

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CAROL PARKER, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

PARADE ENTERPRISES, LLC,

No. 3:14-CV-08084-MAS-DEA

**AMENDED COMPLAINT FOR
VIOLATION OF FAIR LABOR
STANDARDS ACT AND NEW
JERSEY WAGE AND HOUR
LAWS**

JURY TRIAL DEMANDED

Plaintiff Carol Parker (“Plaintiff”), residing at 32 Coleman Way, Jackson, NJ 08527, by her undersigned counsel, alleges the following upon personal knowledge as to her own acts and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This is a collective action under the Fair Labor Standards Act, 29 U.S.C. §201, *et seq.* (the “FLSA”), and a class action under the New Jersey Wage and Hour Law, N.J.S.A. §34:11—56a, *et seq.* (the “NJWHL”) against Defendant Parade Enterprises, LLC (“Defendant” or “Parade”), whose headquarters address is 330 Milltown Road, East Brunswick, NJ 08816, for Defendant’s misclassification of employees with the title of Assistant Manager (the “ASMs” or the “Class”) as exempt from overtime pay and the consequent failure to pay the ASMs at time and one-half their hourly rate for hours worked over 40 in a workweek.

2. Parade owns and operates 45 Burger King restaurants in the State of New Jersey. According to its website, Parade is “[t]he largest Burger King Franchise in New Jersey[.]”

3. At each of its restaurants, Parade employs two ASMs. The ASMs are misclassified as exempt management employees, purportedly pursuant to the “executive exemption” under both the FLSA and the NJWHL. The ASMs are not properly classified as exempt because (1) they are not legitimately paid on a salary basis and are docked pay for missing time at work, including sick days and partial days; and (2) they are without authority to hire or fire and/or their suggestions concerning hiring or firing are not given particular weight.

4. As a result of their misclassification, the ASMs are routinely denied pay at one and one-half times their hourly rate for hours worked over 40 in a workweek, in violation of the FLSA and the NJWHL. The ASMs work 50-hour weeks (five 10-hour days per week) and are paid at a straight hourly rate for all hours worked over 40.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. §1331 and the FLSA, 29 U.S.C. §216(b). This Court has jurisdiction over Plaintiff’s NJWHL claims pursuant to 28 U.S.C. §1367.

6. Venue is proper in this District because Parade resides in this District, and a substantial part of the events giving rise to Plaintiff's claims, and those of the Class, occurred in this District, including but not limited to Plaintiff's employment by Parade and the employment of other ASMs by Parade.

THE PARTIES

7. Plaintiff is a citizen of the State of New Jersey, residing in Jackson. Plaintiff worked as an ASM during the limitations period with regard to both the FLSA and the NJWHL, and at all relevant times was misclassified as exempt from the overtime pay requirements of the FLSA and the NJWHL. Throughout Plaintiff's employment as an ASM, she was subject to Defendant's policies of deducting pay for partial missed days, and for sick days. Plaintiff never had the authority to hire or fire employees while working as an ASM and/or her suggestions concerning hiring or firing were not given particular weight. Plaintiff once attempted to fire an employee, and that employee was reinstated immediately. Plaintiff worked at the Lakehurst Burger King restaurant owned by Parade. Plaintiff worked 50 hours or more per week and was paid at her regular hourly rate for all hours worked, including hours over 40 in a work week, rather than at time and one-half her hourly rate as required by the FLSA and the NJWHL. Plaintiff's written consent to bring this action, pursuant to 29 U.S.C. §216(b), is attached hereto as Exhibit A.

8. Defendant Parade has been an employer of the ASMs at all relevant times within the meaning of the FLSA and the NJWHL. Parade owns 45 Burger King franchise restaurants in the State of New Jersey.

COLLECTIVE ALLEGATIONS

9. Plaintiff brings the First Count as a collective action pursuant to Section 216(b) of the FLSA, 29 U.S.C. §216(b) on behalf of herself and other similarly situated people (the “Collective” or the “ASMs”), which shall include:

All persons who work or worked for Defendant as ASMs from June 23, 2012 through the date the Court orders notice to be sent in accordance with Section 216(b) of the FLSA (the “FLSA Class Period”). Excluded from the Collective are Defendant, and any corporations, partnerships or other entities affiliated with Defendant.

10. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and the Collective. There are likely 100 or more similarly situated current and former employees of Defendant who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendant, are readily identifiable, and can be located through Defendant’s records that Defendant is required to create and maintain under applicable federal and state law. Notice should be sent to the Collective pursuant to 29 U.S.C. §216(b).

CLASS ACTION ALLEGATIONS

11. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23(a) and (b)(3) on behalf of the following class of ASMs (the “Class”):

All persons in the State of New Jersey who work or worked for Defendant as ASMs in the State of New Jersey from December 29, 2012 through the date a judgment is entered in this action. Excluded from the Class are Defendant, and any corporations, partnerships or other entities affiliated with Defendant.

12. The members of the Class are so numerous that joinder of all members would be impracticable. Plaintiff estimates that there are at least 100 members of the Class.

13. Questions of law and fact are common to all the members of the Class that predominate over any questions affecting only individual members, including:

a. Whether Defendant misclassified Plaintiff and the Class as exempt employees;

b. Whether the ASMs were paid on a salary basis;

c. Whether the ASMs had the authority to hire or fire, or make suggestions concerning hiring or firing that were given particular weight;

d. Whether Defendant failed to pay Plaintiff and the Class at overtime rates for hours worked over 40 per workweek;

e. Whether Defendant’s conduct violated the NJWHL; and

f. The amount by which Plaintiff and the Class were damaged.

14. The claims of Plaintiff are typical of the claims of the members of the Class. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

15. Plaintiff will protect the interests of the Class fairly and adequately, and Plaintiff has retained attorneys experienced in class action litigation.

16. A class action is superior to all other available methods for this controversy because:

a. The prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;

b. The prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for defendant;

c. Defendant acted or refused to act on grounds generally applicable to the Class; and questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and a

class action is superior to other available methods for the fair and efficient adjudication of the controversy.

d. ASMs who are currently employed by Parade are likely to fear retaliation and/or the loss of their employment, and thus will likely not commence their own actions. Indeed, Plaintiff has witnessed retaliation by Parade including termination of an employee who complained about Parade's failure to follow applicable wage and hour laws.

SUBSTANTIVE ALLEGATIONS

17. Plaintiff was employed by Parade as an ASM during the limitations period of both FLSA and the NJWHL. At all times, Plaintiff was misclassified as an exempt employee and was not paid at time and one-half her regular hourly rate for hours worked over 40 in a work week. As an ASM, Plaintiff was scheduled to, and did, work 50 hours or more per week. Like Plaintiff, all of the other ASMs work 50 hours per week.

18. Parade misclassifies Plaintiff, and all of its other ASMs, as exempt from the FLSA and the NJWHL's overtime requirements, apparently on the grounds that they are management and thus subject to the "executive" exemption under both the FLSA and the NJWHL.

19. In order to be an exempted "executive" under the FLSA and the NJWHL, an employee must (1) be paid on a "salary basis" at a rate of \$455 per

week or more; (2) the employee's primary duty must be management; (3) the employee must customarily direct the work of at least two or more other full-time employees; and (4) the employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

20. Plaintiff and the ASMs do not meet this test. First, pursuant to a uniform policy applied to all ASMs, Parade deducts pay for partial missed days and for full missed days, including but not limited to sick days. Parade also deducts from the ASMs' pay to cover shortages in the cash register at the end of a shift. Accordingly, the ASMs are not paid on a "salary basis."

21. The ASMs also do not have the authority to hire or fire, and their suggestions and recommendations concerning same are not given any weight. Plaintiff, on one occasion, attempted to fire an employee; that employee was reinstated without any input from Plaintiff.

COUNT I

Fair Labor Standards Act, 29 U.S.C. §201, *et seq.*: Failure to Pay Overtime (Brought on Behalf of Plaintiff and the Collective)

22. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

23. During the FLSA Class Period, Plaintiff and others similarly situated were “employees” of Defendant within the meaning of the FLSA, 29 U.S.C. §203(e) and (g).

