

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAUDIA ALVARADO SANTOS, on behalf of herself and all others similarly situated	:	CIVIL ACTION
	:	
Plaintiff,	:	NO. _____
v.	:	
	:	CLASS/COLLECTIVE ACTION
EL GALLITO MEXICAN BAKERY II LLC and EL GALLITO MEXICAN BAKERY III LLC,	:	NON-JURY TRIAL
	:	
Defendants.	:	
	:	

**COMPLAINT - CLASS/COLLECTIVE ACTION**

Plaintiff Claudia Alvarado Santos (“Plaintiff”), on behalf of herself and similarly situated individuals, brings this class/collective action lawsuit against Defendants El Gallito Mexican Bakery II LLC and El Gallito Mexican Bakery III LLC (collectively “Defendants”), seeking all available relief under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* and the Pennsylvania Minimum Wage Act (“PMWA”), 43 P.S. §§ 333.101, *et seq.* Plaintiff’s FLSA claim is asserted as a collective action under the FLSA Section 16(b), 29 U.S.C. § 216(b), while her PMWA claim is asserted as a class action under Federal Rule of Civil Procedure 23.<sup>1</sup>

**JURISDICTION AND VENUE**

1. Jurisdiction over the FLSA claim is proper under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.
2. Jurisdiction over the PMWA claim is proper under 28 U.S.C. § 1367.
3. Venue is proper under 28 U.S.C. § 1391.

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<sup>1</sup> FLSA collective action claims and Rule 23 class action claims may proceed together in the same lawsuit. *See Knepper v. Rite Aid Corp.*, 675 F.3d 249 (3d Cir. 2012).

**PARITES**

4. Plaintiff is an individual residing in Reading, PA (Berks County).

5. Defendants are corporations registered to do business in Pennsylvania and, maintaining a corporate headquarters in Reading, PA (Berks County).

6. Defendant El Gallito Mexican Bakery II LLC was listed as Plaintiff's employer on Plaintiff's 2013 and 2014 W-2 forms.

7. Defendant El Gallito Mexican Bakery III LLC was listed as Plaintiff's employer on Plaintiff's 2015 W-2 form.

8. Defendants are employers covered by the FLSA and PMWA.

**FACTS**

9. Defendants operate a facility in Reading, PA (the "Facility") where they produce, package, and sell various food products.

10. Plaintiff worked at the Facility as a Cashier from approximately 2012 until approximately January 2016.

11. Plaintiff typically was paid approximately \$480 per week regardless of the number of hours she worked.

12. Plaintiff regularly was required to work at least 40 hours per workweek. In fact, Plaintiff estimates that she typically worked approximately 46 to 47 hours per week.<sup>2</sup>

13. Defendants failed to pay Plaintiff the required time and one-half overtime premium compensation for hours worked over 40 per week.

14. In addition to Plaintiff, Defendants have employed many other employees at the

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<sup>2</sup> During the holiday season, Plaintiff regularly worked in excess of her normal 46-47 hour per week schedule. During this limited period, Defendants paid Plaintiff \$9 per hour for each hour beyond her standard 46-47 hours per week. Defendants failed to pay Plaintiff the required overtime premium compensation for these extra holiday hours.

Facility (“Facility Employees”).

15. Like Plaintiff, Facility Employees have worked over 40 hours per week and have not been paid overtime premium compensation for such work hours.

16. Defendants have failed to compensate Plaintiff and other Facility Employees the legally mandated overtime premium for hours worked over 40 in a workweek.

**CLASS/COLLECTIVE ACTION ALLEGATIONS**

17. Plaintiff brings her FLSA claim as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of: All individuals who worked at Defendants’ Facility during any workweek within the past three years.

18. Plaintiff’s FLSA claim should proceed as a collective action because Plaintiff and other potential members of the collective, having worked pursuant to the common policies described herein, are “similarly situated” as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

19. Plaintiff brings her PMWA claim as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of: All individuals who worked at Defendants’ Facility during any workweek within the past three years.

20. Class action treatment of Plaintiff’s PMWA claim is appropriate because, as alleged below, all of Federal Rule of Civil Procedure 23’s class action requisites are satisfied.

21. The class, upon information and belief, includes over 50 individuals, all of whom are readily ascertainable based on Defendants’ standard payroll records and are so numerous that joinder of all class members is impracticable.

22. Plaintiff is a class member, her claims are typical of the claims of other class members, and she has no interests that are antagonistic to or in conflict with the interests of other

class members.

23. Plaintiff will fairly and adequately represent the class members and their interests, and she has retained competent and experienced counsel who will effectively represent the class members' interests.

24. Questions of law and fact are common to all class members, because, *inter alia*, this action concerns Defendants' uniform pay policies, as summarized herein. The legality of these policies will be determined through the resolution of generally applicable legal principles to a common set of facts.

25. Class certification is appropriate under Federal Rule of Civil Procedure 23(b)(3) because common questions of law and fact predominate over questions affecting only individual class members and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation.

**COUNT I**  
**(Alleging FLSA Violations)**

26. All previous paragraphs are incorporated as though fully set forth herein.

27. Plaintiff and the collective are employees entitled to the FLSA's protections.

28. Defendants are employers covered by the FLSA.

29. The FLSA entitles employees to overtime compensation "not less than one and one-half times" their regular rate of pay for hours worked over 40 in a workweek. *See* 29 U.S.C. § 207(a)(1).

30. Defendants violated the FLSA by failing to pay Plaintiff and the collective overtime premium compensation for hours worked over 40 in a week.

