

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND SAYWARD, SR.,)
and JOHN PROVOST)
)
individually and on behalf of all others)
similarly situated,)
)
Plaintiffs,)
)
v.)
)
PEPPERIDGE FARM, INC.)
)
Defendant.)
)

C.A. No. 1:13—cv-12770-GAO

SECOND AMENDED CLASS ACTION COMPLAINT

1. Plaintiffs Edward Sayward, Sr. (“Sayward”) and John Provost (“Provost”) (collectively “Plaintiffs”) individually and on behalf of other similarly situated persons, seek to recover from Defendant Pepperidge Farm, Inc. (“Pepperidge Farm”) damages (including unpaid wages and overtime compensation) arising from its illegal misclassification of them and other so-called “distributors” employed by it as independent contractors, rather than employees.

2. During the three years preceding the filing of this complaint, Plaintiffs each worked for Pepperidge Farm in Massachusetts as so-called “distributors”, delivering its products to stores and other Pepperidge Farm merchandisers and customers, stocking displays of those products in such stores, merchandising them, promoting them, and returning them to Pepperidge Farm when they were not sold.

3. From before the date of the filing of the initial complaint in this matter through the present, Plaintiff Provost has continued to work for Pepperidge Farm in Massachusetts as a so-called “distributor,” delivering its products to stores and other Pepperidge Farm

merchandisers and customers, stocking displays of those products, in such stores, merchandising them, promoting them, and returning them to Pepperidge Farm when they were not sold.

4. As set forth below, Pepperidge Farm's misclassification of its Massachusetts distributors as independent contractors rather than employees constitutes a violation of M.G.L. c.149, Sec. 148B.

5. Pepperidge Farm exercises extensive control and direction over its Massachusetts distributors in the performance of their services.

6. The services that the distributors perform for Pepperidge Farm constitute a regular and continuing part of Pepperidge Farm's usual business, which is the manufacture, marketing, sale, and distribution of biscuit and bakery products across the United States.

7. The nature of Pepperidge Farm's business requires the distributors to depend solely on Pepperidge Farm for the continuation of the work they are performing.

8. In this action, Plaintiffs seek on behalf of themselves and other distributors in Massachusetts to recover damages that they suffered as a result of Pepperidge Farm's illegal misclassification, including expenses and charges that Pepperidge Farm improperly required them to pay as a condition of their employment by it, as well as employee benefits that Pepperidge Farm improperly denied them. Plaintiffs also seek to recover unpaid wages, including overtime wages, owed to them under M.G.L. c. 149, Sec. 150 (the "Wage Act") and M.G.L. c. 151, Sec. 1A and 1B (the "Massachusetts Overtime Statute"), including statutory treble damages, prejudgment interest, attorneys' fees and costs, and any other relief permitted by law.

Parties

9. Plaintiff Sayward is a resident of Carver, Massachusetts. From approximately 2005 through 2012, he worked for Pepperidge Farm in Massachusetts as a distributor.

10. Plaintiff Provost is a resident of Middleton, Massachusetts. From approximately 2002 through the present, he has worked for Pepperidge Farm in Massachusetts as a distributor.

11. Pepperidge Farm is a Connecticut corporation with its principal place of business in Norwalk, Connecticut. It regularly conducts business in Suffolk County and elsewhere in Massachusetts and operates facilities in various parts of the state.

12. During the relevant time period, Pepperidge Farm's activities in Massachusetts were subject to the Massachusetts wage and hour laws (and administrative regulations interpreting those laws), and it was required to compensate Plaintiffs and the members of the class they purport to represent in accordance with the requirements imposed on employers by Massachusetts law.

Jurisdiction

13. The Court has personal jurisdiction over Pepperidge Farm because it does business in the Commonwealth of Massachusetts and the conduct complained of occurred in Massachusetts.

14. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. 1332(d)(2). Plaintiffs' individual claims exceeds \$75,000, , and the Class' claims exceed \$5 million.

Factual Allegations

15. Pepperidge Farm manufactures, markets, sells, and distributes biscuit/snack products (cookies and crackers) and bakery products (bread, rolls, stuffing, and croutons) throughout the United States, including in Massachusetts.

