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

EDWARD McCAFFERETY,
for himself and all others similarly situated,
Plaintiff,

v.

HOLOD'S GARDEN CENTER, INC.,
LOUIS HOLOD, SR. and LOUIS HOLOD, JR.,
Defendants.

18 3458
Case No. _____

JURY TRIAL DEMANDED

FILED

AUG 15 2018

KATE BARKMAN, Clerk
By _____ Dep. Clerk

COLLECTIVE AND CLASS ACTION COMPLAINT

Edward McCafferey ("Plaintiff"), by and through his undersigned attorneys, hereby makes the following allegations against Holod's Garden Center, Inc., Louis Holod, Sr. and Louis Holod, Jr. (collectively "Defendants") concerning their acts and status upon actual knowledge and concerning all other matters upon information, belief and the investigation of his counsel:

NATURE OF THE ACTION

1. Plaintiff brings this action to redress Defendants' common policies and practices that: 1) automatically deduct 30 minutes from Associates' daily time for an unpaid meal break without any consideration for their frequent meal break work; and 2) consistently round Associates' time punches in Defendants' favor. Both of these practices violate the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201, *et seq.* ("FLSA") and the Pennsylvania Minimum Wage Act of 1968, 43 P.S. §§ 333.101, *et seq.* ("PMWA") as described fully below.

2. Plaintiff brings his FLSA claims on a collective basis pursuant to 29 U.S.C. § 216(b) for all people who have worked as hourly employees of Holod's Garden Center, Inc. during the maximum limitations period (the "FLSA collective").

3. Plaintiff brings his PMWA claims on a class action basis pursuant to Fed. R. Civ. P. 23 for all Pennsylvania residents who have worked as hourly employees of Holod's Garden Center, Inc. in the past three years (the "putative Class").

JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff's FLSA claims pursuant to 29 U.S.C. §216(b) and 28 U.S.C. §§ 1331.

5. This Court has supplemental jurisdiction over Plaintiff's Pennsylvania claims pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

THE PARTIES

7. Plaintiff Edward McCafferety is an individual who resides in Philadelphia County, PA. From October 2017 to June 2018, Mr. McCafferety worked as an hourly Associate for Defendants' Holod's True Value Home store in Lafayette Hill, PA. Throughout this time, Mr. McCafferety worked 40 or more hours per week, had 30 minutes automatically deducted from his daily time for a meal break he rarely got and consistently had his time punches rounded in Defendant's favor. Mr. McCafferety is personally familiar with, and has been personally affected by, the policies and practices described in this Complaint and has signed and filed a Consent Form to join this litigation. *See* Exhibit A.

8. Holod's Garden Center, Inc. is a Pennsylvania Business Corporation that, throughout the relevant period, has owned and operated Holod's True Value Home (a garden, hardware and rental center) and Holod's Gifts Plus (an all-occasion gift store), both of which are located at 700 Ridge Pike in Lafayette Hill, PA) (the "Stores").

9. Louis Holod, Sr. and Louis Holod, Jr. are the owners of Holod's Garden Center, Inc. and the operators and managers of the Stores. Throughout the relevant period, Louis Holod, Sr. and Louis Holod, Jr. have been involved in the day-to-day business operation of the Stores, exercised operational control over the Stores and controlled significant business functions of the Stores, including: determining employee salaries, making hiring decisions, controlling corporate checking and payroll accounts, tracking the hours and paying the wages at issue in this matter and acting for Holod's Garden Center, Inc. to devise, direct, implement and supervise the wage and hour policies and practices challenged in this action.

BACKGROUND FACTS

10. The Stores are open from 7:00 a.m. to 9:00 p.m. Monday through Friday (14 hours per day), 7:00 a.m. to 8:00 p.m. on Saturday (13 hours) and 7:00 a.m. to 6:00 p.m. on Sunday (11 hours).

11. Defendants employ Associates to work in the Stores, assist customers, take inventory, stock shelves, clean the premises and provide excellent customer service.

12. Defendants maintain common timekeeping and compensation policies and practices for all hourly Associates.

13. Under these common policies and practices, Defendants typically schedule Associates for five 8-hour shifts per week. Each shift includes 7½ work hours and a ½-hour unpaid meal break.

14. Defendants require Associates to punch-in on a timeclock at the start of their shift and punch-out at the end of their shift.

