

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

EMMANUEL JEAN-FRANCOIS, ALICIA) Civil No. 7:22-cv-00063
JOHNSON, and WANDA KING,)
individually and on behalf of all others)
similarly situated;)
)
)
Plaintiff(s),)
v.) COLLECTIVE ACTION COMPLAINT
)
SMITHFIELD FOODS, INC.,)
SMITHFIELD PACKAGED MEATS,)
CORP., SMITHFIELD FRESH MEATS)
CORP., and SMITHFIELD)
DISTRIBUTION, LLC.)
Defendants.)

Plaintiffs, Emmanuel Jean-Francois (“Jean-Francois”), Alicia Johnson (“Johnson”), and Wanda King (“King”) (together “Plaintiffs”), by and through counsel, individually and on behalf of all persons similarly situated, file this Collective Action Complaint against Defendants Smithfield Foods, Inc., Smithfield Packaged Meats, Corp., Smithfield Fresh Meats Corp., and Smithfield Distribution, LLC (together “Defendants”), seeking all available relief under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et. seq.* (“FLSA”).

NATURE OF ACTION

In response to the COVID-19 pandemic, Defendants paid Plaintiffs and other similarly situated employees a \$5 per hour “Responsibility Bonus” for each regular hour worked, up to 40 hours in a workweek. In calculating overtime earned by Plaintiffs and other similarly situated

employees, Defendants failed to include the \$5 per hour Responsibility Bonus in each employee's regular rate of pay. Plaintiffs allege that Defendants violated the FLSA by failing to calculate their correct overtime rates of pay, and therefore failing to pay all overtime compensation due to Plaintiffs and those similarly situated. Plaintiffs bring their claims for unpaid overtime compensation on behalf of themselves and others similarly situated as an opt-in collective action pursuant to the FLSA.

PARTIES

1. Jean-Francois is an adult individual who is a resident of Goldsboro, North Carolina. Jean-Francois worked for Defendants during the three-year period preceding the filing of this Complaint.

2. Johnson is an adult individual who is a resident of Lumberton, North Carolina. Johnson worked for Defendants during the three-year period preceding the filing of this Complaint. Johnson's Consent to Become a Party Plaintiff form is attached hereto as Exhibit 1.

3. King is an adult individual who is a resident of Bladenboro, North Carolina. King worked for Defendants during the three-year period preceding the filing of this Complaint. King's Consent to Become a Party Plaintiff form is attached hereto as Exhibit 2.

4. Smithfield Foods, Inc. is a corporation organized and existing under the laws of the State of Virginia with its principal office at 200 Commerce Street, Smithfield, Virginia.

5. Smithfield Packaged Meats Corp. is a corporation organized and existing under the laws of the State of Delaware and licensed to conduct business in the State of North Carolina with its principal office at 200 Commerce Street, Smithfield, Virginia.

6. Smithfield Fresh Meats Corp. is a corporation organized and existing under the laws of the State of Delaware and licensed to conduct business in the State of North Carolina with its principal office at 200 Commerce Street, Smithfield, Virginia.

7. Smithfield Distribution, LLC is a limited liability company organized and existing under the laws of the State of Delaware and licensed to conduct business in the State of North Carolina with its principal office at 200 Commerce Street, Smithfield, Virginia.

JURISDICTION AND VENUE

8. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 for the claims brought under the FLSA, 29 U.S.C. § 201 *et. seq.*

9. This Court has personal jurisdiction because Defendants conduct business in Sampson County and Bladen County, which are located within this judicial district.

10. Venue is proper in this judicial district because the unlawful acts alleged herein occurred in Sampson County, North Carolina and Bladen County County, North Carolina.

COVERAGE ALLEGATIONS

11. At all times hereinafter mentioned, Defendants have been employers within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

12. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the FLSA 29 U.S.C. § 203(r).

13. At all times hereinafter mentioned, Defendants have been an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that the enterprise has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by

any person and in that the enterprise has had and has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

14. At all times hereinafter mentioned, Plaintiffs have been employees within the meaning of Section 3(e) of the FLSA, 29 U.S.C. § 203(e).

15. At all times hereinafter mentioned, Plaintiffs were individual employees who were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. § 207.

16. Upon information and belief, Smithfield Foods, Inc. is the owner and operator of Smithfield Packaged Meats, Corp., Smithfield Fresh Meats Corp., and Smithfield Distribution, LLC.

17. Defendants are a joint employer and/or single enterprise within the meaning of 29 U.S.C. §§ 203(e) and 207(b), as they have an interrelation of operations, common business purpose and activities, common management, common control of labor relations, common financial control, and common ownership.

PLAINTIFFS' FACTUAL ALLEGATIONS

18. Defendants are pork producers and food-processing companies based in Smithfield, Virginia.

19. Defendants operate pork processing, packaging, and distribution plants in various cities in North Carolina.

20. Smithfield Foods, Inc. and Smithfield Fresh Meats Corp. employed Plaintiff Jean-Francois as an hourly employee between November 2013 and October 2021.

21. Smithfield Foods, Inc. and Smithfield Packaged Meats Corp., employed Plaintiff Johnson as an hourly employee beginning in March 2017 and she is still currently employed with Smithfield.

22. Smithfield Foods, Inc. and Smithfield Fresh Meats Corp. employed Plaintiff King as an hourly employee beginning in November 2006 and she is still currently employed with Smithfield.

23. Jean-Francois worked at Defendants' facility in Clinton, North Carolina.

24. Johnson worked at Defendants' facility in Wilson, North Carolina.

25. King worked at Defendants' facility in Tar Heel, North Carolina

26. Defendants employed other similarly situated employees at their pork processing, packaging, and distribution plants throughout North Carolina.

27. To incentivize its North Carolina hourly employees to work during the COVID-19 pandemic, Smithfield paid Plaintiffs and other similarly situated employees a bonus of \$5 per hour for all regular hours worked up to and including forty in a workweek. Defendants called the \$5 per hour payment a "Responsibility Bonus."

28. Defendants paid the Responsibility Bonus to all hourly employees who worked at Defendants' North Carolina pork processing, packaging, and distribution plants during the period April 1, 2020 to October 31, 2020.

29. Plaintiffs and similarly situated employees are not exempt from the overtime provisions of the FLSA.

30. The FLSA requires that overtime wages for hourly employees be calculated by multiplying an employee's "regular rate" of pay times 1.5. For workweeks when Plaintiffs and

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