

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

KEVIN MARTIN, JOHN R.	:	
DEPAOLANTONIO, JR., PATRICIA A.	:	
GAHAN, JAMES HOLLIDAY, and MARY E.	:	CIVIL ACTION
RYAN, on behalf of themselves and similarly	:	
situated employees,	:	NO. 10-cv-00260-MSG
	:	
Plaintiffs,	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
CITIZENS FINANCIAL GROUP, INC., RBS	:	
CITIZENS, N.A. (d/b/a Citizens Bank), and	:	
CITIZENS BANK OF PENNSYLVANIA	:	
(d/b/a Citizens Bank),	:	
	:	
Defendants.	:	

AMENDED COLLECTIVE ACTION COMPLAINT

Plaintiffs Kevin Martin, John R. DePaolantonio, Jr., Patricia A. Gahan, James Holliday, and Mary E. Ryan (“Plaintiffs”), on behalf of themselves and similarly situated employees, bring this collective action lawsuit, pursuant to 29 U.S.C. § 216(b), against Defendants Citizens Financial Group, Inc., RBS Citizens, N.A. (d/b/a Citizens Bank), and Citizens Bank of Pennsylvania (d/b/a Citizens Bank) (“Defendants”) to recover for violations of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* for unpaid overtime compensation and related penalties and damages on behalf of all nonexempt employees working at Defendants’ retail branch locations. The following 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. Venue in this Court is proper under 28 U.S.C. § 1391.

THE RELEVANT TIME PERIOD

3. The FLSA permits Plaintiffs to recover unpaid wages and liquidated damages for up to three years prior to the filing of the Complaint on January 21, 2010. *See* Doc. 1.

Accordingly, the allegations set forth herein concern Plaintiffs' employment since January 21, 2007.

PARTIES

4. Plaintiff Kevin Martin ("Martin") is an individual residing in West Chester, Pennsylvania and has been assigned to Defendants' King of Prussia Plaza Branch located in King of Prussia, Pennsylvania. On January 25, 2010, Martin filed a notice of consent to become a party plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). *See* Doc. 2.

5. Plaintiff John R. DePaolantonio, Jr. ("DePaolantonio") is an individual residing in Coatesville, Pennsylvania and has been assigned to Defendants' West Goshen Branch in West Chester, Pennsylvania, Defendants' Exton Branch located in Exton, Pennsylvania, Defendants' Kimberton Branch located in Phoenixville, Pennsylvania, and Defendants' Devon Branch located in Devon, Pennsylvania. On February 17, 2010, DePaolantonio filed a notice of consent to become a party plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). *See* Doc. 17.

6. Plaintiff Patricia A. Gahan ("Gahan") is an individual residing in New Hope, Pennsylvania and has been assigned to Defendants' Southampton Giant Branch located in Southampton, Pennsylvania and Defendants' Abington Branch located in Abington,

Pennsylvania. On February 15, 2010, Gahan filed a notice of consent to become a party plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). *See* Doc. 14.

7. Plaintiff James Holliday (“Holliday”) is an individual residing in Philadelphia, Pennsylvania and has been assigned to Defendants’ Roxborough Branch located in Philadelphia, Pennsylvania and Defendants’ Overbrook Branch located in Philadelphia, Pennsylvania. On February 17, 2010, Holliday filed a notice of consent to become a party plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). *See* Doc. 15.

8. Plaintiff Mary E. Ryan (“Ryan”) is an individual residing in Maple Shade, New Jersey and has been assigned to Defendants’ Medford Acme Branch in Medford, New Jersey. On February 23, 2010, Ryan filed a notice of consent to become a party plaintiff to this lawsuit pursuant to 29 U.S.C. § 216(b). *See* Doc. 20.

9. Plaintiffs Martin, DePaolantonio, Gahan, Holliday, and Ryan are collectively referred to herein as “Plaintiffs.”

10. 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.

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

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

13. Defendants 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.

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

15. Defendants are “employers” engaged in interstate “commerce” and/or in the production of “goods” for “commerce” within the meaning of the FLSA, 29 U.S.C. §203.

