

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**CHRISTINA PADILLA and JESSICA
ZAMUDIO, individually
and on behalf of others similarly
situated,**

CASE NO. 1:16-cv-4936

Plaintiffs,

v.

**RUBY FOODS, INC., STANDARD
FOODS, INC., MOONSTONE FOODS
ENTERPRISES, LLC, SIRAJUDDEN
VIRANI and FAISAL MERCHANT,**

Defendants.

CLASS AND COLLECTIVE ACTION COMPLAINT

Plaintiffs Christina Padilla (“Padilla”) and Jessica Zamudio (“Zamudio”), on behalf of themselves and other persons similarly situated, through their attorneys, Hughes Socol Piers Resnick & Dym, Ltd. and Community Activism Law Alliance, complain against Defendants Moonstone Foods Enterprises LLC (“Moonstone Foods”), Ruby Foods, Inc. (“Ruby Foods”), Standard Foods, Inc. (“Standard Foods”), Sirajudden Virani (“Virani”), and Faisal Merchant (“Merchant”) (collectively, “Defendants”) as follows:

NATURE OF THE ACTION

1. This is an action for unpaid wages brought against Defendants for state and federal wage and hour violations stemming from Defendants’ illegal deductions from Plaintiffs’ and other workers’ pay. Plaintiffs bring this action against Defendants to recover unpaid wages, interest, statutory penalties, liquidated damages, and attorneys’ fees and costs owed to them and other

similarly situated current and former employees. Plaintiffs also bring this action to obtain declaratory and injunctive relief as well as all other relief that the Court deems appropriate.

JURISDICTION

2. The Court has jurisdiction over this case pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

VENUE

3. Venue is proper in this Court because a substantial part of the events or omissions giving rise to the Plaintiffs' claims occurred in this judicial district and because the Defendants reside in this judicial district. *See* 28 U.S.C. § 1391(b).

PARTIES

4. Christina Padilla worked for Moonstone Foods from December 2013 to May 2014, and she worked for Ruby Foods from May 2014 until August 2015. She is a resident of Chicago, Illinois.

5. Jessica Zamudio worked for Standard Foods from June 2015 until January 2016. She is a resident of Chicago, Illinois.

6. Moonstone Foods is an Illinois corporation that operates a Dunkin' Donuts franchise located at 600 S. Wabash in Chicago Illinois.

7. Ruby Foods is an Illinois corporation that operates a Dunkin' Donuts franchise located at 229 W. Jackson in Chicago Illinois.

8. Standard Foods is an Illinois corporation that operates a Dunkin' Donuts franchise located at 62 E. Jackson in Chicago Illinois.

9. Faisal Merchant calculates and processes payroll for sixteen Dunkin' Donuts franchises – including Moonstone Foods, Ruby Foods, and Standard Foods – that are owned by Sirajuddin Virani.

10. Sirajuddin Virani owns sixteen Dunkin' Donuts franchises, including Moonstone Foods, Ruby Foods, and Standard Foods, located in Chicago, Illinois.

11. During relevant times, Moonstone Foods, Merchant, and Virani employed Padilla for purposes of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 203 and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/3(d).

12. During relevant times, Ruby Foods, Merchant, and Virani employed Padilla for purposes of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 203 and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/3(d).

13. During relevant times, Standard Foods, Merchant, and Virani employed Zamudio for purposes of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 203 and the Illinois Minimum Wage Law (“IMWL”), 820 ILCS 105/3(d).

Enterprise Status

14. From May 4, 2013 to the present, Defendants constituted an “enterprise” as that term is defined in the FLSA because they performed related activities (either through unified operation or common control) for a common business purpose. During relevant times, Defendants engaged in well over \$500,000 in annual sales or business.

Unpaid Overtime and Minimum Wages

15. Padilla worked for Moonstone Foods as an hourly employee from December 2013 to May 2014. She was paid \$8.75 per hour.

16. Padilla worked for Ruby Foods as an hourly employee from May 2014 to August 2015. From approximately May 2014 to February 2015, Ruby Foods paid her \$8.75 per hour. From approximately March 2015 to August 2015, Ruby Foods paid her \$10.00 or \$10.25 per hour.