15. Defendants pay Associates a straight-time rate of about \$12.00-\$13.00 per hour for their 7½ work hours each shift but always treat the ½-hour meal break as unpaid time and have

never paid any wages for work done during meal breaks.

16. Since Associates' meal breaks are unpaid, Defendants usually allow Associates to work as many as 2½ extra hours per week and earn up to 40 hours' wages per week (excluding their 2½ hours of meal break time).

Unpaid Meal Break Work Overtime Violation

17. Although Defendants promise Associates one unpaid ½-hour meal break per shift, it is almost impossible for Associates to take these meal breaks because Defendants: give Associates more work than can reasonably be completed during their assigned shift; require Associates to prioritize their work responsibilities over their ability to take a meal break; do not assign dedicated relief workers to free Associates from their duties so they can take an uninterrupted meal break; and routinely schedule fewer Associates to work each shift than their business requires, particularly during the hours Associates would normally try to take a meal break.

18. Defendants have never told their Associates they could track their missed or interrupted meal breaks, allowed their Associates to record their missed and interrupted meal breaks on the time clock, or maintained any procedure for Associates to track their missed or interrupted meal breaks.

19. Defendants have never told their Associates they could request pay for their missed or interrupted meal breaks, maintained any procedure for Associates to claim pay for their missed or interrupted meal breaks, or paid any Associate for his or her meal break work.

20. Instead, Defendants automatically deduct 30 minutes from every shift their Associates work, representing their unpaid meal break, without any consideration for whether their Associates received a full meal break, an interrupted meal break, or no meal break at all.

21. As a result, Defendants' Associates routinely work through their meal breaks and experience interrupted meal breaks, have no way to track, submit, or request pay for this work and are not paid any wages for their meal break work.

22. Plaintiff has repeatedly discussed these issues with Defendants, his managers and other Associates as part of Defendants' day-to-day operations. By virtue of these discussions and discussions with other employees, Defendants are well aware that they are receiving as much as 2½ hours unpaid work time from each Associate for free and have no interest in doing anything to change this situation.

23. Some or all of the wages Defendants owe for their Associates' meal break work are payable at an overtime premium rate in any week their Associates were paid for more than 37½ hours.

Time Rounding Overtime Violation

24. Defendants require Associates to punch-in at the timeclock to start their shift and punch-out at the timeclock to end their shift.

25. Defendants consistently round these punches in their favor as follows:

a. if an Associate punches-in to start work early (*i.e.*, 8:45 a.m. for a shift scheduled to start at 9:00 a.m.), no time is added to his daily hours and he is paid as if he arrived on time (*i.e.*, 9:00 a.m.); and

b. if an Associate punches-in to start work more than four minutes late (*i.e.*, 9:05 a.m. for a shift scheduled to start at 9:00 a.m.), his daily hours are rounded back to the next half-hour (*i.e.*, 9:30 a.m.) and his pay is docked;

c. if an Associate punches-out from work late (*i.e.*, 5:15 p.m. for a shift scheduled to end at 5:00 p.m.), no time is added to his daily hours and he is paid as

if he left on time (*i.e.*, at 5:00 p.m.); and

d. if an Associate punches-out from work more than four minutes early (*i.e.*, 4:55 p.m. for a shift scheduled to end at 5:00 p.m.), his daily hours are rounded back to the next half-hour (*i.e.*, 4:30 p.m.) and his pay is docked.

26. Defendants rounding system only works in their favor, by reducing the number of hours for which they pay their Associates.

27. Plaintiff has repeatedly discussed these issues with Defendants, his managers and other Associates as part of Defendants' day-to-day operations. By virtue of these discussions and discussions with other employees, Defendants are well aware that they are benefitting from their time rounding practices and have no interest in doing anything to change this situation.

28. Some or all of the wages Defendants owe as a result of their one-sided rounding practices are payable at an overtime premium rate in any week an Associate whose time was rounded down was paid for more than 37½ hours.

FLSA COLLECTIVE ACTION ALLEGATIONS

29. Plaintiff brings his FLSA claims for himself and all hourly employees of Holod's Garden Center, Inc. during the maximum limitations period (the "FLSA collective").

30. Plaintiff belongs to the FLSA collective he seeks to represent, because he worked as an hourly employee of Holod's Garden Center, Inc. during the relevant period.

31. The FLSA collective is "similarly situated," as defined by 29 U.S.C. § 216(b), because its members were subjected to the Company-wide policies and practices described herein.

