



NARDELLI et al v. LAMPARSKI et al

2022 | Cited 0 times | W.D. Pennsylvania | September 12, 2022

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

PITTSBURGH JESSICA NARDELLI, AND; AND JULIE HANSEN, Plaintiffs, vs. DON G.
LAMPARSKID.M.D, AND; AND DON G. LAMPARSKIJR., BOTH JOINTLY AND SEVERALLY;
Defendants,

2:20-CV-01723-CRE

MEMORANDUM OPINION 1 CYNTHIA REED EDDY, Chief United States Magistrate Judge.

I. INTRODUCTION

This civil action was initiated by Plaintiffs Jessica Nardelli and Julie Hansen, former employees of Defendants Don G. Lamparski, D.M.D and Don G. Lamparski, Jr. D.M.D. alleging violations of the Fair Labor Standards Act, and the Pennsylvania Minimum Wage Act. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1367.

Federal Rule of Civil Procedure 15(a)(2), and a motion to dismiss pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) (ECF No. 33). The motion is fully briefed and ripe for disposition. to strike is denied, motion to dismiss is

1 All parties have consented to jurisdiction before a United States Magistrate Judge; therefore the Court has the authority to decide dispositive motions, and to eventually enter final judgment. See 28 U.S.C. § 636, et seq.

granted, and supplemental briefing will be ordered.

II. BACKGROUND

Since the initiation of this action, Plaintiffs have filed four separate iterations of their complaint alleging various overtime wage violations. Plaintiffs filed their first amended complaint as of right following the Defendants filing a motion to dismiss. (ECF No. 13). Defendants moved inter alia for a more definite statement which the Court granted and ordered Plaintiffs to file a second amended



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complaint. (ECF No. 26). Plaintiffs filed a second amended complaint, which the Defendants moved to dismiss. While the Court issued a briefing order on the motion to dismiss, Plaintiffs filed a Third Amended Complaint and did not issue a responsive pleading. (ECF No. 32). Defendants now move to strike or dismiss the Third Amended Complaint.

Because the Court has previously recounted the facts underlying this action (ECF No. 25), only those necessary for the disposition of the present motion will be included herein.

Plaintiff Nardelli alleges that between October 2015 and April 2019, she was assigned an eight-hour shift from 9:00 a.m. to 5:00 p.m. and she did not punch in or punch out of work and did not have a time clock to enter the number of hours she worked. She claims she was compensated was not compensated for the days she did not work. She claims that she was told by Defendants

-site one

as much [as] ten hours in overtime in the course of a five- - Id. at ¶ 21.

Beginning in April 2019, Plaintiff Nardelli began to work part-time and would typically work three to four days a week 9:00 a.m. to 5:00 p.m. She alleges that she was still required to arrive one to two hours before 9:00 a.m. and depart one to two hours after 5:00 p.m. and was not Plaintiff Nardelli -day period on many Id. at ¶ 29.

In June 2018, Plaintiff Hansen began working for Defendants and was assigned an eight- hour shift from 9:00 a.m. to 5:00 p.m. and she did not punch in or punch out of work and did not have a time clock to enter the number of hours she worked. Plaintiff Hansen worked three to four throughout her employment she was required to begin working one to two hours in

advanced of her scheduled 9:00 a.m. shift and one to two hours beyond her 5:00 p.m. end time. Id. at ¶ 52. She alleges she was not compensated for any time worked beyond her eight-hour more than 40 hours in a seven- Id. at ¶ 54.

Plaintiffs violation of the FLSA and PMWA against Defendants failure

(3) (4)

IV ; o pay overtime in violation of the FLSA against Defendants and (7) Case 2:20-cv-01723-CRE Document 39 Filed 09/12/22 Page 3 of 13

III. STANDARD OF REVIEW

a. Federal Rule of Civil Procedure 12(b)(6) The applicable inquiry under Federal Rule of Civil



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Procedure 12(b)(6) is well settled. To go on to dismiss, a complaint must contain

Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Bell Atl.

Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A complaint that merely alleges entitlement to relief, without alleging facts that show entitlement, must be dismissed. See Fowler v. UPMC Shadyside, 578 F.3d 203, 211 (3d Cir. 2009).

