

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND**

BARBARA J. LUEDERS, DEAN BRUNER,)
PAUL DANNELS, MARK HEPPNER,)
LINDA HERRON, LUTZ MEYER, JOHN)
PIERSOL, WILLIAM SWANSON, ROBERT)
WELLS, STEVEN WRIGHT and BETH)
ZUIDMEA, individually and on behalf of a)
class of similarly situated persons,)
)
Plaintiffs,)
)

Case No. 08-CV-4047
Judge Michael Mihm
Magistrate Judge Gorman

vs.

3M COMPANY, a Delaware corporation,

Defendant.

**FIRST AMENDED
CLASS ACTION COMPLAINT FOR AN
ACCOUNTING, INJUNCTIVE RELIEF AND RECOVERY OF WAGES**

Plaintiffs, BARBARA LUEDERS, DEAN BRUNER, PAUL DANNELS, MARK HEPPNER, LINDA HERRON, LUTZ MEYER, JOHN PIERSOL, WILLIAM SWANSON, ROBERT WELLS, STEVEN WRIGHT, and BETH ZUIDEMA, individually and on behalf of a class of similarly situated persons, by their attorneys, the LAW OFFICES OF COLLEEN M. MCLAUGHLIN and ROBIN POTTER AND ASSOCIATES, P.C., and pursuant to 735 ILCS 5/2-801 *et seq.* Class Actions; 820 ILCS 115/1 *et seq.*, the Wage Payment and Collection Act; 820 ILCS 105/1 *et seq.*, the Illinois Minimum Wage Act; 29 U.S.C. §201 *et seq.* the Fair Labor Standards Act; and 20 U.S.C. §251 *et seq.*, the Portal to Portal Act, complain of Defendant 3M COMPANY (“3M”) as follows:

JURISDICTION AND VENUE

1. Defendant has and continues to violate the Illinois Minimum Wage Law (“IMWL”), 820 ILCS §105/1 *et seq.* and the Illinois Wage Payment and Collection Act (“IWPCA”), 820 ILCS §115/1 *et seq.* by refusing and failing to pay Plaintiffs and other similarly situated employees wages for all hours worked including overtime wages. In addition, Defendant has and continues to violate the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201 *et seq.*, and the Portal to Portal Act, 29 U.S.C. §251 *et seq.*, by refusing and failing to pay Plaintiffs at least minimum wage for all hours worked and overtime wages at the rate of one and one-half times their regular hourly rate for all hours worked over 40 in a week.

2. This Court has jurisdiction over these claims under the IMWL, 820 ILCS §105/12(a), the IWPCA, 820 ILCS §115/11 and the FLSA, 29 U.S.C. §203(d) by virtue of defendant’s removal of this case from the Illinois Circuit Court.

3. Venue is proper in this Court because the 3M plant at which Plaintiffs work(ed) is located in Cordova, Rock Island County, Illinois.

PARTIES

4. 3M is a Delaware corporation, headquartered in St. Paul, Minnesota, and is involved in the research, manufacture and marketing of products, including adhesives, medical, dental and office products. Its plant located in Cordova, Illinois is one of many in the 3M Material Resource Division involved in the production of specialty adhesives. On information and belief, from 1997 to the present, Defendant 3M has employed, at its facility in Cordova, Illinois, 400 or more non-exempt, hourly employees.

5. Plaintiff Barbara Lueders resides in Thomson, Illinois. Lueders worked as a full-

time, non-exempt, hourly employee at the 3M Cordova facility from January 29, 1990 to May 24, 2007. During the course of her employment, Lueders worked as a Chemical Processor in various units and buildings throughout the Cordova facility.

6. Plaintiff Dean Bruner resides in Cordova, Illinois. Bruner was hired by 3M in 1990 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Process Specialist in Building 3. During the course of his employment, Bruner has worked as Chemical Processor in Buildings 3 and 23.

7. Plaintiff Paul Dannels resides in Cordova, Illinois. Dannels was hired by 3M in 1980 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Finished Goods Handler in Building 30. Over the course of his employment at 3M, Dannels worked as a Chemical Processor in Building 3, a Chemical Processor in Building 20, he also worked in “small packaging” in Building 30, and as a warehouse employee in Building 2.

