

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

MICHAEL VANBUSKIRK and JESSICIA)	
FICKERT , on behalf of themselves and all)	Case No.
others similarly situated,)	
)	Judge
Plaintiffs,)	
)	<u>COLLECTIVE AND CLASS ACTION</u>
vs.)	
)	<u>JURY DEMAND ENDORSED HEREON</u>
CONAGRA BRANDS, INC.,)	
)	
– and –)	
)	
CONAGRA FOODS PACKAGED FOODS)	
COMPANY, LLC,)	
)	
Defendants.)	

Plaintiffs Michael Vanbuskirk and Jessica Fickert (“Plaintiffs”), on behalf of themselves and all others similarly situated, for their Collective and Class Action Complaint against Defendants Conagra Brands, Inc. and Conagra Foods Packaged Foods Company, LLC (“Defendants”), state and allege as follows:

INTRODUCTION

1. This case challenges policies and practices of Defendants that violate the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201-219, and the Pennsylvania Minimum Wage Act of 1968 (PMWA) 43 Pa. Stat. Ann §§ 333.101-333.104 (the “PMWA”).

2. Plaintiffs bring this case as an FLSA “collective action” pursuant to 29 U.S.C. §216(b), which provides that “[a]n action to recover the liability” prescribed by the FLSA “may be maintained against any employer ... by any one or more employees for and on behalf of himself or themselves and other employees similarly situated.” Plaintiffs bring this case on behalf of themselves and other “similarly situated” persons who may join this case pursuant to §216(b) (the

“Opt-Ins”).

3. Specifically, Plaintiff Fickert brings this FLSA collective action on behalf of herself and other similarly situated employees defined as:

All current and former employees of Defendants who were involved in the manufacturing, packaging, or handling of food or food products in one of Defendants’ non-union facilities and who engaged in donning and doffing of sanitary clothing and handwashing and sanitization before and/or after their shifts and/ during their unpaid meal periods at any time during the three (3) years preceding the date of the filing of this Action to the present. (“FLSA Non-Union Collective”)

4. In addition, Plaintiff Vanbuskirk brings this FLSA collective action on behalf of himself and other similarly situated employees defined as:

All current and former employees of Defendants who were involved in the manufacturing, packaging, or handling of food or food products in one of Defendants’ union facilities and who engaged in donning and doffing of sanitary clothing and handwashing and sanitization during their unpaid meal periods at any time during the three (3) years preceding the date of the filing of this Action to the present. (“FLSA Union Collective”)

5. Plaintiff Michael Vanbuskirk also brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and other members of a class of persons, defined herein, who assert factually related claims under the PMWA (the “Pennsylvania Class”).

JURISDICTION AND VENUE

6. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b).

7. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because Defendants are registered to do business in this District and Division, Defendants conduct business in this District and Division, and because a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred in this District and Division.

8. This Court has supplemental jurisdiction over Plaintiff Vanbuskirk’s claims under

the PMWA because those claims are so related to the FLSA claims as to form part of the same case or controversy.

PARTIES

9. Plaintiff Michael Vanbuskirk is an adult individual residing in Pennsylvania. Plaintiff Vanbuskirk's Consent to Join is attached as **Exhibit A**.

10. Plaintiff Jessica Fickert is an adult individual residing in Ohio. Plaintiff Fickert's Consent to Join is attached as **Exhibit B**.

11. At all relevant times, Plaintiffs were jointly employed by Defendants as hourly non-exempt employees.

12. Specifically, Plaintiff Michael Vanbuskirk was jointly employed by Defendants as an hourly non-exempt employee at Defendants' food manufacturing facility in Milton, Pennsylvania. His job duties involved the manufacturing, packaging, processing and/or handling of food. At all relevant times during his employment with Defendants, Plaintiff Vanbuskirk was a member of a union.

13. In addition, Plaintiff Jessica Fickert was jointly employed by Defendants as an hourly non-exempt employee at Defendants' food manufacturing facility in Troy, Ohio. Her job duties involved the manufacturing, packaging, processing and/or handling of food. At no time during her employment with Defendant was Plaintiff Fickert a member of a union.