Phillips v. Cty. of Allegheny, 515 F.3d 224, 234 (3d Cir. 2008) (quoting Bell Atlantic Corp., 550

U.S. at 556). Yet Doug Grant, Inc. v. Greate Bay Casino Corp., 232 F.3d 173, 183 84 (3d Cir. 2000),

or the p Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997).

Although a complaint does not need detailed factual allegations to survive a Fed. R. Civ. P. 12(b)(6) motion, a complaint must provide more than labels and conclusions. Bell Atlantic Corp., 550 U.S. at 555 Case 2:20-cv-01723-CRE Document 39 Filed 09/12/22 Page 4 of 13 Id. (citing Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)). Bell Atlantic Corp., 550 U.S. at

555 content that allows the court to Ashcroft, 556 U.S. at 678 (citing Bell Atlantic Corp., 550 U.S. at 556).

The plausibility standard is not akin to remoteness, but it asks for more than a sheer possibility that a defendant has acted unlawfully. . . . Where a complaint pleads facts possibility and plausibility of Id. (quoting Bell Atlantic Corp., 550 U.S. at

556) (internal citations omitted).

When considering a Rule 12(b)(6) whether a plaintiff is entitled to offer evidence in support of his claims. See Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974). The court does not consider whether a plaintiff will ultimately prevail. Id. complaint fails to state a claim. Gould Elecs. Inc. v. United States, 220 F.3d 169, 178 (3d Cir.

2000).

for judgment on the pleadings, the motion must be converted into one for summary judgment. In

re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997). However, a court may consider (1) exhibits attached to the complaint, (2) matters of public record, and (3) all documents integral to or explicitly relied on in the complaint, even if they are not attached thereto, without converting the motion into one for summary judgment. Mele v. Fed. Rsv. Bank of New York, 359



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F.3d 251, 256 (3d Cir. 2004) n. 5 (3d Cir. 2004); Pension Ben. Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993).

IV. DISCUSSION

12(b)(6) and lack of jurisdiction pursuant to Rule 12(b)(1). Each argument will be separately discussed.

a. Motion to Strike

Rule 15. Specifically, Defendants argue that instead of filing a motion for leave to amend their complaint, Plaintiff improperly filed their third amended complaint in response to Defendants. Defendants also argue that amendment would be futile.

In response, Plaintiffs admit that they should have sought leave to amend their complaint but argue that the Court should permit the filing nunc pro tunc and admit the filing under Rule

15(a)(1)-(2). Whether to grant or deny the motion is within the district court's discretion. Foman

v. Davis, 371 U.S. 178, 182, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). or declared reason such as undue delay, bad faith or dilatory motive on the part of the movant,

repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. the leave Id. Mere delay will not warrant the denial Zygmuntowicz v. Hospitality Invs., Inc., 151 F.R.D. 53, 55 (E.D.Pa.1993). Prejudice has been

defined as Id Massarsky v. Gen. Motors Corp., 706 F.2d 111, 125 (3d Cir.1983). Denying

leave to amend where none of these factors are present is an abuse of discretion. Alvin v. Suzuki, 227 F.3d 107, 121 (3d Cir.2000). Defendants are correct that Plaintiffs did not seek leave to amend the complaint and is seeking not the appropriate way to seek amendment of a complaint, because the Court discerns no undue prejudice that Defendants would suffer from allowing the amendment, the Court will allow the filing of the amendment is futile.

b. Motion to Dismiss for Failure to State a Claim This Court previously held that [t] provide sufficient detail about the length and frequency of their unpaid work to support a

Memo. Op. (ECF No. 25 at 11) (citations and quotation marks omitted). iteration of their complaint does not meet this standard and neither Plaintiff alleges that they were

scheduled to work forty hours in any given week and that their alleged Case 2:20-cv-01723-CRE



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Document 39 Filed 09/12/22 Page 7 of 13 regular habits and shifts [they] would have accrued more than 40 hours in a seven-day period on

inference they worked more than forty hours in any given week. (ECF No. 34 at 7). Plaintiffs argue that they have sufficiently alleged they worked beyond forty hours in a work week and provided estimates of the amount of overtime hours they worked.