8. Plaintiff Mark Heppner resides in Erie, Illinois. Heppner was hired by 3M in 1989 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Process Specialist in Building 30. Over the course of his employment at 3M, Heppner has worked as a Chemical Processor in Buildings 3 and 20, a Process Specialist in Building 20, and a temporary Contractor Coordinator in Building 30.

9. Plaintiff Linda Herron resides in Clinton, Iowa. Herron was hired by 3M in 1976 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Material Goods Handler, assigned to the “Tank Farm” associated with Building 80. Over the course of her employment at 3M Herron has worked as a Production Operator in Buildings 3 & 4 and as a Custodian in Buildings 1, 2, 3, and 5.

10. Plaintiff Lutz “Butch” Meyer resides in Delmar, Iowa. Meyer was hired by 3M in 1984 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Process Specialist in Building 23. Over the course of his employment at 3M Meyer has also worked as a Chemical Processor in Buildings 3, 4, and 23, a Process Specialist in Buildings 3 and 23, and in TDX Production in Building 2.

11. Plaintiff John Piersol resides in Albany, Illinois. Piersol was hired by 3M in 1984 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Material Handler Specialist in the Warehouse, working 8 hour shifts. Over the course of his employment at 3M Piersol has also worked as a Chemical Processor in Building 3 and as a 12 hour shift material handler in the Warehouse.

12. Plaintiff William “Bill” Swanson resides in Morrison, Illinois. Swanson was hired by 3M in 1974 and retired from his position as a Chemical Processor in Building 3. Over the course of his employment at 3M, Swanson worked as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Chemical Processor production employee in Building 50.

13. Plaintiff Robert Wells resides in Clinton, Iowa. Wells was hired by 3M in 1974 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as an Utilities Specialist in the Maintenance department in Building 5. Over the course of his employment at 3M Wells has worked as a Shift Material Handler in Building 2, an Incinerator Handler in Building 18, and completed an apprenticeship to become a first class Utilities Serviceman in Building 6.

14. Plaintiff Steven Wright resides in Camanche, Iowa. Wright was hired by 3M in 2004 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility

as a Chemical Processor. Over the course of his employment at 3M, Wright has worked at a Chemical Processor in Building 3 and 23.

15. Plaintiff Beth Zuimeda resides in Morrison, Illinois. Zuimeda was hired by 3M in 1996 and currently works as a full-time, non-exempt, hourly employee at the 3M Cordova facility as a Process Specialist in Building 3. Over the course of her employment at 3M, Zuimeda has worked as a Chemical Processor in buildings 3, 20 and 23.

16. The acts complained of herein have occurred at all times from at least December 1997, and continuing through the present.

FACTS COMMON TO ALL COUNTS

17. The 3M Cordova facility occupies over 700 acres and is comprised of several buildings. Employees work around and directly with flammable liquids and chemicals. The Cordova facility typically operates around the clock, 7 days a week.

18. Production employees include Chemical and Oxide Processors, Process Specialists, Material Handlers, Finished Good Handlers, Environmental Material Handlers, and Yard Keepers. Plant Engineering employees include Mechanics, Electricians, Utility and Servicepersons, Apprentices and Helpers.

19. Employees are all issued security badges and are instructed to swipe in and out at a secured location to gain access to or leave the facility. Thus, there is a record of the times employees arrive at and depart the facility.

20. Production and Engineering employees typically have been assigned to one of two types of schedules. First, there is the “day shift,” which consists of one 8-hour shifts per day. Day Shift “start” time is normally at 0700 and shift “end” time is normally at 1500.

21. The second type of shift is referred to by 3M as the “4-Crew, 12 Hour Shift Operation,” which consists of two 12-hour shifts. The first, day shift (code 1), is scheduled from 0600-1800 and the second, night shift (code 3), is scheduled from 1800 -0600.

22. There are also some employees who work an 8 hour shift referred to as a “Three-Shift Operation.” These employees work 8 hour shifts but “hand-off” their duties to the person on the next shift.

