

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PAUL MEDRANO, on his own behalf and)
on behalf of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
FLOWERS FOODS, INC., and)
FLOWERS BAKING CO. OF EL PASO, LLC)
)
Defendants.)

COLLECTIVE ACTION COMPLAINT AND JURY TRIAL DEMAND

Plaintiff Paul Medrano (“Plaintiff”), on behalf of himself and other similarly situated individuals, by and through his undersigned attorneys, brings this collective action lawsuit against Defendants Flowers Foods, Inc. (“Flowers Foods”) and Flowers Baking Co. of El Paso, LLC (“Flowers El Paso” and collectively with Flowers Foods, “Defendants”), seeking all available relief under the Federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 *et seq.* and the New Mexico Minimum Wage Act (“NMMWA”), NMSA 1978, §§ 50-4-1 *et seq.* Plaintiff’s claims under the FLSA are being asserted as a collective action pursuant to Section 16(b), 29 U.S.C. § 216(b). Plaintiff’s claims under the NMMWA are being asserted as a collective action pursuant to NMSA 1978, § 50-4-26(D). The following allegations are based on personal knowledge as to Plaintiff’s own conduct and are made on information and belief as to the acts of others.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an individual residing in Bernalillo County, New Mexico.
2. Plaintiff is an employee covered by the FLSA and the NMMWA.
3. Upon information and belief, Flowers Foods is a Georgia corporate entity doing business in New Mexico.
4. Upon information and belief, Flowers El Paso is a Texas corporate entity doing business in New Mexico.
5. Flowers Foods and Flowers El Paso are employers covered by the FLSA and the NMMWA.
6. At all times relevant to this Complaint, Plaintiff was employed by Defendants to work in Bernalillo County, New Mexico.
7. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, federal question jurisdiction, and 28 U.S.C. § 1367, supplemental jurisdiction, for the claims brought under the NMMWA.

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

8. Flowers Foods is “one of the largest producers of packaged bakery foods in the United States” and operates more than 40 bakeries nationwide. Familiar brands owned and produced by Flowers Foods include Nature’s Own, Wonder, Ms. Freshly’s, and Tastycake.
9. According to its own website, in 2014, Flowers Foods had sales of \$3.7 billion.

10. Defendant Flowers El Paso is a wholly owned subsidiary of Flowers Foods that operates a bakery and warehouses in Bernalillo County. Flowers Foods, by and through its subsidiaries such as Defendant Flowers El Paso, ships bakery and snack products to warehouses, from which distributors, such as Plaintiff and the others similarly situated, pick up and distribute the products to the Defendants' retail customers at the time and place specified by the Defendants.

11. Distributors hired by Flowers El Paso are integrated into Flowers Foods' existing network of operations. The work performed by Plaintiff and others similarly situated simultaneously benefited or benefits both Flowers Foods and any of its subsidiaries, including Flowers El Paso. Plaintiff and the others similarly situated were hired for the purpose of ultimately distributing products for Flowers Foods.

12. In approximately 2003, Plaintiff was hired by Flowers El Paso as a distributor servicing retail outlets in the Albuquerque area. Plaintiff was employed by the Defendants for more than a decade, until approximately August of 2015.

13. In an effort to perpetuate a scheme that would deny Plaintiff and others similarly situated the rights and benefits provided under the FLSA and the NMMWA, Defendants require all potential distributors to "purchase" a predetermined territory in support of the Defendants' efforts to classify the distributors as independent contractors. As part of that scheme, Plaintiff and others similarly situated were required to enter into a "Distributor Agreement" with Flowers El Paso. The Distributor Agreement had no specific end date and could be terminated by either party at any time with limited notice.

14. Flowers Foods markets its bakery and snack products to retailers and other grocery stores and merchants. Flowers Foods negotiates with the retailers to set virtually all material terms of the relationship with such retailers, including but not limited to (a) wholesale and retail prices for products, (b) service and delivery agreements, (c) shelf space to display products, (d) product selection, (e) promotional pricing for products, (f) the right to display promotional materials, and (g) print advertisements in retailers' newspaper ads.

15. During the entirety of his employment, Defendants required Plaintiff to service specified retail accounts, instructed him on which days he was required to deliver baked goods to those accounts, and controlled virtually all other aspects of his interaction with those retail accounts.

16. Plaintiff was required to accept Defendants' conditions of employment and strictly follow their instructions, including adherence to the pricing, policies, and procedures negotiated between Flowers Foods and its retail customers. Otherwise, Plaintiff would face termination.

17. The job as a distributor performed by Plaintiff and the others similarly situated does not require specialized skills.

18. Plaintiff was not permitted to determine his own schedule or the manner in which he worked.

19. Defendants exercised such control over Plaintiff that when Plaintiff was attending the funeral of his own wife, Ruth Medrano, a manager from Flowers called him on his cell phone and demanded that he return to work immediately.

20. Larry Baldwin, the regional president of Flowers El Paso, later referred to this incident as evidence of how dedicated Plaintiff was to his work, recalling the incident in which he had worked even on the day of his own wife's funeral.

21. As a "distributor," Plaintiff was required to purchase, insure, fuel, and maintain his own delivery vehicle. However, he was given no choice with regard to the selection of insurance, but rather simply had a deduction for insurance taken out of his bi-weekly paychecks.

22. Defendants use the Distributor Agreement contracts to shift certain costs onto its employees. Under the contract, Plaintiff was required to pay all maintenance and fuel cost for what amounted to a company vehicle and warehouse rent. However, Defendants provided Plaintiff with computer equipment, administrative support, advertisements, promotional materials, bakery trays, market advice, strategic development, and other business necessities to its employees.

23. The Distributor Agreement required Defendants to "preserve and develop the quality and marketability" of its products. However, Defendants regularly and consistently provided Plaintiff with product that was moldy, stale, or marred by rodent bite marks, or all three. On many occasions, Plaintiff was charged for the inedible and unsanitary product with which he had been provided, and he was forced to absorb the cost of the unusable product.

24. For the entirety of his employment with Defendants, Plaintiff's delivery schedule typically required Plaintiff to arrive at the factory by 4:30 a.m., and frequently resulted in his arriving home with his daily deliveries completed around 8:00 p.m.

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