32. Plaintiff estimates that the FLSA Collective may include up to one hundred members. Defendants' payroll and personnel records, among other documents should reveal the total number of people who qualify to participate in the FLSA Collective.

PENNSYLVANIA CLASS ACTION ALLEGATIONS

33. Plaintiff brings his PMWA claims for claims for himself and all Pennsylvania residents who have worked as hourly employees of Holod's Garden Center, Inc. since July __, 2015 (the "putative Class").

34. Class treatment of Plaintiff's PMWA claims is appropriate because the putative Class satisfies the requirements of Fed. R. Civ. P. 23.

35. The putative Class is so numerous that joinder of all its members would be impracticable. Plaintiff estimates that the PMWA Class may include up to one hundred members.

36. Plaintiff's claims are typical of the claims of putative Class members, and he has no interests that are antagonistic to, or in conflict with, the interests of the putative Class.

37. There are many questions of law and fact common to the claims of the putative Class members because, *inter alia*, this action concerns the legality of the Company-wide compensation policies and practices described herein. The legality of these policies will be demonstrated by applying generally applicable legal principles to common evidence.

38. Plaintiff will fairly and adequately represent the interests of the putative Class members and has retained competent and experienced counsel for this purpose.

39. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual Class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

40. Allowing Plaintiff's Pennsylvania wage law claims to proceed as a class action will be superior to requiring the individual adjudication of each Class member's claim, since requiring about one hundred hourly-paid employees to file and litigate individual wage claims would cause

an undue burden on the Class members, Defendants and the Courts. Class action treatment will allow a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expenses if these claims were brought individually. Moreover, as the damages suffered by each Class member are relatively small, the expenses and burdens associated with individual litigation would make it difficult for Plaintiff to bring individual claims. Further, the presentation of separate actions by individual Class members could create a risk for inconsistent and varying adjudications, establish incompatible standards of conduct for Defendants and/or substantially impair or impede the ability of Class members to protect their interests.

COUNT I
VIOLATION OF THE FLSA
Unpaid Meal Break Work Overtime Violation

41. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

42. Defendants are “employers” as defined by 29 U.S.C. § 203(d).

43. Plaintiff and the FLSA collective members are “employees” as defined by 29 U.S.C. § 203(e)(1).

44. The wages Defendants pay to Plaintiff and the FLSA collective are “wages” as defined by 29 U.S.C. § 203(m).

45. Defendants are an “enterprise engaged in commerce” within the meaning of 29 U.S.C. § 203(s)(1)(A).

46. Plaintiff and the FLSA collective are similarly-situated individuals within the meaning of 29 U.S.C. §216(b).

47. 29 U.S.C. § 216(b) expressly allows private Plaintiff to bring collective actions to enforce an employers' failure to comply with their requirements.

48. Throughout the relevant period, Defendants have been obligated to comply with the FLSA's requirements, Plaintiff and the FLSA collective members have been covered employees entitled to the FLSA's protections, and Plaintiff and the FLSA collective members have not been exempt from receiving wages required by the FLSA for any reason.

49. 29 U.S.C. § 207(a)(1) requires employers to pay their employees an overtime rate, equal to at least 1½ times their regular rate of pay, for all hours worked in excess of 40 hours per week.

50. Defendants have intentionally violated this provision of the FLSA through common, Company-wide policies and practices that include: promising Associates one 30-minute meal break per shift; automatically deducting 30 minutes from Associates' daily hours worked without giving any consideration to whether an Associate actually received a full meal break, experienced an interrupted meal break, or had no meal break at all; failing to maintain an accurate contemporaneous record of Associates meal break work; failing to include Associates' meal break time in their weekly hours worked; and failing to pay Associates at an overtime rate for their meal break work where appropriate.

51. By engaging in this conduct, Defendants have acted with willful and/or reckless disregard for the FLSA Collective members' rights under the FLSA.

52. Plaintiff and the FLSA Collective members have been harmed as a direct and proximate result of Defendants' unlawful conduct because they have been deprived of overtime premium wages owed for overtime-eligible work they performed and from which Defendants derived a direct and substantial benefit.

COUNT II
VIOLATION OF THE PMWA
Unpaid Meal Break Work Overtime Violation

53. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

54. PMWA Section 4(c) requires employers to pay their employees overtime compensation of “not less than one and one-half times the employee’s regular rate” for all hours worked over 40 in a given workweek. *See* 43 P.S. § 333.104(c).