17. Padilla frequently worked for Defendants in excess of forty hours in a workweek.

18. Zamudio worked for Standard Foods as an hourly employee from June 2015 to January 2016. In June 2015, Standard Foods paid her \$9.00 per hour. From approximately July 2015 to September 2016, Standard Foods paid her \$10.00 per hour. From approximately October 2015 to January 2016, Standard Foods paid her \$10.25 per hour.

19. Zamudio often worked for Defendants in excess of forty hours in a workweek.

20. From May 4, 2013 until the present, Defendants frequently failed to pay Plaintiffs and other workers the minimum wage and appropriate overtime premium pay as required by the FLSA and IMWL.

21. More specifically, when Plaintiffs and other workers started working before their scheduled shift or remained at work past their scheduled shift, Merchant frequently deducted time from their recorded work hours. Merchant instructed managers to change the clock-in-time and clock-out-time records in the store's computer database to make it appear as though Plaintiffs worked fewer hours than they actually did.

22. In addition, Merchant frequently made deductions from Plaintiffs' wages for cash register shortages. Defendants listed these deductions for cash register shortages on a line on Plaintiff's paycheck that said "Cash Advance Repayment."

23. Defendants never obtained Plaintiffs' or the other workers' written authorization to make these deductions from their wages.

24. As a result of Defendants not paying Plaintiffs and other workers for all hours worked and deducting money for cash register shortages, Plaintiffs and the other workers frequently were not paid one-and-a-half times their regular hourly rate for all hours worked in excess of forty in a workweek. They also frequently were not paid the minimum wage required by the Illinois Minimum Wage Law and the Chicago Minimum Wage Ordinance (“the Ordinance”).

25. During relevant times, Vasani was aware that Merchant made deductions from workers’ wages for cash register shortages without their written authorization, but he did nothing to stop the practice.

26. On information and belief, Vasani also was aware that Merchant deducted time from workers’ clock-in times and clock-out times, but he did nothing to stop the practice.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

27. Plaintiffs bring the claims set forth in Count I, alleging violations of the FLSA overtime requirement, as an opt-in representative or collective action on behalf of themselves and an “**FLSA Overtime Class,**” consisting of all individuals who worked as an hourly employee at a Chicago-area Dunkin’ Donuts store owned or managed by Merchant or Virani between May 4, 2013 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

28. Plaintiffs bring the claims in Count II and III, alleging violations of the IMWL, on behalf of themselves and an “**IMWL Class,**” consisting of all individuals who worked as an hourly employee at a Chicago-area Dunkin’ Donuts store owned or managed by Merchant or Virani between May 4, 2013 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

29. Plaintiffs bring the claims in Count IV and V, alleging violations of the Ordinance, on behalf of themselves and an “**Ordinance Class,**” consisting of all individuals who worked as an hourly employee at a Chicago-area Dunkin’ Donuts store owned or managed by Merchant or Virani between July 1, 2015 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

30. There are legal and factual questions that are common to Plaintiffs’ and the IMWL and Ordinance Class Members’ claims under the IMWL and the Ordinance that predominate over any question(s) solely affecting individual members of the class. One such question is whether Defendants engaged in a pattern, practice, or policy of deducting time from Class Members’ hours worked and deducting amounts from Class Members’ wages for cash register shortages, so that they were paid less than the minimum wage prescribed by the IMWL and the Ordinance and not paid one-and-a-half times their regular rate for hours worked in excess of forty in a workweek.

31. Plaintiffs bring the claims in Count VI, alleging violations of the IWPCA, on behalf of themselves and an “**IWPCA Deduction Class,**” consisting of all individuals who worked as an hourly employee at a Chicago-area Dunkin’ Donuts store owned or managed by Merchant or Virani between May 4, 2006 and May 4, 2016 and who had money deducted from their wages for cash register shortages without their written authorization.

32. There are legal and factual questions that are common to Plaintiffs’ and IWPCA Deduction Class Members’ claims under the IWPCA that predominate over any question(s) solely affecting individual members of the class. One such question is whether Defendants engaged in a pattern, practice, or policy of deducting amounts from Class Members’ wages for cash register shortages without their written authorization.

33. The Classes for whose benefit this action is brought are each so numerous and geographically dispersed that joinder of all members is impracticable, and the disposition of their claims in a class action will provide substantial benefits to both the parties and the Court. Each class is composed of hundreds of individuals.