16. Pepperidge Farm typically sells its products to grocery stores, convenience stores, mass merchandisers, military commissaries, and other retail stores. As an integral part of its business, Pepperidge Farm relies on its distributors to get its products to market. These individuals deliver, stock, merchandise, promote, and remove Pepperidge Farm products at the store level, within defined territories.

17. Plaintiffs and other distributors performed delivery, stocking, merchandising, promotional, and removal services on behalf of Pepperidge Farm in Massachusetts.

18. In performing this work, Plaintiffs and other distributors used both their own vehicles and trucks that they were required to purchase that meet Pepperidge Farm's specifications.

19. In order to perform such work, Pepperidge Farm first required Plaintiffs and the other distributors to sign an agreement described by Pepperidge Farm as a "Consignment Agreement."

20. A copy of the Consignment Agreement signed by Plaintiff Sayward is attached hereto as Exhibit A.

21. Exhibit A is substantially similar in substance to the Consignment Agreements signed by Plaintiff Provost, and the putative class members who Plaintiffs seek to represent in this action.

22. The Consignment Agreements purport to describe the distributors as "independent contractors." Such Agreements are one-sided contracts of adhesion drafted exclusively by

Pepperidge Farm. The distributors have no meaningful opportunity to negotiate any of the Agreements' terms and are instead required to accept such terms on a take it or leave it basis.

23. Pepperidge Farm also requires its distributors to agree to various "policies" in connection with their work under the Consignment Agreements, including without limitation policies governing handheld computer and other equipment, palletized delivery of certain product, and stale or damaged product, which are discussed further below. As with the Consignment Agreements, the distributors have no meaningful opportunity to negotiate any of the terms of these policies and are instead required to accept such policies on a "take it or leave it" basis.

24. Under the Consignment Agreements, Pepperidge Farm uniformly exercises a substantial degree of control and direction over Plaintiffs and its other distributors in Massachusetts in numerous ways, including (but not limited to) the following:

a. The distributors are required to deliver products to the locations designated by Pepperidge Farm and to "accept sufficient quantities of Consigned Products to maintain at all times an adequate and fresh supply thereof in all retail stores in the Territory which request such products...." Consignment Agreement ¶ 2.

b. The distributors are required to hold and care for all Consigned Products, which are deemed to be the "sole and exclusive property" of Pepperidge Farm. *Id.*

c. The distributors may not grant any security interest in or lien on such products. *Id.*

d. The distributors must keep records of all products received by them from Pepperidge Farms and all sales and deliveries of such products that they make pursuant to

Pepperidge Farm's instructions. *Id.* at ¶¶ 3(e). The Consignment Agreements give Pepperidge Farm the right to inspect such records at any time and the right to take physical inventory of any products in the distributors' possession whenever Pepperidge Farms wishes to do so. *Id.*

e. The Consignment Agreements also require the distributors to use their "best efforts to realize the full sales potential" of their assigned territory, *id.* at ¶ 4, which means that each distributor must do all of the following:

i. "actively solicit all retail stores in the Territory whose accounts can [be] profitably handled";

ii. "maintain at all times an adequate and fresh supply of Consigned Products in all such retail stores";

iii. "provide distribution service to all such retail stores on such days of the week (including weekends), at such intervals and with such frequency as is necessary to realize the full sales potential thereof and to maintain an adequate and fresh supply of Consigned Products therein";

iv. "make available to all such retail stores all varieties of authorized Consigned Products unless it is demonstrably unprofitable to do so";

v. "cooperate with [Pepperidge Farm] in the effective utilization of [its] advertising, sales promotion and space merchandising programs"; and

vi. "keep fully informed of [Pepperidge Farm's] recommended policies and methods for increasing sales and improving distribution service." *Id.*

f. Under the Consignment Agreements, Plaintiffs and other distributors are prohibited from distributing any products that are competitive with Pepperidge Farm's products. *Id.* Plaintiffs and other distributors are also prohibited from distributing any other products,

