

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

DENNIS THIERET, RONALD L. )  
BUCKNER, DAVID S. BENGEL, )  
DAVID D. McDONALD, MICHAEL )  
CALLAHAN, MICHAEL D. DRAZICH, )  
JOHN FARR, CHARLES LEGEZA, )  
RONALD PERRIS, ERIC DeFAZIO, )  
JOHN BRADFORD, RONALD )  
LAWRENCE, DAVID M. NELSON, )  
DAVE SIMPSON, FRANK CINICOLA, )  
SCOTT URQUAHANT, DAVID )  
CORNELIUS, DALTON MINERD, )  
JEFFREY B. WHITFORD, MARK A. )  
SUTHERIN, JR., RANDY DEVER, )  
ROBERT THOMAS, MATTHEW )  
RALSTON, PAT GOLDEN, DAVID H. )  
HANEY, ERIC L. GROH, DAVID M. )  
STITT, ROBERT SMITH, BRIAN )  
GEISER, MICHAEL SCHUBERT, )  
KEVIN E. SWEENEY, CHRISTIAN )  
MARINI, THOMAS L. HANDERHAN, )  
MICHAEL HARTLE and ARTHUR )  
GOLDBERG, on their own behalf and on )  
behalf of those similarly situated, )

Plaintiffs )

vs. )

PEPSI BEVERAGES COMPANY, )

Defendant )

Civil Action No.

**COMPLAINT**

**I. Parties**

1. Plaintiff, Dennis Thieret, is an individual residing at 411 Pointview Road, Pittsburgh, Pennsylvania 15227.

2. Plaintiff, Ronald L. Buckner, is an individual residing at 137 Broadcrest Drive, Pittsburgh, Pennsylvania 15235.

3. Plaintiff, David S. Bengel, is an individual residing at 207 Hillpoint Drive, Jeannette, Pennsylvania 15644.

4. Plaintiff, David D. McDonald, is an individual residing at 770 Sunrise Drive, Leechburg, Pennsylvania 15656.

5. Plaintiff, Michael Callahan, is an individual residing at 3710 McWhinney Street, Munhall, Pennsylvania 15120.

6. Plaintiff, Michael D. Drazich, is an individual residing at 91 Lynn Portal Road, Avella, Pennsylvania 15310.

7. Plaintiff, John Farr, is an individual residing at 512 Parker Road, Sarver, Pennsylvania 16055.

8. Plaintiff, Charles Legeza, is an individual residing at 417 Deer Park West, Jefferson Hills, Pennsylvania 15025.

9. Plaintiff, Ronald Perris, is an individual residing at 5735 Mifflin Road, Pittsburgh, Pennsylvania 15207.

10. Plaintiff, Eric DeFazio, is an individual residing at 100 High Meadow Road, Baden, Pennsylvania 15005.

11. Plaintiff, John Bradford, is an individual residing at 400 Baker Drive, Aliquippa, Pennsylvania 15001.

12. Plaintiff, Ronald Lawrence, is an individual residing at 126 Jenny Drive, Butler, Pennsylvania 16001.

13. Plaintiff, David M. Nelson, is an individual residing at 194 Calhoun Road, Aliquippa, Pennsylvania 15001.

14. Plaintiff, Dave Simpson, is an individual residing at 2012 Crafton Boulevard, Pittsburgh, Pennsylvania 15205.

15. Plaintiff, Frank Cinicola, is an individual residing at 231 St. Leonard's Lane, Cranberry Township, Pennsylvania 16066.

16. Plaintiff, Scott Urquahant, is an individual residing at 1799 Renee Drive, South Park, Pennsylvania 15129.

17. Plaintiff, David Cornelius, is an individual residing at 4198 Frew Mill Road, Portersville, Pennsylvania 16051.

18. Plaintiff, Dalton Minerd, is an individual residing at 9099 Meadow Oak Drive, Allison Park, Pennsylvania 15101.

19. Plaintiff, Jeffrey B. Whitford, is an individual residing at 1115 – 25<sup>th</sup> Street, Beaver Falls, Pennsylvania 15010.

20. Plaintiff, Mark A. Sutherin, Jr., is an individual residing at 2489 Jefferson Avenue, Washington, Pennsylvania 15301.