55. Under the PMWA, overtime is calculated based on the number of hours worked in a “workweek”, defined in controlling regulations as “a period of 7 consecutive days”. *See* 34 Pa. Code § 231.42.

56. Throughout the relevant period, PMWA Section 8 required Defendants to “keep a true and accurate record of the hours worked by each employee and the wages paid to each.” *See* 43 P.S. § 333.108.

57. Defendants have intentionally violated these provisions of the PMWA through common, Company-wide policies and practices that include: promising Associates one 30-minute meal break per shift; automatically deducting 30 minutes from Associates’ daily hours worked without giving any consideration to whether an Associate actually received a full meal break, experienced an interrupted meal break, or had no meal break at all; failing to maintain an accurate contemporaneous record of Associates meal break work; failing to include Associates’ meal break time in their weekly hours worked; and failing to pay Associates at an overtime rate for their meal break work where appropriate.

58. By engaging in this conduct, Defendants have acted with willful and/or reckless disregard for Plaintiff’s and the putative Class members’ rights under the PMWA.

59. Defendants have no good faith justification or defense for the conduct detailed above, or for failing to pay Plaintiff and the putative Class members all wages mandated by the PMWA.

60. Plaintiff and the putative Class members have been harmed as a direct and proximate result of the unlawful conduct described here, because they have been deprived of legally-required wages for overtime-eligible they performed from which Defendants derived a direct and substantial benefit.

COUNT III
VIOLATION OF THE FLSA
Time Rounding Overtime Violation

61. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

62. 29 C.F.R. § 785.48(b) prohibits employers from engaging in time rounding practices unless they are: “used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.”

63. Defendants have intentionally violated this provision of the FLSA’s enabling Regulations through common, Company-wide policies and practices that include: consistently rounding Associates’ early and late time punches in their favor, subtracting time from Associates’ total hours worked and reducing the number of overtime hours for which they pay their Associates.

64. By engaging in this conduct, Defendants have acted with willful and/or reckless disregard for the FLSA Collective members’ rights under the FLSA.

65. Plaintiff and the FLSA Collective members have been harmed as a direct and proximate result of Defendants’ unlawful conduct because they have been deprived of overtime

premium wages owed for overtime-eligible work they performed and from which Defendants derived a direct and substantial benefit.

COUNT IV
VIOLATION OF THE PMWA
Time Rounding Overtime Violation

66. Each of the preceding paragraphs is incorporated by reference as though fully set forth herein.

67. Defendants have intentionally violated the PMWA's overtime pay requirement through common, Company-wide policies and practices that include: consistently rounding Associates' early and late time punches in their favor, subtracting time from Associates' total hours worked and reducing the number of overtime hours for which they pay their Associates.

68. By engaging in this conduct, Defendants have acted with willful and/or reckless disregard for Plaintiff's and the putative Class members' rights under the PMWA.

69. Defendants have no good faith justification or defense for the conduct detailed above, or for failing to pay Plaintiff and the putative Class members all wages mandated by the PMWA.

70. Plaintiff and the putative Class members have been harmed as a direct and proximate result of the unlawful conduct described here, because they have been deprived of legally-required wages for overtime-eligible work they performed from which Defendants derived a direct and substantial benefit.

WHEREFORE, Plaintiff respectfully prays for an Order:

- a. Certifying this matter to proceed as a collective action with respect to Counts I and III and as a class action with respect to Counts II and IV;
- b. Approving Plaintiff as an adequate Class representative;
- c. Appointing Stephan Zouras, LLP to serve as Class Counsel;


- d. Finding Defendants willfully violated the applicable provisions of the FLSA and PMWA by failing to pay all required overtime wages to Plaintiff and the collective / class members;
- e. Granting judgment in favor of Plaintiff and the collective / class members against Defendants, and each of them, jointly and severally, on Counts I-IV;
- f. Awarding all available compensatory damages in amounts to be determined;
- g. Awarding all available liquidated damages in amounts to be determined;
- h. Awarding pre-judgment interest on all compensatory damages due;
- i. Awarding a reasonable attorney's fee and reimbursement of all costs and expenses incurred in litigating this action;
- j. Awarding equitable and injunctive relief precluding the continuation of the policies and practices pled in this Complaint;
- k. Awarding any further relief the Court deems just, necessary and proper; and
- l. Maintaining jurisdiction over this action to ensure Defendants' compliance with the foregoing.

