

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TERRI L. FOSTER)	Civil Action No.
on behalf of herself and)	
all others similarly situated)	
)	INDIVIDUAL AND CLASS
Plaintiff,)	ACTION COMPLAINT
)	
v.)	
)	Electronically Filed
KRAFT FOODS GLOBAL, INC.)	
)	Jury Trial Demanded
Defendant.)	

INDIVIDUAL AND CLASS ACTION COMPLAINT

NATURE OF THE ACTION, JURISDICTION AND VENUE

1. This is an individual and class action, in diversity, for an amount in excess of \$100,000.00, under the Pennsylvania Minimum Wage Act, (PMWA)(43 P.S. §333.101 et seq.), to recover damages for non-payment of overtime wages and to make Plaintiff, and all others similarly situated, whole.
2. Jurisdiction of this court is invoked pursuant to 28 U.S.C. §1332.
3. The Parties are citizens of different states.
4. Plaintiff is a Pennsylvania resident and citizen and carried out her duties for Defendant from the Pittsburgh, PA, area. Therefore, this action is within the jurisdiction of the United States District Court for the Western District of Pennsylvania and the venue is proper.

PARTIES

5. **Plaintiff Terri L. Foster (hereinafter "Plaintiff" or "Foster") has resided at all relevant times at 1154 Brinton Avenue Extension, North Braddock, PA 15104, is a citizen of Pennsylvania and was employed by Defendant as a sales representative from in or about February 1981 until on or about July 1, 2007, when she became a so-called Wall-to-Wall Sales Representative.**

6. **Defendant Kraft Foods Global, Inc. (hereinafter "Defendant," or "Kraft") is a consumer food company, is incorporated in and is a citizen of a state other than PA, is headquartered at Three Lakes Drive, Northfield, IL 60093, and maintains business offices and a continual business presence in the Commonwealth.**

7. **Defendant is an employer within the meaning of the PMWA.**

BACKGROUND AND STATEMENT OF CLAIMS

8. **Plaintiff was hired in or about February 1981 by Defendant as a sales representative and worked until on or about July 1, 2007, when she was recategorized by Kraft as a Wall-to-Wall Sales Representative.**

9. **Prior to May 2007 Plaintiff was responsible for servicing Kraft food products in the supermarkets and other retail stores in Western Pennsylvania.**

10. **Plaintiff would go to each store to check the quality of Kraft's products and determine the**

sell-by dates and otherwise assure the Kraft products were being displayed and maintained properly by the retail outlets.

- 11. Plaintiff did not stock shelves prior to May 2007.**
- 12. Plaintiff did not make the shelf-stock sales of the Kraft products she was servicing; rather, she spent fifteen to twenty minutes a week advising the store manager of current promotions and attempting to accept more product but the arrangements to permit Kraft products to be sold in the store were not made by Plaintiff.**
- 13. Plaintiff was servicing the sales of others.**
- 14. Plaintiff devoted far in excess of 20% of her time to non-sales work.**
- 15. Prior to May 2007 Plaintiff was paid a salary, plus commissions based on percentage over prior year volume of food products.**
- 16. In May 2007 Plaintiff was assigned an additional base of food products (Nabisco cookies and crackers).**
- 17. During her employment before July 1, 2007, Plaintiff was charged \$55.38 bi-weekly for the use of a company vehicle.**
- 18. The \$55.38 was deducted from Plaintiff's regular pay for all weeks she worked, both non-overtime weeks and overtime weeks.**

19. Prior to July 2007 Plaintiff was not permitted to record any overtime hours (any hours worked in excess of the regular schedule of 40 hours per week).
20. During her employment prior to July 1, 2007, Plaintiff regularly worked in excess of 40 hours in a week.
21. Defendant followed the same policies and practices (¶¶ 15, 16, 17, 18, 19, 20) with respect to the other sales representatives in the Commonwealth of Pennsylvania prior to July 1, 2007.
22. These sales representatives performed similar duties with respect to various Kraft products as did Plaintiff. (¶¶9, 10, 11, 12, 13, 14)
23. There have been in excess of twenty such sales representatives employed by Kraft in the Commonwealth of Pennsylvania between April 2006 (three years prior to the initial lawsuit filed at Civil Action No. 09-453) and July 1, 2007.
24. Plaintiff was not a manager within the meaning of the PMWA.
25. The other sales representatives in the Commonwealth of Pennsylvania were not managers within the meaning of the PMWA.
26. Plaintiff did not perform professional services in which she exercised discretion and independent judgment within the meaning of the PMWA.
27. The other sales representatives in the Commonwealth of Pennsylvania did not perform

professional services in which they exercised discretion and independent judgment within the meaning of the PMWA.