34. Plaintiffs will fairly and adequately protect the interests of the Classes that they seek to represent. Plaintiffs' claims are typical of the claims of other Class Members because Plaintiffs were hourly employees who, like the other members of the Classes, sustained damage arising out of the Defendants' failure to pay minimum wages and overtime premium pay and Defendants' policy of deducting wages for cash register shortages.

34. Plaintiffs have retained counsel competent and experienced in complex and class action litigation, including wage and hour litigation.

35. A class action is superior to other methods for the fair and efficient adjudication of the controversy alleged in this Complaint. Class action treatment will permit a large number of similarly situated persons to prosecute their modest, common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would require.

36. The Court is not likely to encounter any difficulties that would preclude it from maintaining this case as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Individualized litigation also would present the potential for inconsistent or contradictory judgments.

COUNT I
FLSA Overtime Claim

37. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

38. Defendants willfully refused to pay all overtime premiums required by FLSA, 29 U.S.C. § 207(a), which requires an employer to pay its hourly, non-exempt employees at a rate of not less than one-and-a-half times the regular rate of pay for all hours worked in excess of forty in any workweek.

PRAYER FOR RELIEF

Plaintiffs ask the Court to enter judgment against Defendants and issue an order:

- a. Certifying this case as a collective action under 29 U.S.C. § 216(b);
- b. Entering judgment in the amount of all unpaid overtime wages due and owing to Plaintiffs as well as all applicable liquidated damages;
- c. Declaring that Defendants' conduct violated the FLSA.
- d. Awarding Plaintiffs their reasonable attorneys' fees and costs of this action;
- e. Awarding pre-judgment and post-judgment interest on all monetary amounts awarded in this action; and
- f. Awarding such other and further relief as this Court deems appropriate and just.

COUNT II
IMWL Overtime Claim

39. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

40. This count is brought against Defendants on behalf of:

all individuals who worked as an hourly employee at a Chicago-area Dunkin' Donuts store owned or managed by Merchant or Virani between May 4, 2013 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

41. Defendants refused to pay all overtime premiums as required by the IMWL, 820 ILCS 105/4a, which requires an employer to pay its hourly, non-exempt employees at a rate of not less than one-and-a-half times the regular rate of pay for all hours worked in excess of forty in any workweek.

PRAYER FOR RELIEF

Plaintiffs ask the court to enter judgment against Defendants and issue an order:

- a. Certifying a class as defined in this count;
- b. Appointing Plaintiffs as representatives of the class;
- c. Appointing the undersigned counsel as class counsel;
- d. Declaring that the actions complained of herein violate 820 ILCS 105/4a;
- e. Awarding unpaid wages due as provided by the IMWL;
- f. Awarding prejudgment interest on the back wages in accordance with 815 ILCS 205/2;
- g. Awarding penalties in the amount of 2% of all unpaid wages for each month the unpaid wages remain delinquent, as contemplated by 820 ILCS 105/12(a);
- h. Awarding reasonable attorneys' fees and costs of this action as provided by the IMWL; and
- i. Awarding such other relief as this Court deems just and proper.

COUNT III
IMWL Minimum Wage Claim

42. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

43. This count is brought against Defendants on behalf of:

all individuals who worked as an hourly employee at a Chicago-area Dunkin' Donuts store owned or managed by Merchant or Virani between May 4, 2013 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

44. Defendants willfully refused to pay \$8.25 per hour as required by the IMWL, 820 ILCS 105/4. Defendants paid less than the minimum wage by not paying Plaintiffs for all hours worked and by deducting money from their wages for cash register shortages.

PRAYER FOR RELIEF

Plaintiffs ask the court to enter judgment against Defendants and issue an order:

- a. Certifying a class as defined in this count;
- b. Appointing Plaintiffs as representatives of the class;
- c. Appointing the undersigned counsel as class counsel;
- d. Entering judgment in the amount of all unpaid overtime wages due and owing to Plaintiffs for violations occurring on or after May 4, 2013 as well as applicable liquidated damages for those violations;
- e. Declaring that Defendants' conduct violated the IMWL;
- f. Awarding Plaintiffs their reasonable attorneys' fees and costs of this action;
- g. Awarding pre-judgment and post-judgment interest on all monetary amounts awarded in this action; and
- h. Awarding such other and further relief as this Court deems appropriate and just.