whether competitive or not, to the extent such activities would “interfere with” the distributors’ performance of their obligations under the Agreement. *Id.*

g. Pepperidge Farm reserves the right at any time to “establish reasonable sales and/or distribution goals” for the distributors, in which case the distributors must “either meet or exceed such goals.” *Id.*

h. The distributors must provide and maintain a delivery truck and computer meeting specifications dictated by Pepperidge Farm, together with such other equipment that Pepperidge Farm deems necessary for the operation of the distributors’ business. *Id.* at ¶ 5. The distributors must maintain the general appearance and condition of such equipment and the “appearance and deportment” of the distributor and any helpers, in accordance with the “established reputation” of Pepperidge Farm. *Id.*

i. The distributors are strictly limited with regard to both to whom they may sell or deliver product and the products that they may sell or deliver. *Id.* at ¶ 9.

j. The distributors must obtain, at their own expense, public liability and property damage insurance to protect both Pepperidge Farm and the distributor against certain claims. *Id.* at ¶ 13.

k. The distributors must obtain Pepperidge Farm’s express, prior written approval before selling their routes. *Id.* at ¶ 18.

l. Pepperidge Farm retains the right to decide who can become a distributor, and the right to reject distributor applicants and proposed transfers of routes or the proposed “splitting” of routes. *Id.* at ¶ 19.

25. Pepperidge Farm’s practices throughout Massachusetts are consistent with the foregoing provisions of the Consignment Agreement.

26. In practice, Pepperidge Farm uniformly exerts substantial control and direction over its distributors in numerous additional ways, examples of which include the following:

a. Pepperidge Farm unilaterally dictates the amount of products the Plaintiffs and other distributors are required to deliver to each customer.

b. Pepperidge Farm unilaterally determines the retail sales price for each product delivered by the Plaintiffs and other distributors. Plaintiffs and the other distributors are not permitted to have any input into these price determinations.

c. Distributors are required to report to a Pepperidge Farm facility every morning, a set number of days a week, at which time they are provided with the products that Pepperidge Farms has decided they should deliver. Plaintiff Sayward reported to Wareham and Plaintiff Provost reports to Woburn. Pepperidge Farm operates similar facilities throughout the state.

d. Distributors are required to comport with Pepperidge Farm's code of appearance and conduct.

e. Pepperidge Farm tells the distributors how many days per week they must deliver food products to each store location, and carefully tracks whether the distributors have complied with the schedule set by it.

f. Whenever a Pepperidge Farm product is on discounted sale at a particular store location, Pepperidge Farm requires that the distributors deliver the sale product on the same day as the sale is scheduled to begin. Pepperidge Farm unilaterally determines when each sale will occur, as well as the store location where each sale takes place, and carefully tracks whether the distributors have made such deliveries in a timely fashion.

g. Pepperidge Farm requires distributors to visit designated store locations on at least one or two non-delivery days each week, in order to stock shelves and ensure correct

product placement, and carefully tracks whether the distributors have complied with the schedule set by it.

h. Because no products are transported on non-delivery days, distributors drive to the store locations designated by Pepperidge Farms in their smaller personal vehicles, rather than in their delivery trucks, which, being larger, are more expensive to operate.

i. Pepperidge Farm creates and provides to distributors certain “plan-o-grams,” which are photographic depictions of precisely how the distributors should display the products that they deliver in the stores.

j. Pepperidge Farm requires Plaintiffs and other distributors to display the products they deliver to stores in strict conformity with the “plan-o-grams.”

k. Pepperidge Farm requires each distributor to purchase and pay to maintain a specialized hand-held computer and printer that the distributors must have on their persons at all times. Pepperidge Farm requires each distributor to use this device to transmit and receive detailed information regarding the performance of services by the distributors, providing details on each product delivery, such as which products were delivered to whom, where, and when; receiving information on product prices and promotions; recording stale or damaged product; generating invoices; and communicating with Pepperidge Farm, such as with respect to scheduling.

l. Pepperidge Farm requires distributors to own or lease a delivery truck that meets specifications determined by Pepperidge Farm.