24. At all relevant times, Defendant has been an “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. §203.

25. At all relevant times, Defendant’s business has had annual gross revenues in excess of \$500,000.

26. Plaintiff consents in writing to be a party to this action pursuant to 29 U.S.C. §216(b). Plaintiff’s written consent is attached hereto as Exhibit A and incorporated by reference.

27. Defendant was required to properly pay Plaintiff and others similarly situated all wages due including applicable overtime wages for all hours worked in excess of 40 hours in a workweek.

28. During the FLSA Class Period, Defendant failed to pay Plaintiff and the ASMs all wages due including overtime wages of not less than one and one-half times the regular rate of pay for each hour worked in excess of 40 hours in a workweek to which they were entitled under the FLSA, 29 U.S.C. §207.

29. Defendant’s violation of the overtime requirements of the FLSA was part of its regular business practice and constituted a pattern, practice, and/or policy.

30. As a result of Defendant's violations of the FLSA, Plaintiff and others similarly situated have suffered damages by being denied overtime wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages in an amount equal to their unpaid wages, prejudgment and post judgment interest, reasonable attorneys' fees, costs, and punitive damages pursuant to 29 U.S.C. §216(b).

31. Defendant's unlawful conduct, as described above, was willful and intentional and/or was not in good faith. Defendant knew or should have known that the practices complained of herein were unlawful. Defendant knew that Plaintiff and others similarly situated routinely worked in excess of forty hours per week and that Plaintiff and others similarly situated were not paid for all hours worked.

32. Defendant has not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and others similarly situated.

33. Because Defendant's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to the FLSA, 29 U.S.C. §255(a).

34. Plaintiff and the ASMs seek to enjoin Defendant from its continuing violations of 29 U.S.C. §207.

COUNT II

NJWHL, Article 19: Failure to Pay Overtime

(Brought on Behalf of Plaintiff and the NJWHL Class)

35. Plaintiff incorporates and re-alleges all of the preceding paragraphs as if they were fully set forth herein.

36. At all relevant times, Plaintiff and the Class were employed by Parade within the meaning of the NJWHL.

37. Parade willfully violated Plaintiff's rights, and the rights of the members of the Class, by unlawfully classifying them as exempt employees and failing to pay them overtime compensation at rates not less than one and one-half their regular rate of pay for each hour worked in excess of forty hours in a work week.

38. As a result of Defendant's violations of the NJWHL, Plaintiff and the Class have suffered damages in amounts to be determined at trial, and are entitled to recovery of such amounts, prejudgment and post judgment interest, and reasonable attorneys' fees and costs pursuant to the NJWHL.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court grant Plaintiff and the ASMs the following relief:

A. An order certifying this case as a collective action for the violations of the FLSA, as it pertains to the First claim under 29 U.S.C. §216(b) for the class of employees described herein and designating Plaintiff's counsel as Class Counsel;

B. An order certifying this case as a class action for violations of the NJWHL as it pertains to the Second claim under Federal Rule of Civil Procedure 23 (a) and (b)(3) for the class of employees described herein, appointing Plaintiff as Class Representative, and appointing Plaintiff's counsel as Class Counsel;

C. Award Plaintiff and the ASMs all statutory damages, compensatory damages, punitive damages, liquidated damages, pre-judgment interest, and post-judgment interest, statutory damages, and any other damages that may be just and proper;

D. Award Plaintiff and the ASMs their reasonable attorneys' fees, costs and expenses as authorized by law;

E. Enjoin Defendant from its continued violation of the FLSA and the NJWHL; and

F. Grant in favor of Plaintiff and the Class such other relief as may be just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: June 23, 2015

GARDY & NOTIS, LLP

By: /s/ Jennifer Sarnelli

Mark C. Gardy

Jennifer Sarnelli

Orin Kurtz (*pro hac vice* application to be filed)

560 Sylvan Avenue, Suite 3085
Englewood Cliffs, NJ 07632
Tel: (201) 567-7377
Fax: (201) 567-7337
mgardy@gardylaw.com
jsarnelli@gardylaw.com
okurtz@gardylaw.com

Attorneys for Plaintiff