

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

TRAVIS ATHERTON, individually and on
behalf of those similarly situated,
536 Greenfield Drive
Chambersburg, PA 17202

Plaintiff,

v.

TARGET CORPORATION,
3001 Archer Drive,
Chambersburg, PA 17202

Defendant.

INDIVIDUAL AND COLLECTIVE
ACTION FOR UNPAID OVERTIME
WAGES UNDER FAIR LABOR
STANDARDS ACT

INDIVIDUAL AND CLASS ACTION FOR
UNPAID OVERTIME WAGES UNDER
PENNSYLVANIA MINIMUM WAGE ACT

CIVIL ACTION NO.:

JURY TRIAL DEMANDED

INDIVIDUAL, COLLECTIVE, AND CLASS ACTION COMPLAINT

Named Plaintiff Travis Atherton (hereinafter referred to as “Named Plaintiff”), individually and on behalf of those similarly situated, by and through undersigned counsel, hereby complains as follows against Defendant Target Corporation (hereinafter referred to as “Defendant”).

INTRODUCTION

1. Named Plaintiff has initiated the instant action to redress Defendant’s violations of the Fair Labor Standards Act (“FLSA”) and the Pennsylvania Minimum Wage Act (“PMWA”). Named Plaintiff asserts that Defendant failed to pay Named Plaintiff and those similarly situated proper overtime compensation in violation of the FLSA and the PMWA.

JURISDICTION AND VENUE

2. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

3. This Court, in accordance with 28 U.S.C. § 1331, has original subject matter jurisdiction over Named Plaintiff’s federal claims because this civil action arises under laws of the United States, the FLSA, 29 U.S.C. § 201 *et seq.* This Court has supplemental jurisdiction over

related state law claims, because the claims arise out of the same circumstance and are based upon a common nucleus of operative fact.

4. This Court may properly maintain personal jurisdiction over Defendant, because Defendant's contact with this state and this judicial district is sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice.

5. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is properly laid in this judicial district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district and Defendant is deemed to reside where it is subject to personal jurisdiction, rendering Defendant resident of this judicial district.

PARTIES

6. The foregoing paragraphs are incorporated herein as if set forth in full.

7. Named Plaintiff is an adult individual with an address as set forth above.

8. Defendant is a corporation doing business in the Commonwealth of Pennsylvania at the address set forth in the caption.

9. At all times relevant herein, Defendant acted by and through its agents, servants, and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

FLSA COLLECTIVE ACTION ALLEGATIONS

10. Named Plaintiff brings this action for violations of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons presently and formerly employed as hourly employees of Defendant who work or worked for Defendant at one of its distribution centers, who are or were subject to Defendant's pay practices and policies described herein at any point from the three years prior to the date that the instant action was

initiated through the present (the members of this putative class are referred to as “Collective Plaintiffs”).

11. There are numerous similarly situated current and former employees of Defendant who were compensated improperly for overtime work in violation of the FLSA and who would benefit from the issuance of a Court Supervised Notice of the instant lawsuit and the opportunity to join in the present lawsuit.

12. Similarly situated employees are known to Defendant, are readily identifiable by Defendant, and can be located through Defendant’s records. Therefore, Named Plaintiff should be permitted to bring this action as a collective action for and on behalf of himself and those employees similarly situated, pursuant to the “opt-in” provisions of the FLSA, 29 U.S.C. § 216(b).

CLASS ACTION ALLEGATIONS

13. The foregoing paragraphs are incorporated herein as if set forth in their entirety.

14. Named Plaintiff brings his claims asserting violations of the Pennsylvania Minimum Wage Act as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons presently and formerly employed as hourly employees of Defendant who work or worked for Defendant at one of its distribution centers in Pennsylvania, who are or were subject to Defendant’s pay practices and policies described herein at any point from the three years prior to the date that the instant action was initiated through the present (the members of this putative class are referred to as “Class Plaintiffs”).

15. The class is so numerous that the joinder of all class members is impracticable. Named Plaintiff does not know the exact size of the class, as such information is in the exclusive control of Defendant; however, on information and belief, the number of potential class members is estimated to be more than forty (40) employees.