m. Pepperidge Farm carefully monitors the activities of its distributors for both quality assurance and efficiency purposes.

n. Pepperidge Farm employs common disciplinary practices to ensure that the distributors comply with all of Pepperidge Farm's mandates. These practices include the issuance of warning letters (also known as "five day letters") that are routinely sent to "under-performing" distributors. Plaintiffs and other distributors have received a number of five day letters over the course of their relationships with Pepperidge Farm.

o. Pepperidge Farm manages distributor performance through its "stale policy." The stale policy allows distributors to return "out-of-code" (i.e., past the expiration date) or damaged products to Pepperidge Farm for a credit. At the beginning of each quarter, Pepperidge Farm unilaterally sets and advises distributors of their "stale objective," which is the percentage of stale or damaged product which the distributor may return to Pepperidge Farm for credit. If at the end of the quarter the distributor's returns of stale or damaged product exceed that percentage, Pepperidge Farm will issue a "chargeback" to the distributor, deducting such amount from the distributor's pay for that period. Moreover, if Pepperidge Farm determines in its sole discretion that distributors have not satisfied certain performance metrics, it may revoke their stale policy privileges. Pepperidge Farm routinely threatens to revoke or actually revokes stale privileges from distributors in order to control their job performance.

p. Pepperidge Farm also imposes "pallet fees" against distributors, deducting such fees from their pay. Pepperidge Farm directly delivers products to certain of its customers in palletized form at the customers' warehouses. Although Pepperidge Farm delivers the products to the warehouses, the distributor must nonetheless accept the product and become responsible for the product, in the sense that the distributor must stock and merchandise such product in the customers' stores.

q. Pepperidge Farm charges each distributor a “pallet fee” for all palletized deliveries. Pepperidge Farm purports to justify these fees by pretending that the palletized deliveries were authorized by the distributors. In practice, however, distributors have no choice but to accept all palletized deliveries as they risk having Pepperidge Farm unilaterally remove the store from their exclusive territory if they refuse such deliveries. Moreover, in the event that products delivered by pallet become stale or damaged, the distributor is responsible for removing them from the stores, which may subject the distributor to increased chargebacks under Pepperidge Farm’s stale policy.

27. In light of the foregoing, Pepperidge Farm uniformly exercises a substantial degree of control and direction over the performance of services by Plaintiffs and other distributors in Massachusetts. For this reason alone, Pepperidge Farm misclassified Plaintiffs and other distributors as independent contractors instead of employees in violation of Massachusetts law.

28. The services that Plaintiffs and the other distributors in Massachusetts performed and/or continue to perform on behalf of Pepperidge Farm constitute a regular and continuing part of its business.

29. On its website, Pepperidge Farm advertises that the distributors are “the secret to Pepperidge Farm’s success.”

30. The distributors are integral to Pepperidge Farm’s business in a variety of ways. For example, Pepperidge Farm develops promotions for Pepperidge Farm products, and works with chain stores to determine which promotions the stores will run. Pepperidge Farm implements its promotions through its distributors who are required to comply with all Pepperidge Farm promotions.

31. Plaintiffs and other distributors deliver, merchandise, and stock the products that Pepperidge Farm sells to its customers from the early morning through the mid-afternoon. After completing their deliveries or any other physical work that they are required to perform for Pepperidge Farm, the distributors submit their daily sales related data through the hand-held computer devices that they are required to purchase by Pepperidge Farm.

32. Pepperidge Farm uses the sales to data to track every distributor's performance in elaborate detail, and it uses this information as a means of assessing its own profitability.

33. The overwhelming majority of revenue generated by distributors for Pepperidge Farm is from chain account deliveries as to which distributors have no independent decision making authority. As a result, distributors' ability to profit is predicated entirely on the decisions made by Pepperidge Farm's corporate officials. If a distributor believes that a certain product will not sell in a chain store account, the distributor has no authority to remove the product from the store without Pepperidge Farm's permission. For this reason, among others, the distributors are performing work within Pepperidge Farm's usual course of business and are not conducting an independently established trade, occupation, profession or business.