14. At all relevant times during their employment with Defendants, Plaintiff regularly worked 40 or more hours per workweek.

15. At all relevant times, Plaintiffs, and others similarly situated to Plaintiffs, were employees within the meaning of the FLSA.

16. At all relevant times, Plaintiff Vanbuskirk, and others similarly situated to Plaintiff Vanbuskirk, were employees with the meaning of the PMWA.

17. Defendant Conagra Brands, Inc. is a for-profit Delaware Corporation that is registered to do business in the State of Pennsylvania and that jointly operates production facilities throughout the United States. Defendant Conagra Brands, Inc. can be served via its statutory agent: CT Corporation System.

18. Defendant Conagra Foods Packaged Foods Company, LLC is a for-profit Delaware Corporation that is registered to do business in the State of Pennsylvania and that jointly operates production facilities throughout the United States. Defendant Conagra Foods Packaged Foods Company, LLC can be served via its statutory agent: CT Corporation System.

19. At all relevant times, Defendants were individual and joint employers of Plaintiffs and others similarly situated within the meaning of the FLSA and the PMWA.

20. At all relevant times, Defendants individually and jointly constituted an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

21. At all relevant times, Plaintiffs, and others similarly situated to Plaintiffs, were employees engaged in commerce or in the production of goods for commerce within the meaning of the FLSA.

FACTUAL ALLEGATIONS

22. Defendants jointly manufacture, package, process, distribute, and sell food products throughout the United States, including in Ohio and Pennsylvania. Some of Defendants facilities are union facilities and some are not.

23. At all relevant times, Defendants jointly employed hourly non-exempt employees, like Plaintiffs, to work in its facilities throughout the United States. Like Plaintiffs, these hourly non-exempt employees were engaged in the manufacturing, packaging, processing, and handling of food products and regularly worked 40 or more hours per workweek.

24. At all relevant times, Defendants jointly exercised operational control over significant

aspects of the day-to-day functions of their employees, including Plaintiffs and those similarly situated.

25. At all relevant times, Defendants shared authority to hire, fire and discipline their employees, including Plaintiffs and those similarly situated.

26. At all relevant times, Defendants shared authority to set rates and methods of compensation of their employees, including Plaintiffs and those similarly situated.

27. At all relevant times, Defendants shared authority to control the work schedules and employment conditions of their employees, including Plaintiffs and those similarly situated.

28. At all relevant times, Defendants shared authority and control of the employment records of their employees, including Plaintiffs and those similarly situated.

29. At all relevant times, Defendants jointly benefitted from the work performed by their employees, including Plaintiffs and those similarly situated.

30. As a manufacturer of food products, Defendants are regulated by the U.S. Food and Drug Administration (“FDA”), and is subject to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 9, *et seq.* (hereinafter “FDCA”).

31. In enforcing the FDCA, the FDA promulgates its own Good Manufacturing Practices (“GMPs”) for the manufacturing, packing, or handling of human food, set forth in 21 C.F.R. § 110, with which Defendant is required by law to comply.

32. The GMPs have a section dedicated to personnel, which specifically requires that “[a]ll persons working in direct contact with food, food-contact surfaces, and food-packaging materials *shall conform to hygienic practices while on duty* to the extent necessary to protect against contamination of food.” 21 C.F.R. § 110.10(b) (emphasis added). These practices include, but are not limited to:

- (1) Wearing outer garments suitable to the operation in a manner that protects

against the contamination of food, food-contact surfaces, or food-packaging materials.