COUNT IV
Ordinance Overtime Claim

45. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

46. This count is brought against Defendants on behalf of:

all individuals who worked as an hourly employee at a Chicago-area Dunkin' Donuts store owned or managed by Merchant or Virani between July 1, 2015 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

47. Defendants refused to pay all overtime premiums as required by the Ordinance, which requires an employer to pay its hourly, non-exempt employees at a rate of not less than \$15 per hour for all hours worked in excess of forty in any workweek.

PRAYER FOR RELIEF

Plaintiffs ask the court to enter judgment against Defendants and issue an order:

- a. Certifying a class as defined in this count;
- b. Appointing Plaintiffs as representatives of the class;
- c. Appointing the undersigned counsel as class counsel;

- d. Declaring that the actions complained of herein violate the Ordinance;
- e. Awarding unpaid wages due as provided by the Ordinance;
- f. Awarding prejudgment interest on the back wages in accordance with the Ordinance;
- g. Awarding penalties in the amount of three times the amount of all unpaid wages;
- h. Awarding reasonable attorneys' fees and costs of this action as provided by the Ordinance; and
- i. Awarding such other relief as this Court deems just and proper.

COUNT V
Ordinance Minimum Wage Claim

48. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

49. This count is brought against Defendants on behalf of:

all individuals who worked as an hourly employee at a Chicago-area Dunkin' Donuts store owned or managed by Merchant or Virani between July 1, 2015 and May 4, 2016 and who either had hours backed out of their clock-in or clock-out times or had deductions made from their wages for cash register shortages.

50. Defendants willfully refused to pay \$10.00 per hour as required by the Ordinance. Defendants paid less than the minimum wage by not paying Plaintiffs for all hours worked and by deducting money from their wages for cash register shortages.

PRAYER FOR RELIEF

Plaintiffs ask the court to enter judgment against Defendants and issue an order:

- a. Certifying a class as defined in this count;
- b. Appointing Plaintiffs as representatives of the class;
- c. Appointing the undersigned counsel as class counsel;
- d. Entering judgment in the amount of all unpaid wages due and owing to Plaintiffs for violations occurring on or after April 20, 2013;

- e. Declaring that Defendants' conduct violated the Ordinance;
- f. Awarding Plaintiffs their reasonable attorneys' fees and costs of this action;
- g. Awarding pre-judgment and post-judgment interest on all monetary amounts awarded in this action; and
- h. Awarding such other and further relief as this Court deems appropriate and just.

COUNT VI
IWPCA – Unlawful Deductions Claim

51. Plaintiffs incorporate by reference each of the preceding allegations as though fully set forth herein.

52. This count is brought against Defendants on behalf of:

all individuals who worked as an hourly employee at a Chicago-area Dunkin' Donuts store owned or managed by Merchant or Virani between May 4, 2006 and May 4, 2016 and who had deductions made from their wages for cash register shortages.

53. The IWPCA prohibits an employer from making deductions from the wages of employees unless the deductions are (1) required by law; (2) to the benefit of the employee; (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made. *See* 820 ILCS 115/9.

54. Defendants deducted amounts from Plaintiffs' wages without their express written consent at the time of the deductions, in violation of Section 9 of the IWPCA.

PRAYER FOR RELIEF

Plaintiffs ask the court to enter judgment against Defendants and issue an order:

- a. Declaring that the actions complained of herein violated the IWPCA, 820 ILCS 115/3, 4 & 9;
- b. Awarding Plaintiffs all amounts unlawfully deducted from their wages, as provided by the IWPCA;
- c. Awarding Plaintiffs penalties in the amount of 2% of all unpaid wages for each month the unpaid wages remain delinquent, as contemplated by 820 ILCS 115/14(a);

- d. Requiring Defendants to pay all statutorily-required wages and enjoining Defendants from future IWPCA violations;
- e. Awarding Plaintiffs prejudgment interest on the back wages in accordance with 815 ILCS 205/2;
- f. Awarding the attorney's fees and costs of this action as provided by Section 14 the IWPCA; and
- g. Awarding such other relief as this Court deems just and proper.

Jury Demand

Plaintiffs demand a jury trial on all claims for which a jury trial is available.

May 4, 2016

Respectfully submitted,

/s/ Christopher J. Wilmes
One of the Attorneys for Plaintiffs

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