34. Likewise, if distributors believe that certain Pepperidge Farm products that have not been designated by Pepperidge Farm for chain accounts would be profitably sold by those accounts, it cannot merchandise those products to those accounts without obtaining the prior permission of Pepperidge Farm.

35. Pepperidge Farm employs district sales managers ("DSMs") who evaluate the distributors' performance, and who frequently visit chain stores to conduct store evaluations, promote product placement, and engage in other selling-related activities. In practice, the selling-related activities performed by DSMs are identical to those performed by distributors, again

demonstrating that the distributors are performing work within Pepperidge Farm's usual course of business.

36. Each distributor receives multiple store evaluations from his or her respective DSM each year. The store evaluations contain detailed photographs of the distributor's stores, as well as comments and criticisms related to the distributor's performance, which essentially constitute performance evaluations similar to those that employees typically receive from their employers.

37. That Plaintiffs and other distributors are carrying out Pepperidge Farm's regular business is further borne out by the fact that at least one Pepperidge Farm employee who is responsible for overseeing a Pepperidge Farm product warehouse also makes product deliveries for Pepperidge Farm, in addition to his regular warehouse duties. Pepperidge Farm treats this individual as an employee (and presumably provides him with the other benefits and emoluments of employment that it denies to Plaintiffs and the other distributors) despite the fact that he performs the exact same services as the Plaintiffs and other distributors. This fact alone establishes that Pepperidge Farm misclassified Plaintiffs and other distributors as independent contractors instead of employees in violation of Massachusetts law.

38. Plaintiffs and the other distributors in Massachusetts were not, are not, and could not be customarily engaged in any independently established business because they are entirely dependent upon Pepperidge Farm for their work. As such, they wear the "hat" of Pepperidge Farm. Pepperidge Farm provides truck decals so that the trucks that Pepperidge Farm requires the distributors to purchase will appear to the general public to be Pepperidge Farm vehicles.

39. As a practical matter, because Plaintiffs and other distributors are required to “use his/her best efforts to realize the full sales potential” of their assigned territory, it is impossible for Plaintiffs and the other distributors to perform work on behalf of any entity other than Pepperidge Farm.

40. Plaintiffs and the other distributors routinely work 65 - 70 hours per week for Pepperidge Farm simply to fulfill the terms of their contracts.

41. Plaintiffs’ and other distributors’ work hours alone establish that Pepperidge Farm misclassified Plaintiffs and other distributors as independent contractors instead of employees in violation of Massachusetts law.

42. Pepperidge Farm’s misclassification of Plaintiffs and its other distributors in Massachusetts as independent contractors instead of employees has damaged them in myriad ways, including by forcing the distributors to pay certain expenses and charges which, as the employer, Pepperidge Farm should pay, and by refusing to provide the distributors certain benefits which, as the employer, Pepperidge Farm should provide.

43. Such expenses and other charges which would normally be borne by an employer, and should have been borne by Pepperidge Farm, include the following:

- a. insurance costs (including liability and property damage insurance insuring *both* Pepperidge Farm and the distributor);
- b. truck purchase or lease and maintenance/depreciation costs;
- c. fuel and other mileage-related costs;
- d. cost of the excise taxes for the trucks;
- e. expenses associated with using smaller personal vehicles for work on non-delivery days;

- f. computer and associated equipment costs, including maintenance and service costs;
- g. medical costs for periodic doctor's visits to obtain a medical examiner's certificate; and
- h. other charges that Pepperidge Farm levied against Plaintiffs and other distributors, including without limitation certain "stale charges" for products that became stale before any sale was made, and certain "pallet charges" for products that Pepperidge Farm delivers on behalf of the distributors to certain locations.

44. The employee benefits that Pepperidge Farm failed to provide to its distributors include the following:

- a. the employer's share of certain payroll taxes, including social security and Medicare;
- b. sick, vacation, and holiday pay, as well as meal breaks and rest periods; and
- c. health insurance and other similar benefits, including without limitation life or disability insurance, Family Medical Leave Act benefits, access to a retirement plan, worker's compensation, and unemployment compensation.

