

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE**

CHAD HELMS,
on behalf of himself and all
others similarly situated,

Plaintiff,

v.

BIMBO BAKERIES USA, INC. and,
BIMBO FOODS BAKERIES
DISTRIBUTION, LLC

Defendants.

CIVIL ACTION NO: _____

CLASS ACTION AND INDIVIDUAL COMPLAINT

I. INTRODUCTION

This is an action brought on behalf of individuals who are current and former delivery drivers or “Distributors” of Defendants Bimbo Bakeries USA, Inc. and Bimbo Foods Bakeries Distribution, LLC (together, “Bimbo” or “Defendants”) challenging the unlawful misclassification of them as independent contractors instead of employees. Plaintiff asserts claims on his own behalf and a class of all other Maine “Distributors” pursuant to Rule 23 for violations of the Maine’s wage payment and deductions statute, 26 M.R.S.A. §629, and Maine’s overtime statute, 26 M.R.S.A. §664. Plaintiff also asserts an individual claim for violations of the Federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.*

II. PARTIES

1. Plaintiff Chad Helms¹ is an adult resident of Minot, Maine. Since approximately June 2013 to May 2020,² Helms has delivered breads and baked goods on behalf of Defendants in Maine. During the relevant time, he was Defendants' employee as that term is defined under Maine law and the FLSA.

2. Defendant Bimbo Bakeries USA, Inc. is a corporate entity with its headquarters in Horsham, Pennsylvania. Defendant Bimbo Bakeries USA, Inc. conducts business through distribution facilities across the United States.

3. Defendant Bimbo Foods Bakeries, LLC is corporate entity with its headquarters in Horsham, Pennsylvania. It conducts business through distribution facilities across the United States.

4. Defendants are engaged in interstate commerce and employ individuals engaged in interstate commerce and are therefore covered by the FLSA, and they are "employers" as that term is defined under Maine's statutes.

III. JURISDICTION AND VENUE

5. The Court has original jurisdiction over the FLSA claims asserted in this matter pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

6. The Court has supplemental jurisdiction over the state law claims pursuant to 28

¹ The named Plaintiff originally filed opt-in consent forms to participate in an FLSA collective action in the District of New Hampshire, Camp v. Bimbo Bakeries, et al., C.A. No. 1:18-cv-00378-SM (D.N.H.). Upon Defendants' Motion, Judge McAuliffe dismissed the opt-in plaintiffs who worked outside of New Hampshire, finding that there was no personal jurisdiction over Defendants in that forum for the claims of out-of-state plaintiffs. Plaintiff is therefore filing his claims here in Maine where he resides and works for Bimbo Bakeries, where a substantial part of the events giving rise to this action occurred, and where the Defendants are subject to personal jurisdiction.

² Under Maine law, the relevant statute of limitations is six years. See 14 M.R.S.A. § 752.

U.S.C. § 1367.

7. The Court also has jurisdiction over this Action pursuant to 28 U.S.C. § 1332(a) and (d) where the parties are citizens of different states and the amounts in controversy exceed the statutory amounts.

8. Venue in this forum is proper pursuant to 28 U.S.C. §§ 1391(a) and (b), because a substantial part of the events giving rise to this action occurred in this District and the Defendant is subject to personal jurisdiction in this District.

IV. STATEMENT OF FACTS

9. The business of Defendants and their affiliates consists of delivering breads and baked goods to grocery stores and other outlets across the United States under the brand names Sara Lee, Nature's Harvest, and others.

10. Defendants pay workers including Plaintiff to deliver and distribute these breads and baked goods within specific geographic regions unilaterally determined by Defendants and these areas are referred to as "routes" or "territories."

11. Defendants refer to these individuals as "Distributors" or "IBPs."

12. Plaintiff worked for Defendants in Maine.

13. The duties of Plaintiff and other Distributors entail, at least in part, driving vehicles weighing less than 10,000 pounds because, for example, Plaintiff and others often visit stores in their personal vehicles to drop off small orders of products and to arrange displays.

14. On a typical week, Distributors such as the named Plaintiff work at least forty hours per week delivering the baked goods for Defendants. This work mainly consists of driving vehicles to stores within a territory designated by Bimbo, delivering Bimbo's products to these stores, and arranging the products on the shelves according to Bimbo's display standards.

15. Plaintiff Helms generally worked approximately 45 to 50 hours per week and has

sometimes worked 60 to 65 hours per week for Defendants.

16. Defendants treat Plaintiff and other IBPs as independent contractors, claiming that they are not entitled to the protections of state and federal employment laws.

17. Nevertheless, the work of Plaintiff and other IBPs is part of Defendants regular business and their work is integral to Defendants' baked goods distribution business, and Defendants also directly employ delivery drivers who perform the same work for Defendants but who are treated as W2 employees.

18. In order to work for Defendants, Plaintiff and other IBPs were required to pay a substantial sum of money to purchase purported "Distribution Rights". Most IBPs finance these purchases through loans facilitated by Defendants (often via Advantafirst Capital Financial Services, LLC, which is a wholly-owned subsidiary of Defendants' parent company).

19. Plaintiff and other IBPs are not engaged in independent businesses or distinct callings. Rather, Plaintiff and IBPs generally work exclusively for Defendants and (where applicable) their associated corporate entities generally exist for the sole purpose of working for Defendants. In fact, Plaintiff and other IBPs are prohibited from performing any similar delivery work for another company.

20. Defendants exercise virtually unlimited control over Plaintiff's and IBP's work, dictating all prices, requiring Plaintiff and IBPs to deliver to stores that are not profitable, employing supervisors who travel to stores in Plaintiff's territories to review their work, and threatening to terminate Plaintiff and IBPs whose work does not satisfy Defendants' standards. On May 21, 2020, Defendants unilaterally terminated its working relationship with Plaintiff Helms due to alleged unsatisfactory work.

21. Defendants unilaterally determine the "price" that its customers (i.e., the grocery

stores) must pay Defendants for the products that IBPs are required to deliver to Defendants' customers.

22. Defendants then pay Plaintiff and other IBPs compensation for their distribution services each week, in an amount roughly equal to the difference between the amount of money that Defendants' customers pay for products and the amount of money that Defendants purport to "charge" Distributors for Defendants' products.

23. Indeed, Defendants have directly paid weekly compensation to Plaintiff and other IBPs pursuant to the arrangement described above during the relevant statutory period as direct compensation for their delivery services.

24. Plaintiff and other IBP's routinely work more than forty hours per week, and they are not paid any "time-and-a-half" overtime premium for their hours worked over forty.

25. Each week, Defendants also make deductions from the earnings of Plaintiff and other IBPs. These deductions are itemized on weekly "settlement sheets" and include, *inter alia*, deductions for route loan repayments, use of Defendants' electronic equipment, lost or stolen product that is never purchased at retail locations, insurance coverage that benefits Defendants, supplies, truck lease payments, penalties for returning too much stale product to Defendants, and other fines and penalties.

26. In addition, Plaintiff and other IBPs regularly incur work-related expenses for, *inter alia*, gas, vehicle maintenance/repair, and insurance. Defendants do not reimburse Plaintiff and other IBPs for such expenses, which are directly related to the work Plaintiff and other IBPs perform for Defendants.

27. Defendants' misclassification of its delivery drivers as independent contractors and the additional violations of Maine law described above were willful and undertaken in bad

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