16. Defendants, individually and collectively, employ thousands of employees engaged in interstate commerce.

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

18. Defendants have gross operating revenues in excess of \$500,000.00 (exclusive of excise taxes at the retail level which are separately stated).

19. Defendants are employers covered by the record-keeping, minimum wage, wage payment, and overtime mandates of the FLSA.

FACTS PERTAINING TO PLAINTIFF MARTIN

20. Martin has been continuously employed by Defendants since in or around August 6, 2007. During this time Martin has held the positions of “Teller,” “Advanced Teller,” and “Banker” for Defendants.

21. Martin is not exempt from the mandates of the FLSA.

22. From approximately August 2007 until May 2009, Martin was regularly scheduled to work 40 hours each workweek for Defendants.

23. Throughout his employment with Defendants, Martin has been paid an hourly wage and has been engaged in commerce or in an occupation directly related to producing, working on, manufacturing, handling, or transporting goods in commerce.

24. As discussed below, Defendants have failed to pay Martin for all of the time Martin has spent performing his day-to-day work activities for Defendants.

25. Defendants denied Martin pay for his work activities by offering him future time off or “comp time” during a following week instead of paying Martin overtime compensation for hours worked over 40 in a particular workweek.

26. Defendants denied Martin pay for his work activities by changing or modifying his weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Martin’s time sheet for that particular workweek.

27. Defendants denied Martin pay for his work activities by requiring Martin to change or modify his weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Martin’s time sheet for that particular workweek.

28. Defendants denied Martin pay for his work activities by instructing Martin not to record hours worked over 40 in a single workweek on his timesheet for that particular workweek.

29. Defendants denied Martin pay for his work activities by having Martin perform work during his uncompensated break times.

30. Since Martin was regularly scheduled to work 40 hours each workweek between August 2007 and May 2009, his uncompensated work time during that period would be considered overtime and thus compensable at an overtime premium of at least one and one-half times his regular hourly rate of pay.

FACTS PERTAINING TO PLAINTIFF DEPAOLANTONIO

31. DePaolantonio has been continuously employed by Defendants since in or around January 30, 2002. During this time DePaolantonio has held the positions of “Teller,” “Advanced Teller,” and “Teller Manager” for Defendants.

32. DePaolantonio is not exempt from the mandates of the FLSA.

33. Throughout his employment, DePaolantonio has been regularly scheduled to work 40 hours each workweek for Defendants.

34. Throughout his employment with Defendants, DePaolantonio has been paid an hourly wage and has been engaged in commerce or in an occupation directly related to producing, working on, manufacturing, handling, or transporting goods in commerce.

35. As discussed below, Defendants have failed to pay DePaolantonio for all of the time DePaolantonio has spent performing his day-to-day work activities for Defendants.

36. Defendants denied DePaolantonio pay for his work activities by offering him future time off or “comp time” during a following week instead of paying DePaolantonio overtime compensation for hours worked over 40 in a particular workweek.

37. Defendants denied DePaolantonio pay for his work activities by instructing DePaolantonio not to record hours worked over 40 in a single workweek on his timesheet for that particular workweek.

38. Defendants denied DePaolantonio pay for his work activities by having DePaolantonio perform work during his uncompensated break times.

39. Since DePaolantonio has been regularly scheduled to work 40 hours each workweek, his uncompensated work time would be considered overtime and thus compensable at an overtime premium of at least one and one-half times his regular hourly rate of pay.

FACTS PERTAINING TO PLAINTIFF GAHAN

40. Gahan was employed by Defendants from in or around January 1997 until approximately May 30, 2008. During this time Gahan has held the positions of “Teller” and “Senior Teller” for Defendants.

41. While employed by Defendants, Gahan was not exempt from the mandates of the FLSA.

42. Throughout her employment with Defendants, Gahan was regularly scheduled to work 40 hours each workweek for Defendants.

43. Throughout her employment with Defendants, Gahan was paid an hourly wage and was engaged in commerce or in an occupation directly related to producing, working on, manufacturing, handling, or transporting goods in commerce.

44. As discussed below, Defendants have failed to pay Gahan for all of the time Gahan spent performing her day-to-day work activities for Defendants.