23. Since at least 1996, 3M has promised and agreed in writing to pay its employees the following:

- straight 8-hour work schedule employees are paid time and one-half for work in excess of 8 hours in any day for which overtime has not been paid on some other basis
- 12-hour shift employees are paid time and one-half for work in excess of 40 hours per workweek for which overtime has not been paid on some other basis and two times their regular base pay for all consecutive hours worked over 12.

Exhibits A and B. (Exhibits A and B are the relevant portions of 3M Cordova’s 1996 and 2002 Employee Manual)

24. Currently, employees scheduled for or assigned to an 8-hour shift are also entitled to a paid 20-minute lunch period and two paid 10-minute rest periods. Employees scheduled for or assigned to a 12-hour shift are entitled to two 30-minute paid meal periods and up to 30 additional minutes of paid rest breaks. Exhibit B.

25. Employees are paid every 2 weeks. Employees assigned to the 12-Hour Shift Operation schedule will generally be assigned to a 36 hours schedule one week and 48 hours schedule the next week. Exhibits A and B.

26. Since at least 1996, 3M has promised employees that paid absences such as vacations and holidays shall be considered time worked for the purpose of determining overtime payment. See Exhibits A and B.

27. The vast majority of Production and Plant Engineering employees are required by 3M, as well as the nature of their work, to wear protective clothing and other personal protective equipment (“PPE”) such as eye protection, hard hats, ear plugs and steel-toed “ESD” rated safety shoes. Flame resistant Uniforms or other protective clothing, eye protection, hard hats, ear plugs and steel-toed, shock resistant safety shoes are donned and doffed at the plant. At the end of shift, employees are instructed to shower before changing into their street clothes.

28. In addition to being required to change into and out of their protective clothing and other PPE on the premises, the majority of hourly plant employees, particularly those scheduled for a 12 hour shift, are also required to engage in “shift hand off” (also sometimes referred to as “shift relief” or “shift change”), a process of reporting to their work stations, in work clothing attire, prior to the official start of their shift so that they can relieve their counterpart on the prior shift.

29. 3M’s employee manual instructs employees as follows:

Making Proper Shift Change

The work requirement is for everyone to make a proper shift change. This involves communication at the “work station.” The responsibility is to the unit, the product, and to the person being relieved. Shift change at the workstation provides both employees an opportunity to discuss the process and the processes being monitored for safety and quality issues. Shift changes that occur out of the work area are not acceptable. (Exhibit B)

30. Hourly employees who are required to conduct a shift hand off generally report to their work stations 15 minutes to 30 minutes prior to the hour they are scheduled to start their

shift. (For 12 hour shift employees this time is typically 6am or 6pm).

31. The pre and post shift activities described herein are integral and indispensable activities that are performed for the benefit of the employer. These activities are performed daily and regularly and the time involved is not *de minimis*. The Plaintiffs and the class are entitled to be paid for all time engaged in these activities.

32. Although it is the employer's burden under the law to keep accurate employee time records under 29 U.S.C. §211(c); 820 ILCS §105/8, 3M has failed to do so. With few exceptions, such as when employees stay late or arrive early for a required safety meeting, employees are instructed to record only the total hours of their assigned shift, which is less than the time that they actually worked. Employees do not record the exact times they start and end their work day. For example, an employee would typically record only "8 hours" or "12 hours" for any given date worked. In actuality, that employee may have worked as much as 12 ½ to 13 hours, depending on how long it took them to change into and out of their protective clothing, walk to and from their work station and when they engaged in a proper shift relief. Supervisors are responsible for checking the employee's recorded total time for any given shift.

33. Employees are not paid at either their regular or applicable overtime rate for the time it takes to don their uniforms and other PPE.

34. Employees are not paid at either their regular or applicable overtime rate for the time it takes to walk from the locker room to their work stations prior to the start of their shift.

35. Employees are not paid at either their regular or applicable overtime rate for all their time spent conducting shift relief activities prior to the official start of their shifts.

36. Although most of the time, employees are allowed to leave their work stations

prior to the end of their scheduled shift time, employees do not always complete the tasks of walking to the locker room, showering, and changing into street clothes prior to the end of their scheduled shift time. Thus, employees are not paid for all the time required to perform these tasks.