JURY DEMAND

Plaintiff demand a jury trial as to all claims so triable.

Respectfully Submitted,

Dated: August 15, 2018

/s/ David J. Cohen 
David J. Cohen
STEPHAN ZOURAS, LLP
604 Spruce Street
Philadelphia, PA 19106
(215) 873-4836

James B. Zouras (*pro hac* forthcoming)
Ryan F. Stephan (*pro hac* forthcoming)
STEPHAN ZOURAS, LLP
205 N. Michigan Avenue, Suite 2560
Chicago, IL 60601
312-233-1550

*Attorneys for Plaintiff and the Putative
Class and Collective Members*

CONSENT TO JOIN COLLECTIVE ACTION

McCafferty v. Holod's Agrden Center, Inc., et al.
United States District Court, Eastern District of Pennsylvania

Complete and Return To:
STEPHAN ZOURAS, LLP
Attn: Hahnemann Overtime Action
205 N. Michigan Ave., Suite 2560
Chicago, IL 60601
Phone: 312-233-1550
Fax: 312-233-1560
E-mail: lawyers@stephanzouras.com

By signing below, I affirm that: I worked as a full-time hourly employee at Holod's Garden Center, Inc. within the past three years; I experienced interrupted meal breaks for which I was not paid any wages; and I was subjected to time rounding practices that only benefitted my employer.

I consent to join this lawsuit for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

I designate Stephan Zouras, LLP and other attorneys with whom they may associate to represent me for all purposes of this action.

I designate the Class Representative(s) as my agent(s) to make decisions on my behalf concerning the litigation, the method and manner of conducting this litigation, settlement, the entering of an agreement with Plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit.

If this case does not proceed collectively, then I also consent to join any subsequent action to assert these claims.

14 August 18
Date

Edward J. McCafferty
Signature

EDWARD J. McCAFFERTY
Print Name

**** This Second Page Will Not Be Filed With the Court ****

2-18-3458

JS 44 (Rev 06/17)

MMB

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

EDWARD MCCAFFERETY

(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DAVID J COHEN, STEPHAN ZOURAS LLP
604 SPRUCE STREET, PHILA., PA 19106

DEFENDANTS

HOLOD'S GARDEN CENTER, INC.,
LOUIS HOLOD, SR and LOUIS HOLOD, JR

County of Residence of First Listed Defendant MONTGOMERY
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)
FAIR LABOR STANDARDS ACT OF 1938, 29 U.S.C. SEC 201 ET SEQ

Brief description of cause:
FAILURE TO PAY OVERTIME WAGES

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint. JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions) JUDGE N/A DOCKET NUMBER N/A

DATE: AUG 15, 2018 SIGNATURE OF ATTORNEY OF RECORD: DAVID J. COHEN

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

AUG 15 2018

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MMB

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 555 MARTIN STREET, PHILA., PA 19128

Address of Defendant: 700 RIDGE PIKE, LAFAYETTE HILL, PA 19444

Place of Accident, Incident or Transaction: MONTGOMERY CO., PA 18 3458

RELATED CASE, IF ANY:

Case Number N/A Judge N/A Date Terminated: N/A

Civil cases are deemed related when Yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
- 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
- 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes No
- 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

I certify that, to my knowledge, the within case is / is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE AUG. 15, 2018 Attorney-at-Law / Pro Se Plaintiff 74070 Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELOA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify) FLSA, 29 U S C SEC 201 ET SEQ

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify)
- 7. Products Liability
- 8. Products Liability - Asbestos
- 9. All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration.)

I, DAVID J. COHEN, counsel of record or pro se plaintiff, do hereby certify:

Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000 00 exclusive of interest and costs

Relief other than monetary damages is sought

DATE AUG. 15, 2018 Attorney-at-Law / Pro Se Plaintiff 74070 Attorney ID # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

AUG 15 2018

MMB

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

CASE MANAGEMENT TRACK DESIGNATION FORM

Edward McCafferey, et al. :

18 CIVIL ACTION
3438

v.
Holod's Garden Center, et al. :

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration - Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

(X)
()

Aug. 15, 2018
Date

David J. Cohen
Attorney-at-law

Plaintiff
Attorney for

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AUG 15 2018

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ex-Employee Sues Holod's Garden Center Over Allegedly Unlawful Wage Deductions](#)