31. In violating the FLSA, Defendants acted willfully and with reckless disregard of clearly applicable FLSA provisions.

**COUNT II**  
**(Alleging Violations of the PMWA)**

32. All previous paragraphs are incorporated as though fully set forth herein.

33. Plaintiff and the class are employees entitled to the PMWA's protections.

34. Defendants are employers covered by the PMWA.

35. The PMWA entitles employees to overtime compensation "not less than one and one-half times" the employee's regular rate of pay for all hours worked over 40 in a workweek. *See* 43 P.S. § 333.104(c).

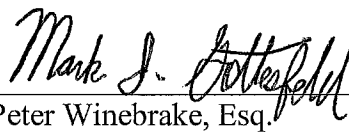
36. Defendants violated the PMWA by failing to compensate Plaintiff and the class overtime premium compensation.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and other members of the class/collective, seeks the following relief:

- A. An order permitting this action to proceed as a collective and class action;
- B. Prompt notice, pursuant to 29 U.S.C. § 216(b), of this litigation to all members of the FLSA collective informing them of this action and permitting them to join (or "opt-in" to) this action;
- C. Unpaid wages and prejudgment interest to the fullest extent permitted under federal and state law;
- D. Liquidated damages to the fullest extent permitted under the FLSA;
- E. Litigation costs, expenses, and attorneys' fees to the fullest extent permitted under federal and state law; and
- F. Such other and further relief as this Court deems just and proper.

Date: December 1, 2016



\_\_\_\_\_  
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R. Andrew Santillo, Esq.  
Mark J. Gottesfeld, Esq.  
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Community Justice Project  
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(717) 236-9486

*Plaintiff's Counsel*

5:16-cv-6309

JS-44 (Rev. 10-16)

**CIVIL COVER SHEET**

This cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by the rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Claudia Alvarado Santos</p> <p><b>(b) County of Residence of First Listed Plaintiff</b> <u>Berks</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c) Attorneys (Firm Name, Address, and Telephone Number)</b> Peter Winebrake, Esq./R. Andrew Santillo, Esq./Mark J. Gottesfeld, Esq., Winebrake &amp; Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025</p>	<p><b>DEFENDANTS</b> El Gallito Mexican Bakery II LLC and El Gallito Mexican Bakery III LLC</p> <p>County of Residence of First Listed Defendant <u>Berks</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known) <u>(PT)</u></p>
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<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td>PTF</td> <td>DEF</td> <td></td> <td>PTF</td> <td>DEF</td> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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**IV. NATURE OF SUIT** *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><b>LABOR</b></p> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor-Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities-Commodities-Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>Habeas Corpus:</b></p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p><b>Other:</b></p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District *(specify)*     6 Multidistrict Litigation - Transfer     8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
 Fair Labor Standards Act, 29 U.S.C. § 201, et seq.  
 Brief Description of cause:  
 Failure to pay overtime compensation

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):* JUDGE \_\_\_\_\_ DOCKET NUMBER **DEC - 5 2016**

DATE: 12/01/2016    SIGNATURE OF ATTORNEY OF RECORD: Mark Gottesfeld

**FOR OFFICE USE ONLY**    RECEIPT # \_\_\_\_\_    AMOUNT \_\_\_\_\_    APPLYING IF P \_\_\_\_\_    JUDGE \_\_\_\_\_    MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT

16 6309

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Berks County

Address of Defendant: Berks County

Place of Accident, Incident or Transaction: Berks County (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes [ ] No [ ]

Does this case involve multidistrict litigation possibilities? Yes [ ] No [ ]

RELATED CASE, IF ANY: Case Number: Judge AIR Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes [ ] No [X]
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes [ ] No [X]
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes [ ] No [X]

CIVIL: (Place check in ONE CATEGORY ONLY)

- A. Federal Question Cases: 1. Indemnity Contract, Marine Contract, and All Other Contracts 2. FELA 3. Jones Act-Personal Injury 4. Antitrust 5. Patent 6. Labor-Management Relations 7. Civil Rights 8. Habeas Corpus 9. Securities Act(s) Cases 10. Social Security Review Cases

- B. Diversity Jurisdiction Cases: 1. Insurance Contract and Other Contracts 2. Airplane Personal Injury 3. Assault, Defamation 4. Marine Personal Injury 5. Motor Vehicle Personal Injury 6. Other Personal Injury (Please specify) 7. Products Liability 8. Products Liability - Asbestos 9. All other Diversity Cases (Please specify)

11. All other Federal Question Cases (Please specify) Fair Labor Standards Act (FLSA)

ARBITRATION CERTIFICATION

(Check Appropriate Category) Mark Gottesfeld, counsel of record do hereby certify:

[X] Pursuant to Local Civil Rule 53.2, Section 3(e)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; [ ] Relief other than monetary damages is sought.

DATE: 12/1/16 Mark Gottesfeld Attorney-at-Law 307752 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38. DEC - 5 2016

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/1/16 Mark Gottesfeld Attorney-at-Law 307752 Attorney I.D.#



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

*Claudia Alvarado Santos*  
v.  
*El Gallito Mexican Bakery II, LLC, et al.*

CIVIL ACTION

NO. *16* *6309*

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

12/1/16  
Date

*Mark Gattesfeld*  
Attorney-at-law

*Plaintiff*  
Attorney for

215-884-2491  
Telephone

215-884-2492  
FAX Number

*mgattesfeld@winebrake.law.com*  
E-Mail Address

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [El Gallito Mexican Bakery II Toasted with Unpaid Overtime Suit](#)

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