37. Defendant, 3M, was aware of its obligation to pay employees for all hours worked and to pay overtime and intentionally chose not to pay Plaintiffs and the class. Defendant acted in bad faith in failing to compensate Plaintiffs and the class for all work performed.

CLASS ALLEGATIONS – IMWL and IWPCA

38. Plaintiffs seek to represent a class of all former and current, non-exempt, hourly plant employees who work, or have worked, at the Cordova 3M facility at any time between December 1997 and continuing through the present, who are/were not paid either their regular or overtime pay for engaging in the following activities:

- (a) Donning and doffing on 3M premises, protective clothing and other PPE required by 3M or the nature of the work;
- (b) Walk to and from their locker rooms and work stations in protective clothing; and
- (c) Reporting to work stations approximately 15-30 minutes prior to the official start of their shift.

39. The Plaintiffs and the members of the class have a commonality of interest in the subject matter (Defendant's common company wide personnel policies) and the remedy sought (payment by Defendant of all unpaid wages at their applicable regular or overtime rate and penalties as allowed by law).

40. There are several predominate questions of fact common to Plaintiffs and the class, including the fact that Plaintiffs and the class are (1) all non-exempt employees who worked in

similar manufacturing-related positions for 3M; (2) were/are all compensated on an hourly basis; (3) were/are all subject to the same wage and hour and payroll policies, practices and procedures including hours paid at the employee's overtime rate; (4) were/are all required to record their total time on the same computerized system; (5) were/are subject to the same policies, practices and procedures concerning work related activities such as the time they were expected to report to their work stations and the requirement to don and doff their Personal Protection Equipment, including uniforms and protective clothing, on 3M premises; and (6) were/are all compensated by the same payroll department, on the basis of common time records, payroll policies, documents and computer systems.

41. In addition, there are questions of law common to Plaintiffs and the class, including but not limited to whether: (1) donning and doffing uniforms and walking to and from work stations and locker rooms is compensable "work" time; (2) the Defendant's failure to pay Plaintiffs and the class wages at all for certain hours worked violated the IMWL and the IWPCA; (3) the Defendants' failure to pay Plaintiffs and the class overtime at the statutory rate of one and one-half their regular hourly rate for all hours worked over forty in a one-week period violated Illinois law; and (4) the Defendants' failure to pay Plaintiffs and the class overtime at their promised rate of pay for all hours worked over 8 or 12 hours in a day violated Illinois law.

42. The class is sufficiently numerous to make joinder impracticable. On information and belief, the proposed class consists of over 400 employees and, at any given time, the Defendant employs over 300 non-exempt, hourly employees who have engaged in the compensable pre and post shift activities described herein and have not been paid for same. This factor alone makes joinder impracticable.

43. There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.

44. Plaintiffs will fairly and adequately represent and protect the interests of the class as whole. Plaintiffs have willingly undertaken and are able to prosecute these claims on behalf of themselves and all similarly-situated persons.

45. This is not a collusive or friendly action. Plaintiffs have retained counsel experienced in wage and hour and in class action litigation.

46. A class action is superior to other available means for the fair and efficient adjudication of the controversy alleged in this Complaint. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual action would engender. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. If individual actions were required to be brought by each of the members of the Plaintiff Class injured or affected, it would necessarily result in a multiplicity of lawsuits, creating a hardship to the individual plaintiff and to the court, as well as to the defendant. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this controversy and distribution of the common fund to which the class is entitled.

47. Plaintiffs and the class meet all the requirements for class certification.

COUNT I
ILLINOIS MINIMUM WAGE LAW

48. Plaintiffs reallege and restate paragraphs 1-47, as if fully set forth herein.

49. Plaintiffs seek to recover from Defendant, for themselves and the members of the class, wages for unpaid hours worked, overtime, punitive damages, attorneys' fees and costs pursuant to Section 12(a) of the IMWL, 820 ILCS §105/12(a).

