

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOSE ORTIZ, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

GOYA FOODS, INC., et al.,

Defendants.

Civil Action No. 19-19003 (SRC)

OPINION

CHESLER, District Judge

This matter comes before the Court on the motion by Defendants Goya Foods, Inc. (“Goya”) and A.N.E. Services, Inc. (“A.N.E.”) (collectively, “Defendants”) to dismiss the First Amended Complaint (“Amended Complaint”) pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs Jose Ortiz, Saul Hernandez, and Pedro Urena (“Plaintiffs”) have opposed the motion. The Court has considered the parties’ submissions. For the reasons that follow, the motion to dismiss will be denied.

I. BACKGROUND

This is an action to recover allegedly unpaid wages. The Court summarized the facts giving rise to this lawsuit in its Opinion of April 3, 2020. In the accompanying Order, the Court dismissed the Complaint for failure to state a claim under New Jersey’s Wage and Hour Law but also gave leave to amend, to add two parties as Plaintiffs and to permit Plaintiffs to assert a claim

under the Pennsylvania Wage Payment and Collection Law. As it writes this Opinion only for the parties, the Court refers them to the April 3, 2020 Opinion for general background. Here, the Court will focus on the allegations and claims of the Amended Complaint.

According to the Amended Complaint, Plaintiffs are residents of Pennsylvania who maintain sales routes in that state to sell and distribute Defendants' Goya Foods products to retailers and other buyers. Each Plaintiff performs this work for Goya and receives compensation according to some substantially similar version of a contract known as the "Broker Agreement." The Broker Agreement, according to the Amended Complaint, sets the non-negotiable terms of the working relationship between the parties. The Broker Agreement provides that Plaintiffs are independent contractors and expressly disclaims any employer-employee relationship. (Milstrey Decl., Ex. A, B and C at ¶ 4(a)).

Plaintiffs allege that, in spite of the Broker Agreement's characterization, Plaintiffs and other similarly situated salespeople in fact function as employees of Goya. According to the Amended Complaint, Defendants retain and exercise pervasive control over the work performed by Plaintiffs. It alleges:

The sales representatives are assigned routes to be followed each day. Sales representatives are required to attend periodic meetings in at [sic] Corporate Office in Jersey City and Pedricktown, New Jersey for which they are not paid. Sales representatives are required to wear Goya-labeled apparel. Sales representatives are required to work shifts that are pre-determined by Defendants and are required to work on holidays. Sales representatives were provided two weeks off vacation, paid by Defendants. Defendants unilaterally altered sales representatives['] routes. Defendants unilaterally set the compensation to be paid to the sales representatives.

(Am. Compl., ¶ 39.) Additionally, the Amended Complaint alleges that Defendants determine the prices the sales representatives may charge for products, exercise sole authority over the

customers that may be maintained and require their sales representatives to sell Goya's products exclusively. (Am. Compl., ¶¶ 45-59.) According to Plaintiffs, their work as sales representatives is an integral part of Goya's business.

Plaintiffs claim they have been harmed by Defendants' failure to pay them the wages they are owed under their agreement. The Broker Agreement bases compensation on a commission structure. While the Broker Agreement makes no reference to "wages" to be paid for the sales work, Plaintiffs aver that their "earned commissions" in reality constitute "wages [which are] direct compensation earned and paid on account of the sales representatives' work." (Id., ¶ 32.) Plaintiffs allege that a portion of these earned commissions or wages (to borrow the term from the Amended Complaint) is unlawfully withheld. The Amended Complaint sets forth as follows:

Defendants make deductions from the wages of Plaintiffs and the proposed class that are illegal under Pennsylvania law. These include deductions for Workers' Compensation insurance, bad/uncollected invoices and a reserve account.

(Id., ¶ 33.)

Based on the foregoing, the Amended Complaint claims that Defendants have violated the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1, et seq., and pleads a single count for recovery of unpaid wages, asserted by the Plaintiffs individually and on behalf of a putative class of similarly situated sales representatives.

II. DISCUSSION

A. Legal Standard

To withstand a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted, the complaint must contain “sufficient factual allegations, accepted as true, to ‘state a claim for relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). On a Rule 12(b)(6) motion, the Court must accept as true the well-pleaded facts of a complaint and any reasonable inference that may be drawn from those facts but need not credit conclusory statements couched as factual allegations. Iqbal, 556 U.S. at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The issue before the Court on a Rule 12(b)(6) motion to dismiss “is not whether plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence in support of the claims.” In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997) (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A district court ruling on a motion to dismiss generally “may not consider matters extraneous to the pleadings.” Id. at 1426. However, the court may properly consider documents that form the basis of a claim and documents that are “integral to or explicitly relied upon in the complaint.” Id. (citations omitted).

B. Pennsylvania Wage Payment and Collection Law

The sole claim for relief in the Amended Complaint arises under the Pennsylvania Wage Payment and Collection Law (“PWPCCL”), which was enacted “to provide employees a means of enforcing payment of wages and compensation withheld by an employer.” Moser v. Papadopoulos, 2011 WL 2441304, at *3 (E.D.Pa. June 16, 2011) (quoting Shaer v. Orthopaedic Surgeons of Cent. Pa., Ltd., 938 A.2d 457, 464 (Pa. Super. Ct. 2007)). Plaintiffs rely on the PWPCCL provision requiring employers to pay their employees all wages earned on regular paydays. See 43 P.S. § 260.3(a). The provision, in relevant part, states as follows:

Wages other than fringe benefits and wage supplements. Every employer shall pay all wages, other than fringe benefits and wage supplements, due to his employes [sic] on regular paydays designated in advance by the employer. Overtime wages may be considered as wages earned and payable in the next succeeding pay period. All wages, other than fringe benefits and wage supplements, earned in any pay period shall be due and payable within the number of days after the expiration of said pay period as provided in a written contract of employment or, if not so specified, within the standard time lapse customary in the trade or within 15 days from the end of such pay period.

Id. “Wages” for purposes of the PWPCCL include “all earnings of an employee, regardless of whether determined on time, task, piece, commission or other method of calculation” and “fringe benefits or wage supplements,” such as bonuses or “any other amount to be paid pursuant to an agreement to the employee . . .” 43 P.S. § 260.2a. The statute authorizes employees “to whom any type of wages is payable” to institute a civil action “to recover unpaid wages.” 43 P.S. § 209(a) and (b).

The PWPCCL itself does not entitle an employee to any prescribed wage or minimum standard of compensation. Numerous state and federal cases have held that a PWPCCL claim for unpaid wages limits a plaintiff to the terms of the agreement between employer and employee

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