

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

CHAD HILL, on behalf of himself
and others similarly situated,

Plaintiff,

v.

PEPPERIDGE FARM, INC.,

Defendant.

Civil Action No. 3:22-cv-97

CLASS AND COLLECTIVE ACTION COMPLAINT

Chad Hill (“Plaintiff”), on behalf of himself and all others similarly situated, files this Class and Collective Action Complaint (“Complaint”) against Pepperidge Farm, Inc. (“Defendant” or “Pepperidge Farm”), and in support states the following:

1. The named Plaintiff and putative Plaintiffs are current and former Pepperidge Farm “Consignees” who worked in Virginia within the three years preceding the filing of this Complaint. Plaintiffs were classified and compensated as Independent Contractors by Pepperidge Farm.

2. Plaintiff and those similarly situated are employees of Pepperidge Farm and have been misclassified. Through this proceeding they seek to recover unpaid overtime wages, unpaid minimum wages, unpaid regular wages, and all other allowable damages and recoveries pursuant to the Fair Labor Standards Act as well as Virginia State law. They also seek to recover damages associated with their misclassification pursuant to § 40.1-28.7:7.

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 2201, 2202 and Plaintiff seeks this Court’s supplemental jurisdiction pursuant to

28 U.S.C. § 1367.

4. Venue is proper in this District under 28 U.S.C. § 1391 because the events forming the basis of this suit occurred in this District.

5. Defendant is subject to personal jurisdiction in the Commonwealth of Virginia.

Nature of this Lawsuit

6. Defendant is a large baker and distributor of packaged snack food, bakery, and bread products sold to consumers throughout the U.S. and in other countries at thousands of groceries, convenience, and other stores.

7. Though referred to as a “Consignee” and/or Independent Contractor, Defendant employed/employs the Plaintiff to deliver and stock its products to stores in an assigned territory, primarily comprised of cities and towns within Southwest Virginia.

8. Defendant employed Plaintiff and other individuals who performed identical job duties within unique assigned Virginia territories.

9. As was the case with the Plaintiff, Defendant labeled/labels all such individuals as Consignees and/or Independent Contractors.

10. Defendant paid Plaintiff, and those similarly situated, a percentage of sales made within their territory.

11. Defendant’s Consignees regularly worked over 40 hours per week and were not paid overtime for those hours over 40.

The Parties

12. Plaintiff is a Virginia resident and has worked for Defendant as a Consignee in Virginia, within Counties in the Richmond Division of the Eastern District of Virginia (including Brunswick, Nottoway, and Mecklenburg Counties) since at least 2015.

13. Defendant is a Connecticut corporate entity that is licensed to do business in Virginia and maintains its principal office at 595 Westport Ave, Norwalk, CT, 06851, USA.

14. Defendant's parent company, Campbell Soup Company is a public company with stock trading on the New York Stock exchange under the ticker "CPB."

Factual Allegations

15. Defendant manufactures and distributes snack food and packaged bake goods for retail sales.

16. Defendant distributes its products to stores through Consignees like the Plaintiff and those similarly situated.

17. In order to deliver product on behalf of Defendant, Consignees are required to contract with Defendant through a boilerplate Consignment Agreement. A copy of the Consignment Agreement is attached hereto as **Exhibit A**.

18. The Consignment Agreement purports to set forth all aspects of the relationship between Consignees and Defendant and declares that Consignees are "Independent Businessm[e]n" and refers to the relationship as an "independent contractor relationship" rather than an employment relationship.

19. Under the terms of the Consignment Agreement, Consignees are made to pay for the right to deliver and distribute Defendant's product within their assigned territory, but all actual control over the product, route, and territory belongs to the Defendant. Moreover, according to the annual report of Defendant's parent company, the loans used by Plaintiff and many other similarly situated Consignees to finance the purchase of such routes are guaranteed by the Defendant's parent company (worth an approximate value of \$199M as of the 2020 fiscal year end). Additionally, the Defendant may deduct from money otherwise owed to a Consignee attendant to

product delivery if that Consignee owes money associated with the guarantee.

20. The Defendant maintains discretion to terminate the Consignment Agreement at any time without cause. Further, Consignees are not allowed to sell their routes, or any part of their route without Defendant's subjective approval of the purchaser.

21. Additionally, the Consignment Agreement's subjective "for cause" termination provisions create a still further level of control for the Defendant, including, but not limited to:

- a. "Failure of Consignee adequately to realize the sales potential of the Territory[...],"
- b. "Failure of Consignee to perform or comply with any material term or provision of this Agreement [...]"
- c. "Any dishonesty of Consignee in his/her dealings with Bakery or with others in connection with Consignee's distribution[...]"
- d. "Any actions, activities or practices of Consignee which either do, or in the opinion of Bakery are likely to, materially damage the reputation of Bakery and/or Bakery's relations or reputation [...]"

22. Despite the Consignment Agreement's proclamation, an individual's employee status under the FLSA is determined by "economic realities of the relationship between the worker and the putative employer," *Schultz v. Capital International Security, Inc.*, 466 F.3d 298, 304 (4th Cir. 2006).

23. The economic reality of the relationship between the Defendant and the Plaintiff, and those similarly situated, is that of an employment relationship. Both factually, and set out in the Consignment Agreement, the Plaintiff, and those similarly situated, are, and have been misclassified as Independent Contractors. Indeed, very little separates their employment from that

of a standard delivery-person employee. For example:

- a. Defendants closely monitor and direct the day-to-day operation of Consignees. Consignees have little to no discretion over their customers, nor the products they distribute.
- b. The Consignment Agreement prohibits Consignees from distribution of products competitive to Defendant.
- c. The Consignment Agreement prohibits Consignees from distributing Defendant's product outside of their assigned territory.
- d. The Defendant retains the right to allocate product as it sees fit within a Consignee's territory.
- e. The Defendant may reduce a Consignee's territory if the Defendant is not satisfied that the territory or stores within the territory are being appropriately serviced by the Consignee.
- f. The Defendant may reduce or discontinue a Consignee's allotment of product should it determine that the Consignee has failed to fulfill any obligation of the Consignment Agreement.
- g. Consignees are not permitted discretion in their customer base nor in product pricing nor in the way Defendant's products are displayed once in stores.
- h. Absent Defendant's permission, Consignees are not allowed to deliver to chain store warehouses nor directly to consumers, hotels, or restaurants.
- i. The position of Consignee requires no special skill or training, aside from a normal driver's license.
- j. Consignees tend to have long term relationships with the Defendant.

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