

allegations are based on personal knowledge as to Plaintiffs' own conduct and are made on information and belief as to the acts of others.

JURISDICTION AND VENUE

1. Jurisdiction over Plaintiffs' FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 and § 1332.

2. Jurisdiction over Plaintiff Bell's PMWA claim is proper under 28 U.S.C. § 1367(a) because this claim is so related to claims in the action within such original jurisdiction that it forms part of the same case or controversy and under 28 U.S.C. § 1332(d) because a member of the proposed class is a citizen of a different state than one of the defendants and the matter in controversy exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

3. Jurisdiction over Plaintiff Costanza's MWA claim is proper under 28 U.S.C. § 1367(a) because this claim is so related to claims in the action within such original jurisdiction that it forms part of the same case or controversy and under 28 U.S.C. § 1332(d) because a member of the proposed class is a citizen of a different state than one of the defendants and the matter in controversy exceeds the sum of \$5,000,000.00 exclusive of interest and costs.

4. Venue in this Court is proper under 28 U.S.C. § 1391.

PARTIES

5. Bell is an individual residing in Penn Hills, Pennsylvania.

6. Costanza is an individual residing in Malden, Massachusetts.

Systems, 457 F. Supp. 2d 522 (M.D. Pa. 2006) (PMWA class actions and FLSA collective actions are "inherently incompatible"); *Burkhart-Deal v. Citifinancial, Inc.*, 2008 U.S. Dist. LEXIS 44469 (W.D. Pa. June 5, 2008) (same). The issue of whether state wage and hour class actions and FLSA collective actions are "inherently incompatible" currently is pending before the Third Circuit Court Appeals in an appeal entitled *Parker v. NutriSystem, Inc.*, No. 09-3545.

7. Defendant Citizens Financial Group, Inc. (“CFG”) is a financial holding company and a Delaware Corporation doing business in the state of Pennsylvania. CFG’s principal place of business is located at One Citizens Plaza, Providence, Rhode Island.

8. Defendant RBS Citizens, N.A. is a corporate entity headquartered at One Citizens Plaza, Providence, Rhode Island.

9. Defendant Citizens Bank of Pennsylvania is a corporate entity headquartered at 1701 John F. Kennedy Boulevard, Philadelphia, Pennsylvania.

10. Defendant RBS Citizens, N.A. and Defendant Citizens Bank of Pennsylvania are wholly-owned bank subsidiaries of CFG that jointly operate hundreds of retail bank branches under the “Citizens Bank” brand throughout Pennsylvania, New Jersey, Delaware, Connecticut, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

11. Defendants Citizens Financial Group, Inc., RBS Citizens, N.A., and Citizens Bank of Pennsylvania are collectively referred to herein as “Defendants.”

12. Defendants are engaged in the interstate commerce and/or in the production of goods for commerce.

13. Defendants, individually and collectively, have employed thousands of employees engaged in interstate commerce.

14. Defendants are establishments engaged in related activities performed through a unified operation or common control for a common business purpose.

15. Defendants have gross operating revenues well in excess of \$500,000.00.

16. Defendants are employers covered by the FLSA.

FACTS PERTAINING TO PLAINTIFF BELL

17. From approximately October 2007 until August 2008, Bell was employed by Defendants as an Assistant Branch Manager (“ABM”) and was assigned to Defendants’ Monroeville Giant Eagle branch in Monroeville, Pennsylvania. The following factual allegations pertain to Bell’s employment as an ABM.

18. Bell’s primary duties did not include managing either his assigned branch or any department or subdivision thereof.

19. Bell spent the great majority of his time performing the same duties as hourly personal bankers and tellers. These duties included, *inter alia*, servicing bank customers and performing basic, non-managerial bank teller duties.

20. Bell did not have the authority to hire or fire other employees and did not make any suggestions or recommendations as to the hiring, firing, advancement, promotion or other change of status of employees.

21. Bell did not perform job evaluations of other employees.

22. Bell did not have the authority to set or adjust other employees’ rates of pay or hours of work.

23. Bell did not customarily and regularly direct the work of two or more employees.

24. Bell did not perform work directly related to the management or general business operations of Defendants or Defendants’ customers.