- 28. Plaintiff did not perform administrative functions within the meaning of the PMWA.**
- 29. The other sales representatives in the Commonwealth of Pennsylvania did not perform administrative functions within the meaning of the PMWA.**
- 30. Plaintiff performed in excess of 20% of her time on non-sales work.**
- 31. The other sales representatives performed in excess of 20% of their time on non-sales work.**
- 32. Plaintiff was non-exempt within the meaning of the PMWA.**
- 33. The other sales representatives in the Commonwealth of Pennsylvania were non-exempt within the meaning of the PMWA.**
- 34. Notwithstanding the fact Plaintiff was non-exempt, and the fact Plaintiff worked in excess of forty (40) hours in workweeks, Plaintiff was paid no overtime.**
- 35. Notwithstanding the fact the other sales representatives in the Commonwealth of Pennsylvania were non-exempt, and the fact the other sales representatives worked in excess of forty (40) hours in workweeks, the other sales representatives were paid no overtime.**

36. Defendant knew Plaintiff, and the other sales representatives in the Commonwealth of Pennsylvania, worked in excess of forty (40) hours in workweeks during their employment with Defendant between April 2006 and July 1, 2007.
37. Defendant knew Plaintiff was non-exempt.
38. Defendant knew the other sales representatives in the Commonwealth of Pennsylvania were non-exempt.
39. Defendant knew it was required by the PMWA to pay overtime to its non-exempt employees, such as Plaintiff and the other sales representatives employed in the Commonwealth of Pennsylvania, for hours worked in excess of forty (40) hours in any given workweek between April 2006 and July 1, 2007.

CLASS ACTION ALLEGATIONS

40. Defendant has employed in excess of twenty employees as sales representatives, like Plaintiff, in the Commonwealth of Pennsylvania between April 2006 and July 1, 2007.
41. Between April 2006 and July 1, 2007, Plaintiff, and all other similarly situated non-exempt sales representatives in the Commonwealth of Pennsylvania, have been subject to the same policies and practices regarding non-payment of overtime.
42. The similarly situated employees of Kraft on whose behalf this lawsuit is brought include all present and former employees of Kraft in the Commonwealth of Pennsylvania who have held the title of sales representative, or who have performed duties similar to the duties Plaintiff and the other sales representatives performed, and who, between April 2006 and

July 1, 2007, have been subject to the same policies and practices as Plaintiff regarding non-payment of overtime wages at time-and-one-half the regular rate of pay.

43. Defendant has violated 43 P.S. §333.101 et seq. by failing to pay Plaintiff, and all other similarly situated non-exempt employees, compensation required by the PA Minimum Wage Act in workweeks in which such employees have worked in excess of forty hours between April 2006 and July 1, 2007.
44. Defendant's violations have been willful.
45. Prosecuting this case as a class action under PA Rules of Civil Procedure Section 1701 for similarly situated employees who have been unlawfully denied overtime wages will promote judicial efficiency and will best protect the interest of the class members.
46. There are no conflicts of interest among the class members.
47. Counsel for the Representative Plaintiff, Joseph Chivers and John Linkosky, are experienced in the field of employment law (including overtime claims under the FLSA and PMWA), and class actions, and will fairly and competently represent the interests of the class members.

COUNT I: PENNSYLVANIA MINIMUM WAGE ACT (PMWA) - OVERTIME

48. Plaintiff hereby incorporates Paragraphs 1 through 47 of her Complaint as though the same were more fully set forth at length herein.
49. Plaintiff, and all other similarly situated employees (as defined in Paragraph 43, above), are

employees of Defendant within the meaning of the PMWA (43 P.S. §333.101 et seq.).

50. Defendant is an employer within the meaning of the PMWA.
51. Plaintiff, and all others similarly situated, are non-exempt.
52. Plaintiff, and all others similarly situated, are entitled to overtime at a rate of time-and-one-half their regular rate of pay for hours worked in excess of forty hours per week between April 2006 and July 1, 2007.
53. Plaintiff, and all others similarly situated, have worked in excess of forty hours in workweeks between April 2006 and July 1, 2007.
54. Defendant has failed to pay overtime to Plaintiff, and all others similarly situated, for hours worked in excess of forty hours in workweeks between April 2006 and July 1, 2007.
55. Defendant's failure to pay overtime is a violation of the PMWA.
56. Defendant's violation is knowing and willful.

PRAYER FOR RELIEF

57. WHEREFORE, Plaintiff, and all others similarly situated, respectfully request that this Court:
 - A. Order Defendant to make Plaintiff, and the class, whole by paying overtime wages due for the period between April 2006 and July 1, 2007;
 - B. Order Defendant to pay interest and penalties on wages owed;

- C. Order Defendant to pay the costs and reasonable attorney's fees incurred by Plaintiff; and,
- D. Grant such further relief as the Court deems necessary and proper.

Respectfully submitted,

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Counsel for Plaintiff and Class

Dated: November 29, 2011