- (2) Maintaining adequate personal cleanliness.
- (3) Washing hands thoroughly (and sanitizing if necessary to protect against contamination with undesirable microorganisms) in an adequate hand-washing facility before starting work, after each absence from the work station, and at any other time when the hands may have become soiled or contaminated.
- (4) Removing all unsecured jewelry and other objects that might fall into food, equipment, or containers, and removing hand jewelry that cannot be adequately sanitized during periods in which food is manipulated by hand. If such hand jewelry cannot be removed, it may be covered by material which can be maintained in an intact, clean, and sanitary condition and which effectively protects against the contamination by these objects of the food, food-contact surfaces, or food-packaging materials.
- (5) Maintaining gloves, if they are used in food handling, in an intact, clean, and sanitary condition. The gloves should be of an impermeable material.
- (6) Wearing, where appropriate, in an effective manner, hair nets, headbands, caps, beard covers, or other effective hair restraints.
- (7) Storing clothing or other personal belongings in areas other than where food is exposed or where equipment or utensils are washed.
- (8) Confining the following to areas other than where food may be exposed or where equipment or utensils are washed: eating food, chewing gum, drinking beverages, or using tobacco.
- (9) Taking any other necessary precautions to protect against contamination of food, food-contact surfaces, or food-packaging materials with microorganisms or foreign substances including, but not limited to, perspiration, hair, cosmetics, tobacco, chemicals, and medicines applied to the skin.

33. Notably, “[r]esponsibility for assuring compliance by all personnel with all requirements of this part shall be clearly assigned to competent supervisory personnel.” 21 C.F.R. § 110.10(d).

34. The FDCA prohibits the adulteration of food, and the introduction or delivery for introduction into interstate commerce of any adulterated food. 21 U.S.C. § 331.

35. Food is considered adulterated “if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health[.]” 21 U.S.C. § 342(a)(4).

36. Any person who violates 21 U.S.C. § 331 “shall be imprisoned for not more than one year or fined not more than \$1,000, or both.” 21 U.S.C. § 333(a)(1).

37. In determining whether food is adulterated, the FDA applies the criteria and definitions set forth in the GMPs. 21 C.F.R. § 110.5(a).

38. Consequently, if Defendants’ employees did not follow the GMPs set forth in 21 C.F.R. § 110.10(b), they could be held criminally liable under 21 U.S.C. § 333(a)(1).

39. Thus, it would be impossible for Plaintiffs and other similarly situated employees to perform their work duties unless they wore proper sanitary clothing and thoroughly washed and sanitized their hands.

40. Indeed, if Plaintiffs and other similarly situated employees did not follow federal law and wear proper sanitary clothing and thoroughly wash and sanitize their hands, it is possible, if not likely, that this would cause the spread of food-borne pathogens to those who consumed Defendants’ products.

41. Upon information and belief, Defendants would not want to endanger the public by encouraging or permitting its employees to disregard federal and/or state food-safety laws and cause the spread of food-borne pathogens to those who consumed Defendants’ products.

42. Upon information and belief, Defendants would deem it impossible for its employees to perform their job duties unless they followed federal or state food safety laws, including the laws requiring Defendants’ employees to wear proper sanitary clothing and thoroughly wash and sanitize their hands.

43. As a result, compliance with the GMPs by Defendants’ employees involved in the

manufacturing, packaging, processing, and handling of food is integral and indispensable to the work they are hired to do.

44. Compliance with the GMPs by Defendants' employees involved in the manufacturing, packaging, processing, and handling of food is an intrinsic element of their activities and one in which they cannot dispense if they are to perform their principal activities.

45. Compliance with the GMPs by Defendants' employees involved in the manufacturing, packaging, processing, and handling of food is a component of the work they are hired to do.

46. Unless Defendants' employees involved in the manufacturing, packaging, processing, and handling of food comply with the GMPs, they cannot complete their work.

47. Therefore, required measures such as donning and doffing of proper sanitary clothing, including but not limited to, hair nets, beard nets, smocks, bump caps, boots, and aprons, and thorough handwashing and sanitization is integral and indispensable to the work performed by Defendants' employees who are involved in the manufacturing, packaging, processing, and handling of food.

Unpaid pre-shift donning and handwashing and sanitizing time and unpaid post-shift doffing time for non-union employees and for employees (union or non-union) who worked for Defendants in Pennsylvania

48. The allegations contained in paragraphs 50-59 relate only to Defendants' hourly non-exempt employees who were involved in the manufacturing, packaging, processing, and handling of food and who worked at one of Defendants' non-union facilities.