The FLSA generally requires employers to pay employees one and one-half times the regular wage for hours worked in excess of forty hours per week. 29 U.S.C. § 207(a); *Davis v. Abington Mem'l Hosp.*, 765 F.3d 236, 241 (3d Cir. 2014). To state a prima facie case under the FLSA for unpaid overtime wages by the FLSA; and (3) the plaintiff worked more than forty hours in a week but was not paid

Rummel v. Highmark, Inc., No. 3:13-CV-87, 2013 WL 6055082, at *3 (W.D. Pa. Nov. 15, 2013) (citing 29 U.S.C. § 216(b)); see also *Davis*, 765 F.3d at 241; *Bedolla v. Brandolini*, No. CV 18-146, 2018 WL 2291117, at *3 (E.D. Pa. May 18, 2018); *Mell v. GNC Corp.*, No. CIV.A. 10-945, 2010 WL 4668966, at *5 (W.D. Pa. Nov. 9, 2010) (collecting cases).

to dismiss/f second amended complaint had not sufficiently alleged an FLSA overtime wage violation, this Court found:

allege 40 hours of work in a given workweek as well as some uncompensated time *Lundy v. Cath. Health Sys. of Long Island Inc.*, 711 F.3d 106, 114 (2d Cir. 2013). See accord *Davis*, 765 F.3d at 242 43. While Plaintiffs allege that they had to work over eight hours in one day by starting and ending up to a total of four hours over their scheduled shift, they do not allege, for example that they were regular full-time employees or that the time worked over their scheduled shift forced them to work over 40 hours in a single workweek. Instead,

Plaintiffs simply allege that they worked up to four hours over their eight-hour shift ge that they worked over 40 hours in any given week and worked uncompensated time must provide sufficient detail about the length and frequency of their unpaid work to support a reasonable inference that they worked more than forty hours in a given week. *Nakahata v. New York-Presbyterian Healthcare Sys., Inc.*, 723 F.3d 192, 201 (2d Cir. 2013). See also *Davis*, 765 F.3d at 242 43. Plaintiffs have offered no such allegations in this case. While such an insufficient pleading would support dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim, Defendants simply seek a more definite statement from Plaintiffs alleging sufficient facts tending to prove they worked over 40 hours in a single workweek and were uncompensated for the time in excess of and to the extent that Plaintiffs can amend their complaint in compliance with Federal Rule of Civil Procedure 11 to include such facts, they may do so. Should Plaintiffs not be able to adequately amend their complaint to include such allegations, their FLSA unpaid overtime claim will be dismissed with prejudice. Memo Op. (ECF No. 25) at 11-12. Thus, Plaintiffs were on notice of exactly how they needed to amend their complaint to adequately



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state an FLSA unpaid overtime claim. Despite this, Plaintiffs have failed to allege adequate facts that would reasonably support an inference that either Plaintiff worked forty hours in a single workweek and were not compensated for time worked in excess of forty hours.

The Court of Appeals for the Third Circuit in *Davis v. Abington Meml. Hosp.*, held that order to state a plausible FLSA overtime claim, a plaintiff must sufficiently allege [forty] hours of

765 F.3d 236, 241-42 (3d Cir. 2014) (citations and quotation marks omitted) (alterations in original). In applying this standard, the *Davis* court upheld the dismissal of an unpaid overtime wage claim where the plaintiff- he or she typically worked shifts totaling between thirty-two and forty hours per week and further alleges that he or she frequently worked extra time *Id.* at 242 (finding that, for example, although an employee pleaded she typically

worked shifts totaling forty hours per week, frequently worked during her unpaid meal periods, worked one to two hours after her shift and was required to complete twenty hours annually of continuing education, she did not adequately state an unpaid overtime wage violation). The court one of the named plaintiffs . . . alleged a single workweek in which he or she worked at least *Id.* While the employees alleged they typically worked at least forty hours per week, in addition to extra hours frequently worked during meal breaks or outside of their scheduled shifts[,] . . . none indicate[d] that [they] in fact worked extra hours during a typical (that is, a forty-hour) week[, and t]heir allegations [were] therefore insufficient. *Id.* at 243 (emphasis in original). In other words, the dots between bare allegations of a typical forty-hour workweek and bare allegations of work completed outside of regularly scheduled shifts, so that the allegations concerning a typical forty-hour week include an assertion that the employee worked additional *Id.* at 243 n. 7. See *Raptis v. DPS Land Services, LLC*, 2:19-CV- 01262-CRE, 2020 WL 2572190, at *5 (W.D. Pa. May 21, 2020) (finding that the allegation that pay for hours they worked in ex *Davis* standard).

