for notice, and for authorization to issue notice to the FLSA Class.

PARTIES

7. Plaintiff Sheila Helmert is a former production employee who was employed by Defendant at its Ozark, Arkansas processing plant within three years of the filing of this Amended Complaint.

8. Plaintiff Wilma Brown is a former production employee who was employed by Defendant at its Ozark, Arkansas processing plant within three years of the filing of this Amended Complaint.

9. Plaintiff Lori West is a former production employee who was employed by Defendant at its Ozark, Arkansas processing plant within three years of the filing of this Amended Complaint.

10. Upon information and belief, Defendant is a North Carolina limited liability company with significant operations throughout the United States, including but not limited to processing plants in Jonesboro, Huntsville, and Ozark, Arkansas (collectively referred to herein as the "Arkansas Butterball plants"). Defendant is a poultry processor which supplies wholesale and retail customers with processed turkey.

11. Upon information and belief, prior to October 2006, ConAgra Foods Packaged Foods Company, Inc. ("ConAgra") owned and operated the Arkansas Butterball plants. Upon further information and belief, on or about October 2, 2006, Defendant acquired the Arkansas Butterball plants in an asset purchase wherein it was assigned and / or assumed the wage and

hour liabilities of ConAgra's processing operations, including but not limited to the operations at the Arkansas Butterball plants.

12. Upon information and belief, upon acquiring the Arkansas Butterball plants from ConAgra, Defendant maintained identical processing locations, continued the business and processing operations previously employed by ConAgra, and maintained substantial employee, supervisory and managerial continuity and retention. Accordingly, upon further information and belief, Defendant is a bona fide successor-in-interest to ConAgra's Butterball turkey operations.

JURISDICTION AND VENUE

13. Jurisdiction over Plaintiffs' federal claims is based upon Section 16(b) of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. § 216(b), and 28 U.S.C. §§ 1331 and 1337.

14. Jurisdiction over Plaintiffs' claims under Arkansas law is based upon this Court's power to exercise supplemental jurisdiction over these claims under 28 U.S.C. § 1367 and the Class Action Fairness Act of 2005.

15. The Eastern District of Arkansas has personal jurisdiction over Defendant because Defendant (a) does business in Arkansas, and in the Eastern District, (b) operates processing plants in Arkansas, and in the Eastern District, (c) employs hundreds of workers in Arkansas, and in the Eastern District, and (c) because many of the acts complained of and giving rise to the claims alleged in Arkansas occurred or are occurring in the Eastern District. Defendant has purposefully availed itself of the privilege of conducting activities within the State of Arkansas, thus invoking the benefits and protections of its laws.

16. Venue is proper because Defendant resides in this District, a substantial part of the events or omissions giving rise to the claims alleged occurred in this District, and/or

Defendants contacts within this District are sufficient to subject it to personal jurisdiction in this District. 28 U.S.C. § 1391(b), (c).

FACTUAL ALLEGATIONS

17. Upon information and belief, Defendant operates three poultry processing plants in the State of Arkansas.

18. Production and support employees at Defendant's processing plants are nonexempt hourly employees, and the work performed by these employees is nonexempt work.

19. Defendant has not compensated its nonexempt employees for all hours worked as required by federal and state law.

A. Defendant has not paid its nonexempt employees full overtime compensation for the hours worked as required by the FLSA and applicable state law.

B. Defendant refuses to fully compensate its hourly production and support employees for the time spent at the beginning of shifts donning and doffing and sanitizing required gear and equipment, including but not limited to, boots, hair nets, ear plugs, smocks, safety glasses, liners, gloves, and hard hats, and at the end of shifts for removing and cleaning these same items.

C. Similarly, Defendant does not compensate its hourly production and support employees for time spent donning and doffing before and after their unpaid lunch breaks and their paid rest breaks.

D. Additionally, Defendant does not compensate its nonexempt workers for time spent walking to and from changing areas and the production floor.

E. Failing to pay these employees overtime pay for walking time and time spent donning, doffing and sanitizing at the plants violates the FLSA and Arkansas and other states' wage and hour laws.

20. Defendant did not exercise good faith in willfully failing to fully compensate its employees under the FLSA. Defendant consciously excluded from “hours worked” the time spent by hourly production and support employees donning, doffing, sanitizing, and walking to and from the production lines at its processing plants.

21. At the same time, and for further proof of its failure to exercise good faith, the poultry industry as a whole has continuously been found to violate federal and state wage and hour laws. Despite repeated admonitions by the U.S. Department of Labor that the industry-wide practice of not compensating workers for time spent donning, doffing, and sanitizing at poultry plants violates federal and state law, to date, Defendant adheres to this unlawful practice.