49. The allegations contained in paragraphs 50-59 relate only to Defendants' hourly non-exempt employees who were involved in the manufacturing, packaging, processing, and handling of food who worked at one of Defendants' union facilities in Pennsylvania.

50. To comply with the GMPs, Plaintiffs and other similarly situated were required to engage in donning and doffing of proper sanitary clothing and thorough handwashing and

sanitization.

51. Plaintiffs and other similarly situated employees could not complete their work unless they performed the activities described above. In fact, donning and doffing the proper sanitary clothing and thoroughly washing and sanitizing their hands is an intrinsic element Plaintiffs' and other similarly situated employees' activities and one in which they cannot dispense if they are to perform their principal activities.

52. Therefore, Defendants required Plaintiffs and other similarly situated employees to don and doff proper sanitary clothing and to thoroughly wash and sanitize their hands before the start of their shifts and before entering the production facility. At all relevant times, Defendants required that these compensable activities take place at its facilities.

53. At all relevant times, the donning of proper sanitary clothing and thorough handwashing and sanitization was Plaintiffs' and other similarly situated employees' first principal activity.

54. At all relevant times, the doffing of proper sanitary clothing was Plaintiffs' and other similarly employees' last principal activity.

55. Because the donning and doffing of proper sanitary clothing and thorough handwashing and sanitization is integral and indispensable to the work performed by Plaintiffs and other similarly situated employees, the time they spent engaged in these activities, as well as related waiting and walking time, is compensable work time within the meaning of the FLSA and the PMWA.

56. Defendants did not pay Plaintiffs and other similarly situated employees for the time they spent donning and doffing proper sanitary clothing and for thoroughly washing and sanitizing their hands in violation of the FLSA and the PMWA.

57. Since Plaintiffs and other similarly situated employees regularly worked 40 or more

hours per workweek, Defendants' failure to pay them for time spent donning and doffing proper sanitary clothing, thoroughly washing and sanitizing their hands, and related waiting and walking time resulted in Defendants not paying Plaintiffs and other similarly situated employees all of their overtime compensation in violation of the FLSA and the PMWA.

58. Defendant knowingly and willfully engaged in the above-mentioned violations of the FLSA and the PMWA.

59. The amount of time Plaintiffs and other similarly situated employees spent performing the unpaid work before and after their shifts as described above was approximately ten to fifteen minutes or more each day. This resulted in approximately 50 minutes to 1 hour and 25 minutes or more of unpaid overtime per employee, per week.

Unpaid donning, doffing, and handwashing and sanitizing time during unpaid meal breaks for all of Defendants' employees (union or non-union)

60. The allegations contained in paragraphs 61-65 relate to all of Defendants' hourly non-exempt employees (union or non-union) who are or were involved in the manufacturing, packaging, processing, and handling of food.

61. During their unpaid lunches, Plaintiffs and other similarly situated employees had to don and doff their proper sanitary clothing and thoroughly wash and sanitize their hands.

62. Defendants did not pay Plaintiffs and other similarly situated employees for the time they spent donning and doffing their proper sanitary clothing and thoroughly washing and sanitizing their hands during their unpaid lunches in violation of the FLSA and the PMWA.

63. Since Plaintiffs and other similarly situated employees regularly worked 40 or more hours per workweek, Defendants' failure to pay them for time spent donning and doffing proper sanitary clothing, thoroughly washing and sanitizing their hands, and related waiting and walking time resulted in Defendants not paying Plaintiffs and other similarly situated employees all of their

overtime compensation in violation of the FLSA and the PMWA.

64. Defendant knowingly and willfully engaged in the above-mentioned violations of the FLSA and the PMWA.

65. The amount of time Plaintiffs and other similarly situated employees spent performing the unpaid work during their unpaid meal breaks as described in paragraphs above was approximately ten to fifteen minutes or more each day. This resulted in approximately 50 minutes to 1 hour and 25 minutes or more of unpaid overtime per employee, per week.