45. Defendants denied Gahan pay for her work activities by offering her future time off or “comp time” during a following week instead of paying Gahan overtime compensation for hours worked over 40 in a particular workweek.

46. Defendants denied Gahan pay for her work activities by changing or modifying her weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Gahan’s time sheet for that particular workweek.

47. Defendants denied Gahan pay for her work activities by requiring Gahan to change or modify her weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Gahan’s time sheet for that particular workweek.

48. Defendants denied Gahan pay for her work activities by instructing Gahan not to record hours worked over 40 in a single workweek on her timesheet for that particular workweek.

49. Defendants denied Gahan pay for her work activities by having Gahan perform work during Gahan's uncompensated break times.

50. Since Gahan was regularly scheduled to work 40 hours each workweek, her uncompensated work time would be considered overtime and thus compensable at an overtime premium of at least one and one-half times her regular hourly rate of pay.

FACTS PERTAINING TO PLAINTIFF HOLLIDAY

51. Holliday was employed by Defendants from in or around December 10, 2007 until October 13, 2009. During this time Holliday held the position of "Banker" for Defendants.

52. While employed by Defendants, Holliday was not exempt from the mandates of the FLSA.

53. Throughout his employment with Defendants, Holliday was regularly scheduled to work 40 hours each workweek for Defendants.

54. Throughout his employment with Defendants, Holliday was paid an hourly wage and was engaged in commerce or in an occupation directly related to producing, working on, manufacturing, handling, or transporting goods in commerce.

55. Defendants failed to pay Holliday for all of the time Holliday spent performing his day-to-day work activities for Defendants.

56. Defendants denied Holliday pay for his work activities by offering him future time off or "comp time" during a following week instead of paying Holliday overtime compensation for hours worked over 40 in a particular workweek.

57. Defendants denied Holliday pay for his work activities by changing or modifying his weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Holliday's time sheet for that particular workweek.

58. Defendants denied Holliday pay for his work activities by requiring Holliday to change or modify his weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Holliday's time sheet for that particular workweek.

59. Defendants denied Holliday pay for his work activities by instructing Holliday not to record hours worked over 40 in a single workweek on his timesheet for that particular workweek.

60. Defendants denied Holliday pay for his work activities by having Holliday perform work during Holliday's uncompensated break times.

61. Since Holliday was regularly scheduled to work 40 hours each workweek, his uncompensated work time would be considered overtime and thus compensable at an overtime premium of at least one and one-half times his regular hourly rate of pay.

FACTS PERTAINING TO PLAINTIFF RYAN

62. Ryan has been continuously employed by Defendants since in or around April 21, 2008. During this time Ryan has held the position of "Banker" for Defendants.

63. Ryan is not exempt from the mandates of the FLSA.

64. Throughout her employment with Defendants, Ryan has been regularly scheduled to work 40 hours each workweek for Defendants.

65. Throughout her employment with Defendants, Ryan has been paid an hourly wage and has been engaged in commerce or in an occupation directly related to producing, working on, manufacturing, handling, or transporting goods in commerce.

66. Defendants have failed to pay Ryan for all of the time Ryan spent performing her day-to-day work activities for Defendants.

67. Defendants denied Ryan pay for her work activities by offering her future time off or “comp time” during a following week instead of paying Ryan overtime compensation for hours worked over 40 in a particular workweek.

68. Defendants denied Ryan pay for her work activities by changing or modifying her weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on Ryan’s time sheet for that particular workweek.

69. Defendants denied Ryan pay for her work activities by requiring Ryan to change or modify her weekly time sheet to eliminate or reduce the hours over 40 that were worked and listed on the time sheet by Ryan for that particular workweek.

70. Defendants denied Ryan pay for her work activities by instructing Ryan not to record hours worked over 40 in a single workweek on her timesheet for that particular workweek.

71. Defendants denied Ryan pay for her work activities by having Ryan perform work during Ryan’s uncompensated break times.

72. Since Ryan has been regularly scheduled to work 40 hours each workweek, her uncompensated work time would be considered overtime and thus compensable at an overtime premium of at least one and one-half times her regular hourly rate of pay.