22. Defendant’s practices violate, among other things, the FLSA and the Arkansas laws pled herein. Plaintiffs seek overtime compensation for all overtime work required, suffered or permitted by Defendant, liquidated or other damages and penalties permitted by applicable law, interest, and attorneys’ fees and costs.

COLLECTIVE ACTION ALLEGATIONS

23. Plaintiffs’ first cause of action is brought under Section 16(b) of the FLSA, 29 U.S.C. § 216(b), as a collective action on behalf of the FLSA Class.

24. Plaintiffs and the FLSA Class are similarly situated in that they have substantially similar job requirements and pay provisions, are subject to Defendant’s common practice, policy, or plan of unlawfully failing to pay for all hours worked, including pay at overtime rates.

25. The names and addresses of the FLSA Class are available from Defendant’s records. Notice should be provided to the FLSA Class via both first class mail and by posting in Defendant’s processing plants as soon as possible.

ARKANSAS CLASS ACTION ALLEGATIONS

26. Plaintiffs bring their second, third, fourth, and fifth causes of action for violation of Arkansas's statutes as a class action under Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

27. Members of the putative class are so numerous that joinder of all such members is impracticable. The exact size of the putative class is unknown, but may be determined from records maintained by Defendant. It is believed and alleged that the number of persons currently employed by Defendant at its Huntsville, Ozark, and Jonesboro plants collectively is more than 1,000 persons. Former employees are also included as class members.

28. There are common questions of law and fact applicable to the putative class with respect to the liability issues, relief issues and anticipated affirmative defenses. For example, common questions of fact and law include but are not limited to the compensability of time spent donning and doffing; whether injunctive relief is available to force Defendant into compliance; whether Defendant has acted willfully or in good faith; whether Plaintiffs are entitled to liquidated damages, penalties and attorneys' fees and costs; and whether Defendant has complied with record-keeping obligations under state and federal law.

29. Plaintiffs' claims are typical of the Arkansas Class. Plaintiffs, like the other Arkansas Class members, were subjected to Defendant's common practice and policy of not paying its hourly production and support employees for all compensable work to which they were entitled under Arkansas law.

30. Plaintiffs will fairly and adequately protect the interests of the putative class. Plaintiffs have no conflicts with the putative class members. Plaintiffs' counsel possess the requisite resources and is experienced in class action litigation.

31. Defendant has acted or refused to act on grounds generally applicable to the Arkansas Class, making appropriate declaratory and injunctive relief with respect to Plaintiffs and the Arkansas Class as a whole. Plaintiffs and the Arkansas Class are entitled to injunctive relief to end Defendant's common and uniform practice of failing to properly compensate Plaintiffs and the putative Class for all hours worked for the benefit of Defendant. Fed. R. Civ. P. 23(b)(2).

32. The questions of law and fact common to the putative class members predominate over any questions affecting only individual class members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Fed. R. Civ. P. 23(b)(3). More specifically, members of the proposed Arkansas Class have little or no interest in individually controlling the prosecution of separate actions. Fed. R. Civ. P. 23(b)(3)(A). Plaintiffs are not aware of any other litigation concerning the controversy already commenced by the proposed State Class. Fed. R. Civ. P. 23(b)(3)(B). It is desirable to concentrate the litigation of the claims in this Court because Defendant does a substantial amount of business in this District. Fed. R. Civ. P. 23(b)(3)(C).

33. This action is manageable as a class action because, compared to any other method such as individual interventions or the consolidation of individual actions, a class action is more fair and efficient. Fed. R. Civ. P. 23(b)(3)(D).

FIRST CAUSE OF ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT OF 1938

34. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

35. The FLSA regulates, among other things, the payment of all hours worked, including overtime pay by employers whose employees are engaged in commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce

or in the production of goods for commerce. 29 U.S.C. § 207(a)(1). Defendant is, and was, subject to the pay requirements of the FLSA, because it is an enterprise engaged in commerce and its employees are engaged in commerce.

36. FLSA requires employers to pay employees for all hours in which the employee is suffered or permitted to work, including preparatory and concluding time. Hours worked includes time spent preparing for and concluding shifts, *i.e.*, donning and doffing and sanitizing required equipment, as well as donning and doffing and sanitizing equipment before and after meals and other breaks. These types of activities are integral and indispensable parts of Defendant's employees' jobs.

37. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires employers to pay non-exempt employees who work longer than 40 hours in a workweek one and one-half times the employee's regular rate of pay for the hours worked in the workweek in excess of 40 hours. Defendant has at all times been subject to this requirement to pay its hourly production and support employees one and one-half times its employees' regular rate of pay for all hours worked in a workweek in excess of 40 hours. Defendant's employees, including the named Plaintiffs, regularly worked more than 40 hours per week and occasionally worked 60 or more hours per week. Defendant violated the FLSA by requiring hourly production and support employees to perform compensable work in excess of 40 hours without proper compensation.

38. By failing to keep, record, report or preserve records of hours worked by the Plaintiffs and the Class, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of 29 U.S.C. § 201 et seq.

39. The FLSA Employees are entitled to damages equal to the amount of all uncompensated time, including overtime premium pay within the three years preceding the

filing of Plaintiffs' initial complaint, plus periods of equitable tolling. Defendant's failure to pay overtime to FLSA Employees was "willful" within the meaning of Section 6(a) of the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 255(a), because Defendant did not act in good faith in failing to pay proper overtime pay, and had no reason to believe that its failure to do so was not a violation of the FLSA, within the meaning of Section 11 of the Portal-to-Portal Pay Act, as amended, 29 U.S.C. § 260. Accordingly, the FLSA Employees are entitled to an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described above, pursuant to Section 16(b) of the FLSA. Alternatively, should the Court find that Defendant did not act willfully in failing to pay overtime pay, the FLSA Employees are entitled to an award of prejudgment interest at the applicable legal rate.

40. Plaintiffs also seek reasonable attorneys' fees and costs, to be paid by Defendant, as provided by Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION
VIOLATION OF ARKANSAS CODE § 11-4-211

41. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

42. Throughout the relevant time period, Defendant was subject to the requirements of the Minimum Wage Act of the State of Arkansas ("Act"), Ark. Code Tit. 11, Ch. 4, Subch. 2. Ark. Code §§ 11-4-201 et. seq.

43. Defendant was an employer within the meaning of Arkansas Code § 11-4-203(4).

44. Defendant was required to pay overtime pay in accordance with Arkansas Code § 11-4-211, which provides in pertinent part:

Overtime. [N]o employer shall employ any of his or her employees for a work week longer than forty (40) hours unless the employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and

one-half (1 ½) times the regular rate of pay at which he or she is employed.

45. Plaintiffs and the Arkansas Class are employees within the meaning of Arkansas Code § 11-4-203(3), and are entitled to the protections of the Act and its overtime provision.

46. When walking, donning and doffing time, and sanitation time is included as compensable work during a regular work week, such compensable work time is in addition to the more than 40 hours of already compensated work each individual Plaintiffs and Arkansas Class Member engaged in each work week. As such, the uncompensated walking, donning and doffing time, and sanitation time should have been compensated at an overtime rate of pay under Section 11-4-211.

47. By failing to keep, record, report or preserve records of hours worked by Plaintiffs and the Arkansas Class, Defendant has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practices of employment, in violation of Arkansas Code § 11-4-217 and Code of Arkansas Rule 010.14-102.

48. Defendant has willfully violated the above provisions by excluding these hours worked and not paying 1 ½ times the rate of hourly pay for compensable work in excess of 40 hours.

49. Defendant is liable to Plaintiffs and the Class for compensatory and liquidated damages, plus costs, disbursements, witness and attorneys' fees, pursuant to Arkansas Code § 11-4-218.

THIRD CAUSE OF ACTION
VIOLATION OF ARKANSAS CODE § 11-4-218 AND
CODE OF ARKANSAS RULE 010.14-108

50. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

51. Arkansas Code § 11-4-218 and Arkansas Code, Tit. 11, Ch. 4, Subch. 4, require Defendant to pay its employees all wages due within the time specified by law. Section 11-4-218 provides that if an employer fails to pay such wages, the employer is liable to the employee for the full amount of wages, plus an additional amount as provided in Arkansas Code § 11-4-218(a)(2).

52. In addition, throughout the relevant time period, Defendant was an employer within the meaning of Arkansas Code § 11-4-203(4) and Code of Arkansas Rule 010.14-100, and subject to the requirements of Code of Arkansas Rule 010.14-108.

53. Rule 010.14-108 requires employers to compensate all employees for each hour worked.

54. Plaintiffs and the Arkansas Class are employees within the meaning of Arkansas Code § 11-4-203(3), and are entitled to the protections of Code of Arkansas Rule 010.14-108.