COLLECTIVE ACTION ALLEGATIONS

66. Plaintiffs bring this action on their own behalf pursuant to 29 U.S.C. § 216(b), and on behalf of all other similarly situated persons who have been, are being, or will be, adversely affected by Defendant's unlawful conduct described herein. Plaintiffs bring this collective action on behalf of two collective classes, which are defined below.

67. The collective that Plaintiff Fickert seeks to represent and for whom she seeks the right to send "opt-in" notices for purposes of the collective action, and of which Plaintiff is herself a member, is composed of and defined as follows:

All current and former employees of Defendants who were involved in the manufacturing, packaging, or handling of food or food products in one of Defendants' non-union facilities and who engaged in donning and doffing of sanitary clothing and handwashing and sanitization before and/or after their shifts and/ during their unpaid meal periods at any time during the three (3) years preceding the date of the filing of this Action to the present. ("FLSA Non-Union Collective")

68. Specifically, the collective that Plaintiff Vanbuskirk seeks to represent and for whom he seeks the right to send "opt-in" notices for purposes of the collective action, and of which Plaintiff is himself a member, is composed of and defined as follows:

All current and former employees of Defendants who were involved in the manufacturing, packaging, or handling of food or food products in one of Defendants' union facilities and who engaged in donning and doffing of sanitary clothing and handwashing and sanitization during their unpaid meal periods at any time during the three (3) years preceding the date of the filing of this Action to the present. ("FLSA Union Collective")

69. This action is maintainable as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b) as to claims for unpaid overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA. In addition to Plaintiffs, numerous current and former employees are similarly situated with regard to their claims for unpaid wages and damages. Plaintiffs are representative of those other employees and are acting on behalf of their interests as well as their own in bringing this action.

70. These similarly situated employees are known to Defendant and are readily identifiable through Defendant's payroll records. These individuals may readily be notified of this action and allowed to opt-in pursuant to 29 U.S.C. § 216(b), for the purpose of collectively adjudicating their claims for unpaid overtime compensation, liquidated damages, attorneys' fees, and costs under the FLSA.

PENNSYLVANIA CLASS ACTION ALLEGATIONS

71. Plaintiff Vanbuskirk bring this action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of himself and all a class of persons employed by Defendants in Pennsylvania within the last three years ("Pennsylvania Class") defined as:

All current and former employees of Defendants who were involved in the manufacturing, packaging, or handling of food or food products in one of Defendants' facilities in Pennsylvania and who engaged in donning and doffing of sanitary clothing and handwashing and sanitization before and/or after their shifts and/ during their unpaid meal periods at any time during the three (3) years preceding the date of the filing of this Action to the present. ("Pennsylvania Class")

72. The class is so numerous that joinder of all class members is impracticable. Plaintiff Vanbuskirk is unable to state the exact size of the potential Pennsylvania Class but, upon information and belief, avers that it consists of at least 100 people.

73. There are questions of law or fact common to the Pennsylvania Class including: whether Defendants failed to pay its employees for donning and doffing time and associated travel, and whether that resulted in the underpayment of overtime.

74. Plaintiff Vanbuskirk will adequately protect the interests of the Pennsylvania Class. His interests are not antagonistic to but, rather, are in unison with, the interests of the Pennsylvania Class members. Plaintiffs' counsel has broad experience in handling class action wage-and-hour litigation and are fully qualified to prosecute the claims of the Pennsylvania Class in this case.

75. The questions of law or fact that are common to the Pennsylvania Class predominate over any questions affecting only individual members. The primary questions that will determine Defendants' liability to the Pennsylvania Class, listed above, are common to the class as a whole, and predominate over any questions affecting only individual class members.

76. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Requiring Pennsylvania Class members to pursue their claims individually would entail a host of separate suits, with concomitant duplication of costs, attorneys' fees, and demands on court resources. Many Pennsylvania Class members' claims are sufficiently small that they would be reluctant to incur the substantial cost, expense, and risk of pursuing their claims individually. Certification of this case pursuant to Fed. R. Civ. P. 23 will enable the issues to be adjudicated for all class members with the efficiencies of class litigation.

COUNT ONE – FLSA NON-UNION COLLECTIVE
(FLSA Overtime Violations)

77. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten

herein.

78. Plaintiff Fickert and the FLSA Non-Union Collective were jointly employed by Defendants as hourly non-exempt employees.

79. Plaintiffs Fickert and the FLSA Non-Union Collective regularly worked 40 or more hours per workweek.

80. To comply with the GMPs, Plaintiff Fickert and the FLSA Non-Union Collective were required to engage in donning and doffing of proper sanitary clothing and thorough handwashing and sanitization before and after their shifts and during their unpaid meal periods.

81. Plaintiff Fickert and the FLSA Non-Union Collective could not complete their work unless they performed the activities described herein. In fact, donning and doffing the proper sanitary clothing and thoroughly washing and sanitizing their hands is an intrinsic element Plaintiff Fickert's and the FLSA Non-Union Collective's activities and one in which they cannot dispense if they are to perform their principal activities.

82. Therefore, Defendants required Plaintiff Fickert and the FLSA Non-Union Collective to don and doff proper sanitary clothing and to thoroughly wash and sanitize their hands before the start of their shifts and before entering the production facility. At all relevant times, Defendants required that these compensable activities take place at its facilities.

83. At all relevant times, the donning of proper sanitary clothing and thorough handwashing and sanitization was Plaintiffs Fickert's and the FLSA Non-Union Collective's first principal activity.

84. At all relevant times, the doffing of proper sanitary clothing was Plaintiff Fickert's and the FLSA Non-Union Collective's last principal activity.

85. Because the donning and doffing of proper sanitary clothing and thorough handwashing and sanitization is integral and indispensable to the work performed by Plaintiff Fickert

and the FLSA Non-Union Collective, the time they spent engaged in these activities, as well as related waiting and walking time, is compensable work time within the meaning of the FLSA.

86. Since Plaintiff Fickert and the FLSA Non-Union Collective regularly worked 40 or more hours per workweek, Defendants' failure to pay them for time spent donning and doffing proper, thoroughly washing and sanitizing their hands, and related waiting and walking time before and after their shifts and during their unpaid meal periods resulted in Defendants not paying Plaintiffs and other similarly situated employees all of their overtime compensation in violation of the FLSA.

87. By engaging in the above-mentioned conduct, Defendants willfully, knowingly, and/or recklessly violated provisions of the FLSA.

88. As a result of Defendants' practices and policies, Plaintiff Fickert and the FLSA Non-Union Collective have been damaged in that they have not received wages due to them pursuant to the FLSA.

COUNT ONE – FLSA UNION COLLECTIVE
(FLSA Overtime Violations)

89. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

90. Plaintiff Vanbuskirk and the FLSA Union Collective were jointly employed by Defendants as hourly non-exempt employees.

91. Plaintiffs Vanbuskirk and the FLSA Union Collective regularly worked 40 or more hours per workweek.

92. During their unpaid lunches, Plaintiff Vanbuskirk and the FLSA Union Collective were required to don and doff sanitary clothing and to wash and sanitize their hands.

93. Plaintiff Vanbuskirk and the FLSA Union Collective were not paid for time spent donning and doffing their sanitary clothing, washing and sanitizing their hands or for associated

waiting and travel time during their unpaid meal breaks.

94. Defendant's practice and policy of not paying Plaintiff Buskirk and the FLSA Union Collective for time spent donning and doffing their sanitary clothing, washing and sanitizing their hands and related walking and waiting time during their unpaid meal breaks, resulted in Defendants' failure to pay Plaintiff Vanbuskirk and the FLSA Union Collective overtime compensation at a rate of one and one-half times their regular rate of pay for all hours worked in excess of 40 hours per workweek, in violation of the FLSA.