21. Plaintiff, Randy Dever, is an individual residing at 14 Marie Road, Washington, Pennsylvania 15301.

22. Plaintiff, Robert Thomas, is an individual residing at 1011 Alpine Drive, Mars, Pennsylvania 16046.

23. Plaintiff, Matthew Ralston, is an individual residing at 529 Highview Road, Pittsburgh, Pennsylvania 15234.

24. Plaintiff, Pat Golden, is an individual residing at 25 Greenview Drive, Carnegie, Pennsylvania 15106.

25. Plaintiff, David H. Haney, is an individual residing at 2092 Leo Street, North Huntingdon, Pennsylvania 15642

26. Plaintiff, Eric L. Groh, is an individual residing at 651 Glowood Drive, Pittsburgh, Pennsylvania 15227.

27. Plaintiff, David M. Stitt, is an individual residing at 436 Reynolds Avenue, Kittanning, Pennsylvania 16201.

28. Plaintiff, Robert Smith, is an individual with an address at P. O. Box 372, South Heights, Pennsylvania 15081.

29. Plaintiff, Brian Geiser, is an individual residing at 45 Allison Road, Bulger, Pennsylvania 15019.

30. Plaintiff, Michael Schubert, is an individual residing at 3809 Collins Way, Weirton, West Virginia 26062.

31. Plaintiff, Kevin E. Sweeney, is an individual residing at 413 Tivoli Road, Pittsburgh, Pennsylvania 15239.

32. Plaintiff, Christian Marini, is an individual residing at 628 Brierly Lane, West Mifflin, Pennsylvania 15122.

33. Plaintiff, Thomas L. Handerhan, is an individual residing at 14 Lorraine Drive, Pittsburgh, Pennsylvania 15205.

34. Plaintiff, Michael Hartle, is an individual residing at 124 Alcott Drive, Sewickley, Pennsylvania 15143.

35. Plaintiff, Arthur Goldberg, is an individual residing at 205 Shaw Court, New Alexandria, Pennsylvania 15670.

36. Defendant, Pepsi Beverages Company, a division of Pepsi Bottling Group, Inc. (hereinafter referred to as “Pepsi”), has offices located at 400 Graham Street, McKees Rocks, Pennsylvania 15136, and is an employer within the meaning of Section 3(d) of the Fair Labor Standards Act (“Act”), 29 U.S.C. §203(d).

## **II. Jurisdiction and Venue**

37. Jurisdiction of this action is conferred on this Court by Sections 3(s)(1)(A) and 16(b) of the Act, 29 U.S.C. §203(s)(1)(A) and §216(b), and by the provisions of 28 U.S.C. §1337 relating to “any civil action or proceeding arising under any act of Congress regulating commerce”.

38. This Court is the proper venue for this action under Section 16(b) of the Act, 29 U.S.C. §216(b), and by the provisions of 29 U.S.C. §1391(b), as the actions of the defendant complained of herein either occurred within this judicial district and/or had their intended effects within this judicial district.

## **III. Factual Averments**

39. The above-named plaintiffs are employees or former employees of Pepsi and bring this action to recover unpaid overtime compensation, liquidated damages, attorney’s fees and costs under the provisions of Section 16(b) of the Act, 29 U.S.C. §216(b).

40. All of the plaintiffs are or were employed by Pepsi at its McKees Rocks, Pennsylvania, facility as pre-sell merchandisers and are or were non-exempt employees within the meaning of the Act and who are or were represented by General Teamsters, Chauffeurs and Helpers Local 249 for purposes of collective bargaining. A copy of the collective bargaining

agreement effective May 1, 2010, to April 30, 2015, covering the plaintiffs is attached hereto and made a part hereof as "Exhibit 1".

41. The overtime compensation provisions set forth in Article 1, Section 3, of the collective bargaining agreement with respect to pre-sell merchandisers have been in effect for at least three years prior to the effective date of the current collective bargaining agreement.

**IV. Statement of Claim**

**29 U.S.C. §207 and §217**

42. Plaintiffs hereby incorporate by reference the averments contained in paragraphs 1 through 41 as fully as though herein set forth at length.

43. Section 7 of the Act, 29 U.S.C. §207, requires that all non-exempt employees be paid at the rate of two and one-half times the regular hourly rate of pay for all hours worked in excess of forty per week.

44. Defendant has been paying plaintiffs overtime compensation in accordance with the terms set forth in the collective bargaining agreement since at least January 2007 and continuing through the present time instead of in accordance with the Act.

45. By letter dated March 4, 2011, the undersigned counsel for plaintiffs wrote a letter to John Alder, attorney for Pepsi, informing him that he was retained to represent 33 Pepsi employees to recover unpaid overtime compensation under the Act. The letter indicated that the undersigned counsel was prepared to file suit on March 14, 2011, unless the matter could be amicably resolved. A copy of said letter is attached hereto and made a part hereof as "Exhibit 2".

46. In response to said letter of March 4, 2011, the undersigned counsel was contacted by Attorney Samantha Hardy of the law firm of Sheppard Mullin, of San Diego,

California, who indicated that she represented Pepsi in this matter. Ms. Hardy requested that the undersigned delay filing suit so that Pepsi could investigate and attempt resolution of the matter. The undersigned agreed to delay filing suit upon the condition that Pepsi agreed to toll the statute of limitations as of March 14, 2011, the date that the undersigned was originally prepared to file suit. A copy of the e-mail exchange memorializing this agreement is attached hereto and made a part hereof as "Exhibit 3".

47. The parties were not able to resolve the matter and it is necessary for plaintiffs to have the services of an attorney to institute and prosecute this action against defendant on their behalf and on behalf of those similarly situated who executed Consent forms.

48. Plaintiffs believe that Pepsi's violation of the Act was willful because, despite knowledge that plaintiffs were not exempt under the Motor Carriers exemption or any other exemption, and plaintiffs knowledge of the results of a similar lawsuit involving a related company, Frito-Lay, Inc., Pepsi continued to refuse and continues to pay overtime compensation in accordance with the Act.

49. Defendant has violated the overtime provisions of the Act and continues to refuse to pay overtime compensation to plaintiffs and persons similarly situated in accordance with the Act.

50. Consent forms have been signed by the plaintiffs and are attached hereto as "Exhibit 4".

WHEREFORE, plaintiffs respectfully pray that judgment be entered against defendant:

- A. For an amount that may be found due and owing to plaintiffs and those other employees similar situated who may consent to be part of this action;
- B. For an amount equal as liquidated damages;

- C. For interest thereon;
- D. For reasonable attorney's fees;
- E. For costs of this suit; and
- F. For such other and further relief as the Court may deem proper and just.

JUBELIRER, PASS & INTRIERI, P.C.

BY: /s/ Ernest B. Orsatti

Ernest B. Orsatti, Esquire  
Pa. I.D. #19891  
219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania  
412-281-3850  
412-281-1985 (fax)  
[ebo@jpilaw.com](mailto:ebo@jpilaw.com)  
Attorney for Plaintiffs