16. Named Plaintiff's claims are typical of the claims of the putative class members, because Named Plaintiff, like all Class Plaintiffs, was subject to the same unlawful wage policies and practices of Defendant.

17. Named Plaintiff will fairly and adequately protect the interests of the putative class because Named Plaintiff's interests are coincident with, and not antagonistic to, those of the class. Named Plaintiff has retained counsel with substantial experience in the prosecution of class claims involving employee wage disputes.

18. Defendant has acted and refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole insofar as Defendant has applied consistent unlawful wage policies to the entire class and have refused to end these policies.

19. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action. The class will be easily identifiable from Defendant's records.

20. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Such treatment will allow all similarly situated individuals to prosecute their common claims in a single forum simultaneously. Prosecution of separate actions by individual members of the putative class would create the risk of inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for Defendant. Furthermore, the amount at stake for individual putative class members may not be great enough to enable all the individual putative class members to maintain separate actions against Defendant.

21. Questions of law and fact that are common to the members of the class predominate over questions that affect only individual members of the class. Among the questions of law and fact that are common to the class include: 1) whether Defendant failed to properly calculate overtime wages owed to Named Plaintiff and Class Plaintiffs due to Defendant's exclusion of remuneration from the regular rate, 2) whether Defendant failed to treat the time it took Named Plaintiff and Class Plaintiffs to walk to and go through Defendant's exit check point as hours worked for the purpose of calculating overtime wages.

FACTUAL BACKGROUND

22. The foregoing paragraphs are incorporated herein as if set forth in full.

23. From in or around August 2016 until on or about November 5, 2019, Defendant employed Named Plaintiff as a Warehouse Associate.

24. At all times relevant herein, Defendant considered Named Plaintiff as non-exempt and entitled to overtime compensation as required by the FLSA and the PMWA.

25. At all times relevant herein, Defendant considered Collective and Class Plaintiffs non-exempt and entitled to overtime compensation as required by the FLSA and the PMWA.

Unlawful overtime rates

(Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs v. Defendant)

26. The foregoing paragraphs are incorporated herein as if set forth in full.

27. Named Plaintiff earned a base hourly rate.

28. In addition to his base hourly rate, Defendant paid Named Plaintiff additional remuneration, including shift differentials.

29. Defendant failed to use a "weighted average" by excluding the additional remuneration, including shift differentials, earned by Named Plaintiff from Named Plaintiff's regular rate, upon which his overtime rate was based.

30. Accordingly, Defendant paid Named Plaintiff less than 1.5 his regular rate for hours that Named Plaintiff worked more than 40 hours during workweeks in which he earned a additional remuneration, including bonuses.

31. Defendant paid/pays Collective and Class Plaintiffs' base hourly rates.

32. Defendant also paid/pays Collective and Class Plaintiffs' additional remuneration, including shift differentials.

33. Defendant failed/fails to use a "weighted average" when calculating Class Plaintiff's regular rates by excluding additional remuneration, including shift differentials, earned by Collective and Class Plaintiffs from their regular rates, upon which their overtime rates were/are based.

34. Accordingly, Defendant paid/pays Collective and Class Plaintiffs less than 1.5 their regular rates for hours that Class Plaintiffs worked/work more than 40 hours during workweeks in which they earned/earn additional remuneration, including bonuses.

35. Defendant's practice of excluding additional remuneration, including bonuses from Named Plaintiff's and Collective and Class Plaintiffs' regular rates occurs/occurred in all pay periods that Named Plaintiff and Collective and Class Plaintiffs work/worked, save only the pay periods where they did not work 40 hours or where they did not earn additional remuneration, including bonuses.

Unpaid Off-the-Clock Time
(Named Plaintiff and Class Plaintiffs v. Defendant)

36. The foregoing paragraphs are incorporated herein as if set forth in full.

37. The time clocks are centrally located in Defendant's distribution centers.

38. After clocking out at the end of a workday, Named Plaintiff walks to the exit of Defendant's distribution center to leave.

39. However, at least once per month, a security guard individually checked/checks each employee exiting Defendant's distribution centers, including Named Plaintiff, before they exited/exit the buildings.