95. By engaging in the above-mentioned conduct, Defendants willfully, knowingly, and/or recklessly violated provisions of the FLSA.

96. As a result of Defendants' practices and policies, Plaintiff Fickert and the FLSA Union Collective have been damaged in that they have not received wages due to them pursuant to the FLSA.

COUNT THREE
(Pennsylvania Overtime Violations)

97. Plaintiffs incorporate by reference the foregoing allegations as if fully rewritten herein.

98. Pennsylvania has not adopted a similar exception to § 203(o) of the FLSA.

99. Plaintiff Vanbuskirk and the Pennsylvania Class were jointly employed by Defendants as hourly non-exempt employees.

100. Plaintiff Vanbuskirk and the Pennsylvania Class regularly worked 40 or more hours per workweek.

101. To comply with the GMPs, Plaintiff Vanbuskirk and the Pennsylvania Class were required to engage in donning and doffing of proper sanitary clothing and thorough handwashing and sanitization before and after their shifts and during their unpaid meal periods.

102. Plaintiff Vanbuskirk and the Pennsylvania Class could not complete their work unless

they performed the activities described herein. In fact, donning and doffing the proper sanitary clothing and thoroughly washing and sanitizing their hands is an intrinsic element Plaintiff Vanbuskirk and the Pennsylvania Class' activities and one in which they cannot dispense if they are to perform their principal activities.

103. Therefore, Defendants required Plaintiff Vanbuskirk and the Pennsylvania Class to don and doff proper sanitary clothing and to thoroughly wash and sanitize their hands before the start of their shifts and before entering the production facility. At all relevant times, Defendants required that these compensable activities take place at its facilities.

104. At all relevant times, the donning of proper sanitary clothing and thorough handwashing and sanitization was Plaintiff Vanbuskirk's and the Pennsylvania Class' first principal activity.

105. At all relevant times, the doffing of proper sanitary clothing was Plaintiff Vanbuskirk's and the Pennsylvania Class' last principal activity.

106. Because the donning and doffing of proper sanitary clothing and thorough handwashing and sanitization is integral and indispensable to the work performed by Plaintiff Vanbuskirk and the Pennsylvania Class, the time they spent engaged in these activities, as well as related waiting and walking time, is compensable work time within the meaning of the PMWA.

107. Since Plaintiff Vanbuskirk and the Pennsylvania Class regularly worked 40 or more hours per workweek, Defendants' failure to pay them for time spent donning and doffing proper, thoroughly washing and sanitizing their hands, and related waiting and walking time before and after their shifts and during their unpaid meal periods resulted in Defendants not paying all of their overtime compensation in violation of the PMWA.

108. By engaging in the above-mentioned conduct, Defendants willfully, knowingly, and/or recklessly violated provisions of the PMWA.

109. As a result of Defendants' practices and policies, Plaintiff Vanbuskirk and the Pennsylvania Class have been damaged in that they have not received wages due to them pursuant to the PMWA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all persons similarly situated, prays that this Honorable Court:

- A. Certify this case as an FLSA "collective action" pursuant to 29 U.S.C. § 216(b);
- B. Certify the Pennsylvania Class as a class action pursuant to Federal Rule of Civil Procedure 23;
- C. Enter judgment against Defendants and in favor of Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class;
- D. Award Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class actual damages for unpaid wages;
- E. Award Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class liquidated damages equal in amount to the unpaid wages found due to them;
- F. Award Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class pre-judgment and post-judgment interest at the statutory rate;
- G. Award Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class attorneys' fees, costs, and disbursements; and
- H. Award Plaintiffs, the Opt-Ins who join this case pursuant to 29 U.S.C. § 216(b), and the Pennsylvania Class further and additional relief as this Court deems just and proper.

Dated November 8, 2023

Respectfully submitted,

/s/Robert E. DeRose

Robert E. DeRose (PA Bar No. 0094395)

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JURY DEMAND

A jury of eight (8) persons is demanded.

/s/Robert E. DeRose

Robert E. DeRose