45. As a result of the foregoing, Pepperidge Farm failed to pay Plaintiffs and the Class all wages earned within seven days of the termination of the pay periods during which those wages were earned, including without limitation by improperly deducting certain expenses and charges from commission payments made to Plaintiffs and the other distributors, as well as by improperly failing to provide Plaintiffs and the distributors with various employee benefits to which they were entitled.

46. Moreover, Plaintiffs and the other distributors in Massachusetts routinely worked between 65-70 hours per week, yet Pepperidge Farm failed to pay them overtime compensation for hours worked in excess of 40 in any week, as required by Massachusetts' Overtime Laws.

47. Attached hereto as Exhibits B and C are letters from the Massachusetts Office of the Attorney General dated, August 21, 2013 and May 3, 2016 authorizing Plaintiffs to pursue their claims against Pepperidge Farm by private right of action on behalf of themselves and all others similarly situated. Plaintiffs have satisfied all prerequisites and conditions precedent necessary to seek the remedies sought in this action.

Class Action Allegations

48. Plaintiffs re-allege the foregoing paragraphs as if set out here in their entirety.

49. Plaintiffs bring this action pursuant to Mass. R. Civ. P. 23 and M.G.L. c. 149, Sec. 150 and M.G.L. c. 151, Sec. 1B, the separate provisions of the Massachusetts Wage Act and Overtime Laws that authorize Plaintiffs to bring a representative action under those statutes, on behalf of themselves and a class (the "Class") consisting of:

All Consignees operating under Consignment Agreements with Pepperidge Farm covering territory in the Commonwealth of Massachusetts at any time from October 2, 2010 to the present (the "Class Period").

50. The Class shall be divided into two subclasses, one of former distributors and the other of current distributors.

51. This action is properly maintainable as a class action.

52. Upon information and belief, in excess of 100 persons have performed services as distributors for Pepperidge Farm in Massachusetts pursuant to Consignment Agreements during the Class Period. For this reason, joinder of all Class members would be impracticable.

53. There are questions of law and fact which are common to the Class and predominate over any questions affecting any individual Class member. These common questions include without limitation the following:

- a. whether Pepperidge Farm improperly classified Plaintiffs and the Class members as independent contractors instead of as employees;
- b. whether Pepperidge Farm failed to pay Plaintiffs and the Class members appropriate wages, including overtime wages, in the manner required by the Massachusetts Wage Act and Overtime Laws;
- c. whether Pepperidge Farm improperly required Plaintiffs and the Class members to pay certain expenses that it should have paid as their employer; and
- d. whether Pepperidge Farm improperly failed to provide Plaintiffs and the Class members certain employee benefits that it should have provided to them as their employer.

54. Plaintiff Provost's claims are typical of the claims of the other members of the current distributor subclass, and Plaintiff Provost does not have any interests adverse to the current distributor subclass. Plaintiff Sayward's claims are typical of the claims of the other members of the former distributor subclass, and Plaintiff Sayward does not have any interests adverse to the former distributor subclass.

55. Plaintiffs have retained competent counsel experienced in class action litigation, particularly with respect to claims under Massachusetts wage and overtime statutes. With the advice of their retained counsel, Plaintiff Provost will fairly and adequately protect the interests of the current distributor subclass, and Plaintiff Sayward will fairly and adequately protect the interests of the former distributor subclass.

56. The prosecution of separate actions against Pepperidge Farm under Massachusetts law would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class which would result in incompatible standards of conduct for Pepperidge Farm. In addition, adjudications with respect to individual members of the Class could, as a practical matter, be dispositive of the interests of the other members of the Class who are not parties to such adjudications, or could substantially impede or impair their ability to protect their interests.

57. A class action is therefore superior to other available methods for the fair and efficient adjudication of the controversy. There will be no difficulty in managing the case as a class action.

58. The members of the Class are known to Pepperidge Farm and are readily identifiable through Pepperidge Farm's records.

59. Defendants have acted on grounds generally applicable to the Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

Count I – Massachusetts Independent Contractor Law Claim
(On Behalf Of Plaintiffs and the Class)

60. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs above.