COLLECTIVE ACTION ALLEGATIONS

73. In addition to Plaintiffs, Defendants employ numerous other nonexempt employees at their Citizens Bank branch locations throughout Pennsylvania, New Jersey, Delaware, Connecticut, Massachusetts, New Hampshire, New York, Rhode Island and Vermont.

This includes, but is not limited to, the following positions: Bank Teller, Customer Service Representatives, Advanced Teller, Senior Teller, Head Teller or Lead Teller, Personal Banker, and Banker. Like Plaintiffs, these individuals are paid on an hourly basis, have been regularly scheduled to work approximately 40 hours each workweek, and have not been compensated for all of their work activities.

74. Plaintiffs and the individuals described in paragraph 73 are similarly situated because they have been subject to Defendants' practice of failing to pay hourly branch employees for all hours worked by: (a) prohibiting their employees from recording all time worked in excess of 40 hours per workweek, (b) erasing or modifying their employees' recorded time in order to eliminate or reduce overtime hours, (c) providing "comp time" to their employees in subsequent workweeks in lieu of paying overtime compensation for hours worked in excess of 40 hours per workweek, and (d) requiring their employees to perform work during unpaid breaks.

75. As a result of the methods described herein, Defendants have failed to compensate Plaintiffs and similarly situated nonexempt retail branch employees for this time, and when warranted, and, where applicable, failed to compensate Plaintiffs and similarly situated nonexempt retail branch employees with the legally mandated overtime premium for hours worked over 40 in a workweek.

76. Plaintiffs bring this lawsuit 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:

All persons who were, are, or will be employed by the Defendants as nonexempt employees at their Citizens Bank retail branches since January 21, 2007 who have

not been compensated at one and one-half times the regular rate of pay for all services performed in excess of forty hours per week.¹

77. Plaintiffs and the above class members are “similarly situated,” as that term is defined in 29 U.S.C. § 216(b), because, *inter alia*, they perform essentially the same respective job functions and worked pursuant to Defendants’ same compensation policy, plan, or procedure that requires them to perform work and/or requires them to be present at work while not compensating them for their services. In turn, this denies Plaintiffs and the class wages for services performed, and, when applicable, denies them their overtime premium pay for hours worked over 40 in a workweek. Resolution of this action requires inquiry into many common facts, including, *inter alia*, Defendants’ common compensation, timekeeping, and payroll practices.

78. In failing to properly compensate Plaintiffs and similarly situated nonexempt retail branch employees for all hours spent working, Defendants have acted willfully and with reckless disregard of clearly applicable FLSA provisions.

COUNT I
(Alleging Violations of the FLSA)

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

80. Plaintiffs and the class members are employees entitled to the FLSA’s protections.

81. Defendants are employers covered by the FLSA.

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

¹ The names and addresses of the putative representative action plaintiffs are available from Defendants. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

83. 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).

84. Defendants violated the FLSA by failing to compensate Plaintiffs and class members for all hours worked and by failing to pay Plaintiffs and class members the legally mandated overtime premium rate of not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek. Therefore, Defendants have violated, and continue to violate, the FLSA, 29 U.S.C. §§201, *et seq.*, including 29 U.S.C. §207(a)(1).

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

86. Plaintiffs, on behalf of themselves and all similarly situated employees of Defendants, seeks damages in the amount of all respective unpaid overtime compensations at a rate of one and one-half times the regular rate of pay for work performed in excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.

87. Plaintiffs, on behalf of themselves and all similarly situated employees of Defendants, also seek recovery of all attorneys’ fees, costs, and expenses of this action, to be paid by Defendants, as provided by the FLSA, 29 U.S.C. §216(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek the following relief on behalf of themselves and all other similarly situated employees who opt-in to this action:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all putative representative action plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);

C. An injunction against Defendants and their officers, agents, successors, employees, representatives, and any and all persons acting in concert with Defendants, as provided by law, from engaging in each of the unlawful practices, policies, and patterns set forth herein;

D. A declaratory judgment that the practices complained of herein are unlawful under the FLSA;

E. Back pay damages and prejudgment interest to the fullest extent permitted under the law;

F. Liquidated damages to the fullest extent permitted under the 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: February 25, 2010

/s/ R. Andrew Santillo
Peter Winebrake
R. Andrew Santillo
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