40. These security checks occurred/occur near the exit of Defendant's distribution centers and after Named Plaintiff and Class Plaintiffs clocked/clock out.

41. Defendant failed/fails to include the time it took/takes Named Plaintiff and Class Plaintiffs to travel from the time clocks to the location, near the buildings' exits, where they underwent/undergo the security check.

42. Defendant's practice of not paying for all hours worked resulted/results in Named Plaintiff and Class Plaintiffs receiving less than 1.5 times their regular rates for hours worked more than 40 hours in workweeks in which they underwent/undergo the security check and worked/work at least 40 other hours.

43. As a result of Defendant's aforesaid illegal actions, Named Plaintiffs and Class Plaintiffs have suffered damages.

COUNT I
Violations of the Fair Labor Standards Act (FLSA)
(Failure to Pay Proper Overtime Compensation)
(Named Plaintiff and Collective Plaintiffs v. Defendant)

44. The foregoing paragraphs are incorporated herein as if set forth in full.

45. At all times relevant herein, Defendant was an "employer" within the meaning of the FLSA.

46. At all times relevant herein, Named Plaintiff and Collective Plaintiffs were/are employed with Defendant as "employees" within the meaning of the FLSA.

47. At all times relevant herein, Defendant was responsible for paying wages to Named Plaintiff and Collective Plaintiffs.

48. Under the FLSA, an employer must pay an employee at least one and one half times his or her regular rate of pay for each overtime hour worked.

49. Defendant's violations of the FLSA include, but are not limited to, not paying Named Plaintiff and Collective Plaintiffs at least 1.5 times their regular rate of pay for all overtime hours worked.

50. Defendant's conduct in failing to properly pay Named Plaintiff and Collective Plaintiffs is/was willful and is/was not based upon any reasonable interpretation of the law.

51. Defendant's conduct caused Named Plaintiff and Collective Plaintiffs to suffer damages.

COUNT III
Pennsylvania Minimum Wage Act ("PMWA")
(Failure to Pay Overtime Compensation)
(Named Plaintiff and Class Plaintiffs v. Defendant)

52. The foregoing paragraphs are incorporated herein as if set forth in full.

53. At all times relevant herein, Defendant was and continues to be an employer within the meaning of the PMWA.

54. At all times relevant herein, Named Plaintiff and Class Plaintiffs were employed by Defendant as "employees" within the meaning of the PMWA.

55. At all times relevant herein, Defendant was responsible for paying wages to Named Plaintiff and Class Plaintiffs.

56. Under the PMWA, an employer must pay an employee at least one and one-half times his or her regular rate for each overtime hour worked.

57. Defendant's violations of the PMWA include failing to pay Named Plaintiff and Class Plaintiffs at least one and one-half times their regular rates for all overtime hours worked.

58. As a result of Defendant's unlawful conduct, Named Plaintiff and Class Plaintiffs have suffered damages as set forth herein.

WHEREFORE, Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs pray that this Court enter an Order providing that:

A. Defendant is to be prohibited from continuing to maintain its illegal policy, practice or custom in violation of federal and state law;

B. Defendant is to compensate, reimburse, and make Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs whole for any and all pay and benefits they would have received had it not been for Defendant's illegal actions;

C. Named Plaintiff and Collective Plaintiffs are to be awarded liquidated damages for Defendant's illegal actions, as provided under applicable law;

D. Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs are to be awarded the costs and expenses of this action and reasonable legal fees as provided under applicable law;

E. Named Plaintiff, Collective Plaintiffs, and Class Plaintiffs are to be awarded any and all other equitable and legal relief as the Court deems appropriate.

F. Named Plaintiff's, Collective Plaintiffs', and Class Plaintiffs' claims are to receive a trial by jury.

Respectfully Submitted,

/s/Matthew D. Miller

Matthew D. Miller, Esq.

Justin L. Swidler, Esq.

Richard S. Swartz, Esq.

SWARTZ SWIDLER, LLC

1101 Kings Highway N., Ste. 402

Cherry Hill, NJ 08034

Phone: (856) 685-7420

Fax: (856) 685-7417

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