55. Defendant has willfully violated Section 11-4-218 and Code of Arkansas Rule 010.14-108 by regularly and repeatedly failing to compensate Plaintiffs and the Class for all hours worked, including uncompensated walking, donning and doffing time, and sanitation time.

56. Defendant is liable to Plaintiffs and the Class for compensatory and liquidated damages, plus costs, disbursements, witness and attorneys' fees, pursuant to Arkansas Code § 11-4-218.

FOURTH CAUSE OF ACTION
VIOLATION OF ARKANSAS CODE 11-4-218 AND
CODE OF ARKANSAS RULE 010.14-108

57. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

58. In addition, throughout the relevant time period, Defendant was an employer within the meaning of Arkansas Code § 11-4-203(4) and Code of Arkansas Rule 010.14-100, and subject to the requirements of Code of Arkansas Rule 010.14-108, subsection C, which provides that employers shall provide employees “bona fide meal periods”:

C. Rest and meal periods

2. Bone fide meal periods are not worktime. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating.

59. Plaintiffs and the Class are employees within the meaning of Arkansas Code § 11-4-203(3), and are entitled to the protections of Code of Arkansas Rule 010.14-108.

60. Defendant has willfully violated Rule 010.14-108 by failing to permit a full 30-minute meal break.

61. Plaintiffs and the Class were damaged by Defendant’s conduct.

62. Defendant is liable to Plaintiffs and the Class for compensatory and liquidated damages, plus costs, disbursements, witness and attorneys’ fees, pursuant to Arkansas Code § 11-4-218.

FIFTH CAUSE OF ACTION
ARKANSAS COMMON LAW BREACH OF CONTRACT

63. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

64. As at-will employees, Plaintiffs and the Arkansas Class are entitled to compensation for all time they work, as consideration for the services they provide to Defendant.

65. Defendant promises its employees, at the time employees are hired, that they will be compensated at specified hourly rates for the hours they work. Defendant also promises its employees, at times during their employment, that they will be given additional consideration, in the form of raises or shift differentials, for the hours they work. The specified hourly rates provide the basis for calculating Plaintiffs' overtime compensation.

66. Defendant breached the terms of the employment agreements by failing to provide Plaintiffs and the Class with full payment based upon all of the hours Plaintiffs and the Arkansas Class worked.

67. Defendant is liable to Plaintiffs and the Class for damages incurred as a result of its breach.

DEMAND FOR JURY

68. The Plaintiffs hereby demand a trial by jury of twelve (12) for all issues in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Sheila Helmert, Wilma Brown and Lori West, on behalf of themselves and all members of the FLSA Class, pray for relief as follows:

1. Designation of this action as a collective action on behalf of the proposed FLSA Class and prompt issuance of notice to all similarly situated members, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims by filing individual Consents to Sue;
2. Designation of the Named Plaintiffs as Representatives of the FLSA Class;
3. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

4. An award of damages, according to proof, including liquidated damages, to be paid by Defendant;

5. Costs of the action incurred herein, including expert fees;

6. Attorneys' fees, including fees pursuant to 29 U.S.C. § 216;

7. Pre- and post-judgment interest, as provided by law; and

8. For any other and further relief the Court may deem just or equitable.

WHEREFORE, Plaintiffs Sheila Helmert, Wilma Brown and Lori West, on behalf of themselves and all members of the Arkansas Class, pray for relief as follows:

9. Certification of this action as a class action on behalf of the proposed Arkansas Class pursuant to Fed. R. Civ. P. 23;

10. Designation of the Named Plaintiffs as Representatives of the Arkansas Class;

11. A declaratory judgment that the practices complained of herein are unlawful under Arkansas law;

12. Appropriate equitable and injunctive relief to remedy Defendant's violations of Arkansas law, including but not necessarily limited to an order enjoining Defendant from continuing its unlawful practices;

13. Appropriate statutory penalties;

14. An award of damages and restitution, including civil penalties, meal and rest break violation payments; recordkeeping penalties, and overtime wages to be paid by Defendant according to proof;

15. Costs of the action incurred herein, including expert fees;

16. Attorneys' fees and costs of suit, including expert fees;

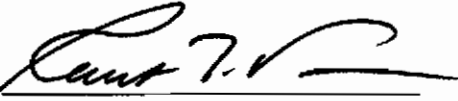
17. Pre and post-judgment interest, as provided by law; and

18. For any other and further relief the Court may deem just or equitable.

Dated: 4-22, 2008

Respectfully Submitted,

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