25. Bell did not exercise discretion or independent judgment with respect to matters of significance.

26. Bell did not make any decisions regarding the branch’s financial budget such as planning or controlling the branch’s budget.

27. Bell was paid a weekly salary.

28. Bell often worked in excess of 40 hours per workweek. In particular, Bell currently estimates that he worked 45-50 hours during a typical workweek

29. Defendants did not pay Bell any compensation for hours worked over 40 during the workweek.

FACTS PERTAINING TO PLAINTIFF COSTANZA

30. From approximately October 2004 until August 2009, Costanza was employed by Defendants as an ABM and was assigned to Defendants' 53 State Street Branch in Boston, Massachusetts and the 441 West Broadway Branch in South Boston. The following factual allegations pertain to Costanza's employment as an ABM.

31. Costanza's primary duties did not include managing either his assigned branch or any department or subdivision thereof.

32. Costanza spent the great majority of his time performing the same duties as hourly personal bankers and tellers. These duties included, *inter alia*, servicing bank customers and assisting them with their daily banking needs.

33. Costanza did not have the authority to hire or fire other employees and did not make any suggestions or recommendations as to the advancement, promotion or other change of status of employees.

34. Costanza did not perform job evaluations of other employees.

35. Costanza did not have the authority to set or adjust other employees' rates of pay or hours of work.

36. Costanza did not perform work directly related to the management or general business operations of Defendants or Defendants' customers.

37. Costanza did not exercise discretion or independent judgment with respect to matters of significance.

38. Costanza did not make any decisions regarding the branch's financial budget such as planning or controlling the branch's budget.

39. Costanza was paid a weekly salary.

40. Costanza often worked in excess of 40 hours per workweek. In particular, Costanza currently estimates that he worked an average of 45 hours during a typical workweek

41. Defendants did not pay Costanza any compensation for hours worked over 40 during the workweek.

FACTS PERTAINING TO DEFENDANTS

42. In addition to Plaintiffs, Defendants employ hundreds of ABMs at their Citizens Bank branch locations throughout Pennsylvania, New Jersey, Delaware, Connecticut, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

43. Regardless of branch location, Defendants' ABMs are paid a salary.

44. Regardless of branch location, Defendants' ABMs regularly work in excess of 40 hours per week.

45. Regardless of branch location, Defendants' ABMs receive no compensation for hours worked over 40 during the workweek.

46. Regardless of branch location, Defendants' ABMs work pursuant to companywide practices and procedures that strictly limit their ability to perform meaningful executive or administrative functions within the branch locations.

47. Regardless of branch location, Defendants' ABMs were classified by Defendants as exempt from the overtime requirements of the FLSA.

48. Regardless of branch locations, Defendants' ABMs assigned to branches within the Commonwealth of Pennsylvania were classified by Defendants as exempt from the overtime requirements of the PMWA.

49. Regardless of branch locations, Defendants' ABMs assigned to branches within the Commonwealth of Massachusetts were classified by Defendants as exempt from the overtime requirements of the MWA.

50. Defendants have acted willfully and with reckless disregard of clearly applicable FLSA, PMWA, and MWA provisions by failing to compensate Plaintiffs and the class members for hours worked in excess of 40 during the workweek and, with respect to such hours, failing to compensate Plaintiffs and other ABMs based upon the overtime premium pay rate of one and one-half times their regular hourly pay rate.

COLLECTIVE ACTION ALLEGATIONS UNDER THE FLSA

51. Plaintiffs bring their FLSA claims as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of the following class of potential opt-in litigants (the "FLSA Class"):

All Assistant Branch Managers employed at Citizens Bank retail branches during any workweek since March 10, 2007 who were paid a salary and classified by Defendants as exempt from the FLSA's overtime pay mandates.

52. Collective action treatment of Plaintiffs' FLSA claims is appropriate under FLSA Section 16(b), 29 U.S.C. §216(b), because Plaintiffs and the FLSA Class have been subjected to the common business practices described in paragraphs 42-47 *supra*, and the success of their claims depends on the resolution of common questions of law and fact. Common questions of law include, *inter alia*, whether, Defendants' company-wide practice of paying ABMs at their branches a salary and classifying them as exempt from overtime compensation violated the

FLSA. As such, Plaintiffs and the FLSA Class are “similarly situated” as that term has been interpreted under FLSA Section 16(b).