61. Pursuant to M.G.L c. 149, § 150, the Massachusetts Attorney General has assented in writing to the commencement of this action.

62. By its conduct set forth herein, Pepperidge Farm violated M.G.L. c. 149, §148B by misclassifying Plaintiffs and the Class as independent contractors instead of employees.

63. Plaintiffs and the Class have been damaged by said violation of M.G.L. c. 149, §148B as set forth herein.

64. Pursuant to M.G.L. c. 149, § 150 and § 148B, Pepperidge Farm is liable for treble damages, prejudgment interest, plus costs and reasonable attorneys' fees.

Count II –Massachusetts Wage Act Claim
(On Behalf Of Plaintiffs and the Class)

65. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs above.

66. Pursuant to M.G.L c. 149, § 150, the Massachusetts Attorney General has assented in writing to the commencement of this action.

67. By its conduct set forth herein, Pepperidge Farm violated M.G.L. c. 149, §148 by failing to pay Plaintiffs and the Class all wages earned within seven days of the termination of the pay period during which those wages were earned, including without limitation by improperly requiring Plaintiffs and the Class to pay certain expenses that should have been paid by Pepperidge Farms, as their employer, as well as by improperly failing to provide Plaintiffs and the Class with employee benefits to which they were entitled.

68. Plaintiffs and the Class have been damaged by said violations of M.G.L. c. 149, §148.

69. Pursuant to M.G.L. c. 149, § 150 and § 148, Pepperidge Farm is liable for treble damages, prejudgment interest, plus costs and reasonable attorneys' fees.

Count III – Massachusetts Overtime Law Claim
(On Behalf Of Plaintiffs and the Class)

70. Plaintiffs re-allege and incorporate the allegations contained in the paragraphs above.

71. By its conduct as set forth herein, Pepperidge Farm violated M.G.L. c. 151, §§ 1A and 1B, by failing to pay Plaintiffs and the Class appropriate overtime compensation.

72. Plaintiffs and the Class have been damaged by said violations of M.G.L. c. 151, §§ 1A and 1B.

73. Pursuant to M.G.L. c. 151, §§ 1A and 1B, Pepperidge Farm is liable to Plaintiffs and the Class for treble damages, prejudgment interest, plus costs and reasonable attorneys' fees.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

I. Issue an order allowing this action to proceed as a class action under Fed. R. Civ. P. 23, M.G.L. c. 149, Sec. 150, and M.G.L. c. 151, Sec. 1B, and appoint Plaintiff Provist and the law firms of Shapiro Haber & Urmy LLP and Rudolph Friedmann LLP to represent the current distributor subclass, and appoint Plaintiff Sayward and the law firm of Rukin Hyland LLP to represent the former distributor subclass.

II. Order a certified, independent accounting, at Defendant's expense, of all records in the possession of the Defendant that are relevant to the calculation of the damages sought by Plaintiffs in this action, and/or the appointment of a Master or Receiver to determine the correct compensation owed to Plaintiffs and Class Members.

III. Determine the damages sustained by Plaintiffs and the Class as a result of Pepperidge Farm's violations of M.G.L. c. 149, §§ 148 and 148B and M.G.L. c. 151, §§ 1A and 1B, and award those damages against Pepperidge Farm and in favor of Plaintiffs and the Class, including treble damages and prejudgment interest.

IV. Order Defendant to immediately cease its wrongful conduct as set forth above.

V. Award Plaintiffs and the Class costs and disbursements of this suit, including, without limitation, reasonable attorneys' fees and expenses.

VI. Award Plaintiffs and the Class post-judgment interest on all amounts awarded at the highest rate allowable by law; and

VII. Any other or further relief as the Court may deem just and proper.

Jury Demand

PLAINTIFFS DEMAND A JURY TRIAL ON ALL CLAIMS SO TRIABLE.

August 14, 2017

By their attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2017, the foregoing document was filed through the ECF system and sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). A paper copy will be served by mail on all non-registered participants.

/s/ Adam J. Shafran

Adam J. Shafran