Similar to the plaintiffs in *Davis*, Plaintiffs here have not adequately alleged, despite multiple opportunities to amend their complaint to do so, that they worked at least forty hours per week and also worked uncompensated time during that forty-hour week. Plaintiff Hansen alleges that she worked three to four days per week for eight- two hours before her shift and one to two hours after her shift and was not compensated beyond

her eight-hour shift. These allegations are insufficient to state an FLSA unpaid overtime claim under *Davis*, as Plaintiff Hansen has not adequately alleged that she in fact worked extra hours during a forty-hour work week. It is not enough to speculate that it is plausible that Plaintiff Hansen could have worked over forty-hours in a seven-day period, she must allege that during a forty-hour week, she worked additional hours.

fairs no better. While Plaintiff Nardelli is implicitly alleged to have been a full-time employee from



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October 2015 through March 2019 2

, she does not allege that she worked forty hours in a given week and does not adequately allege that she worked uncompensated time during that forty-hour week. Plaintiff Nardelli alleges that from October scheduled shift and stay one to two hours after her scheduled shift and was not compensated

beyond her eight-hour shift. These allegations are insufficient to state an FLSA unpaid overtime claim under Davis, as Plaintiff Nardelli has not adequately alleged that she in fact worked extra hours during a forty-hour work week. The same reasoning is true allegations that - -day period

on man (ECF No. 32) at ¶¶ 26; 29. Plaintiff does not adequately allege that during this period that she worked extra hours during any forty-hour work week. Again, it is not enough to speculate that it is plausible that Plaintiff Nardelli could have worked over forty-hours in a seven-day period, she must allege that during a forty-hour week, she worked additional hours.

2 Plaintiff Nardelli does not explicitly allege that she was a full-time employee regularly working forty hours per week; rather, she implies that she was a full-time employee by saying that in April 2019, she began to work part-time or less than five days per week and typically worked three to four days per week. See Compl. at ¶¶ 14-21; 25-26.

This conclusion does not require identify the exact dates and times that [they] worked overtime y requires them to allege during a forty-hour work week, they worked uncompensated additional hours during that week. *Davis v. Abington Meml. Hosp.*, 765 F.3d 236, 243 (3d Cir. 2014). Accordingly, because Plaintiffs have failed to state an FLSA unpaid overtime wage claim and has previously been afforded multiple opportunities to amend their complaint, these claims (Counts II and V) will be dismissed with prejudice.

c. Lack of Jurisdiction Defendants next argue that this Court lacks subject matter jurisdiction over the state law wage claims if the FLSA claims are dismissed.

subject matter jurisdiction over a matter. While absent diversity, a court does not have subject

matter jurisdiction over state law claims, a court has supplemental jurisdiction over state law claims packaged with federal claims. Compare 28 U.S.C. § 1331 with 28 U.S.C. §§ 1332 and 1367. This case presents the latter basis for jurisdiction ove . A federal district c The Court o court has original jurisdiction is dismissed before trial, the district court must decline to decide the

pendent state claims unless considerations of judicial economy, convenience, and fairness to the *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (quoting *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)) (emphasis in original).



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remaining state law claims is not yet ripe, as two causes of action under the FLSA remain: Counts III and VI related to failure to pay a minimum wage. While Defendants did not move to dismiss these claims, the Court will give Defendants the opportunity to file supplemental briefing on whether these claims are viable. 3

Likewise, the Court will accept supplemental briefing as to

V. CONCLUSION

is GRANTED, and supplemental briefing will be ORDERED.

An appropriate Order follows.

DATED this 12th day of September, 2022.

BY THE COURT: s/Cynthia Reed Eddy Chief United States Magistrate Judge

3 claims. See Davis v. Abington Meml. Hosp., 765 F.3d 236, 243 y that is, wages