CLASS ACTION ALLEGATIONS UNDER THE PMWA

53. Plaintiff Bell brings his PMWA claims as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of the following class (the “Pennsylvania Class”):

All Assistant Branch Managers employed at Citizens Bank retail branches in Pennsylvania during any workweek since March 10, 2007 who were paid a salary and classified by Defendants as exempt from the PMWA’s overtime pay mandates.

54. Class action treatment of Plaintiff Bell’s PMWA claim is appropriate because, as alleged in paragraphs 55-61 *infra*, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

55. The Pennsylvania Class includes over three hundred individuals and, as such, is so numerous that joinder of all class members is impracticable.

56. Plaintiff Bell is a member of the Pennsylvania Class, and his PMWA claim is typical of the claims of other Pennsylvania Class members. For example, Plaintiff Bell and the Pennsylvania Class members share an identical legal and financial interest in obtaining a judicial finding that Defendants violated the PMWA when it failed to pay them overtime compensation for hours worked over 40 in a single workweek. Plaintiff Bell has no interests that are antagonistic to or in the conflict with the Pennsylvania Class’s collective interest in obtaining such a judicial finding.

57. Plaintiff Bell will fairly and adequately represent the interests of the class, and has retained competent and experienced counsel who will effectively represent the interests of the Pennsylvania Class.

58. Questions of law and fact are common to the class, as referenced in paragraph 52

supra.

59. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual Pennsylvania Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party Pennsylvania Class members.

60. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because Defendants acted or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to Plaintiff Bell and the Pennsylvania Class as a whole. The Pennsylvania Class is entitled to injunctive relief to end Defendants' common, illegal failure to compensate Pennsylvania Class members with overtime compensation for hours worked over 40 in a single workweek.

61. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact, as referenced in paragraph 52 *supra*, predominate over any questions affecting only individual Pennsylvania Class members. In the absence of class litigation, such common questions of law and fact would need to be resolved in multiple proceedings, making class litigation superior to other available methods for the fair and efficient adjudication of this litigation.

CLASS ACTION ALLEGATIONS UNDER THE MWA

62. Plaintiff Costanza brings his MWA claim as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of the following class (the "Massachusetts Class"):

All Assistant Branch Managers employed at Citizens Bank retail branches in Massachusetts during any workweek since March 10, 2008 who were paid a

salary and classified by Defendants as exempt from the MWA's overtime pay mandates.

63. Class action treatment of Plaintiff Costanza's MWA claim is appropriate because, as alleged in paragraphs 64-70 *infra*, all of Federal Rule of Civil Procedure 23's class action requisites are satisfied.

64. The Massachusetts Class includes over two hundred individuals and, as such, is so numerous that joinder of all class members is impracticable.

65. Plaintiff Costanza is a member of the Massachusetts Class, and his MWA claim is typical of the claims of other Massachusetts Class members. For example, Plaintiff Costanza and the Massachusetts Class members share an identical legal and financial interest in obtaining a judicial finding that Defendants violated the MWA when it failed to pay them overtime compensation for hours worked over 40 in a single workweek. Plaintiff Costanza has no interests that are antagonistic to or in the conflict with the Massachusetts Class's collective interest in obtaining such a judicial finding.

66. Plaintiff Costanza will fairly and adequately represent the interests of the Massachusetts Class, and he has retained competent and experienced counsel who will effectively represent the interests of the Massachusetts Class.

67. Questions of law and fact are common to the class, as referenced in paragraph 52 *supra*.

68. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(1) because the prosecution of separate actions by individual Massachusetts Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants and/or because adjudications with respect to individual class members would as a practical matter be dispositive of the interests of non-party Massachusetts

Class members.

69. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because Defendants acted or refused to act on grounds generally applicable to the class, making appropriate declaratory and injunctive relief with respect to Plaintiff Costanza and the Massachusetts Class as a whole. The Massachusetts Class is entitled to injunctive relief to end Defendants' common, illegal failure to compensate Massachusetts Class members with overtime compensation for hours worked over 40 in a single workweek.

70. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact, as referenced in paragraph 52 *supra*, predominate over any questions affecting only individual Massachusetts Class members. In the absence of class litigation, such common questions of law and fact would need to be resolved in multiple proceedings, making class litigation superior to other available methods for the fair and efficient adjudication of this litigation.

COUNT I
(Alleging Violations of the FLSA)

71. All previous paragraphs are incorporated as though fully set forth herein.

72. Plaintiffs and the FLSA Class are employees entitled to the FLSA's protections.

73. Defendants are employers covered by the FLSA.

74. The FLSA entitles employees to compensation for every hour worked in a workweek. *See* 29 U.S.C. § 206(b).

75. The FLSA entitles employees to overtime compensation "not less than one and one-half times" their regular rate of pay for all hours worked over 40 in a workweek. *See* 29 U.S.C. § 207(a)(1).

76. Defendants violated the FLSA by failing to compensate Plaintiffs and the FLSA Class for hours worked in excess of 40 during the workweek and, with respect to such hours, failing to compensate Plaintiffs and the FLSA Class based upon the overtime premium pay rate of one and one-half times their regular pay rate.

77. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions and, thus, have committed a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

COUNT II
(Alleging PMWA Violations)

78. All previous paragraphs are incorporated as though fully set forth herein.

79. Defendants are employers covered by the overtime pay mandates of the PMWA, and Plaintiff Bell and the Pennsylvania Class are employees entitled to the PMWA's protections.

80. The PMWA entitles employees to compensation for every hour worked in a workweek. *See* 43 P.S. § 333.104(a).

81. The PMWA entitles employees to overtime compensation "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 in a workweek. *See* 43 P.S. § 333.104(c).

82. Defendants violated the PMWA by failing to compensate Plaintiff Bell and the Pennsylvania Class for hours worked in excess of 40 during the workweek and, with respect to such hours, failing to compensate Plaintiff Bell and the Pennsylvania Class based upon the overtime premium pay rate of one and one-half times their regular pay rate.

83. In violating the PMWA, Defendants acted willfully and with reckless disregard of clearly applicable PMWA provisions.

COUNT III
(Alleging MWA Violations)

84. All previous paragraphs are incorporated as though fully set forth herein.

85. Defendants are employers covered by the overtime pay mandates of the MWA, and Plaintiff Costanza is an employee entitled to the MWA's protections.

86. The MWA requires that "no employer in [Massachusetts] shall employ any of his employees in an occupation . . . for a work week longer than forty hours, unless such employee receives compensation for his employment in excess of forty hours at a rate not less than one and one half times the regular rate at which he is employed." *See* Mass. Gen. Laws ch. 151, § 1A.

87. Defendants violated the MWA by failing to compensate Plaintiff Costanza and Massachusetts Class members for hours worked in excess of 40 during the workweek and, with respect to such hours, failing to compensate Plaintiff Costanza and the Massachusetts Class based upon the overtime premium pay rate of one and one-half times their regular pay rate.

88. In violating the MWA, Defendants acted willfully and with reckless disregard of clearly applicable MWA provisions.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and other class members, seeks the following relief:

A. An order permitting Plaintiffs' FLSA claim to proceed as a collective action and permitting the PMWA claims and MWA claims to proceed as a class actions pursuant to Fed. R. Civ. P. 23;

B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all potential members of the FLSA Class apprising them of the pendency of this action and permitting them to assert timely FLSA claims by joining this action;

- C. An injunction prohibiting Defendants from engaging in the unlawful conduct alleged herein;
- D. A declaratory judgment that the practices alleged herein violate the FLSA;
- E. Back pay damages and prejudgment interest to the fullest extent permitted under federal and state law;
- F. Liquidated and treble damages to the fullest extent permitted under federal and state law;
- G. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under the law; and
- H. Such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED

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

Date: April 29, 2010

/s/ Peter Winebrake

Peter Winebrake

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