50. Defendant is an "employer" within the meaning of the IMWL, 820 ILCS §105/3 and Plaintiffs and the class are covered "employees" within the meaning of the IMWL, 820 ILCS §105/3(d). As such, Defendant is required to pay its non-exempt employees overtime at a rate of not less than one and one-half times their regular hourly rate for all hours worked in excess of 40 in one week. 820 ILCS §105/4(A)(1). Defendant is required to pay its non exempt employees no less than minimum wage for all hours worked. 820 ILCS §105/4(a).

51. At all relevant times, Plaintiffs and the class of similarly situated employees were entitled to be paid overtime for hours worked in excess of forty hours per week. Plaintiffs and the class were entitled to be paid at least minimum wage for all regular hours worked.

52. At all relevant times, Defendant refused and/or failed to pay Plaintiffs and other similarly situated employees straight time for all hours worked and for overtime at time and one half, as follows:

- a) Plaintiffs and the class were required by 3M and/or the nature of the work to don protective clothing and other PPE prior to reporting to their work stations.

Defendant does not pay its employees for the time it takes to don their protective

clothing and other PPE and to walk from their locker rooms to their work stations.

- b) Plaintiffs and the class were required by 3M to report to their work stations prior to the start of their scheduled shifts to engage in shift relief. Defendant does not pay its employees for reporting to their work stations before the start of their scheduled shift.
- c) Plaintiffs and the class were required by 3M and/or the nature of the work to doff their protective clothing and other PPE and don street clothes prior to leaving the facility. On information and belief, Defendant does not always pay for its employees to doff their protective clothing and other PPE and change into street clothes.

53. From prior to 1997 and continuing through the present, Defendant has promised to pay its employees who are assigned to an 8-hour shift at a rate of one and a half times their regular rate of pay for all hours worked over 8 in any day. See Exhibits A-D, attached. (Exhibit “C” is Defendant’s On-Line Timecard Entry Hourly Payroll Manual and Exhibit “D” is 3M communication which reiterates the promises.)

54. Defendant has promised to pay its employees at a rate of two times their regular rate of pay for all consecutive hours worked over 12 in any day. See Exhibits A-D, attached.

55. Defendant has failed to pay Plaintiffs and the class their promised overtime wage or the statutory overtime wage required by the IMWL for hours worked over 40 in a workweek.

56. In addition to underpaying Plaintiffs and the class as described above, Defendant has failed to pay Plaintiffs and the class at all, at either their promised wage rate or minimum wage rate, for certain hours they worked.

57. Plaintiffs and all similarly situated employees have been damaged by Defendant's violations of the IMWL, outlined above, in an amount not presently ascertainable.

58. Defendant knew, or should have known, of the IMWL requirement to pay employees minimum wage for all hours worked and overtime for all hours over 40 worked in a week and that the activities described herein are "work" for which employees must be compensated. Defendant's violations of the IMWL were willful.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, and the class they represent, ask the court:

- A. To order Defendant to make an accounting of all the hours worked and wages paid to the Plaintiffs and to each and every class member they represent commencing at least in December 1997 through and to the present;
- B. For a judgment for all back wages due, as provided by the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*;
- C. For prejudgment interest on the back wages in accordance with 815 ILCS 205/2 and punitive damages under The Illinois Minimum Wage Law, 820 ILCS 105/12a;
- D. For reasonable attorney's fees and costs of this action as provided by the Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*;
- E. To enter an injunction requiring Defendant to comply with the Illinois Minimum Wage Act in the future; and
- F. For such other and further relief as the Court may deem just and equitable.

COUNT II **ILLINOIS WAGE PAYMENT AND COLLECTION ACT**

59. Plaintiffs reallege and restate paragraphs 1-58, as if fully set forth herein.

60. Plaintiffs seek to recover from Defendant, for themselves and the members of the class, wages for unpaid hours worked, at the rate of pay promised by Defendant, attorneys' fees and costs pursuant to Section 14 of the IWPCA, 820 ILCS 115/14 and the Illinois Attorneys Fees In Wage Actions Act, 705 ILCS 225/1.

61. Defendant is an "employer" within the meaning of the IWPCA, 820 ILCS §115/2 and Plaintiffs and the class are covered "employees" within the meaning of the IWPCA, 820 ILCS §115/2. As such, Defendant is required to pay its non-exempt employees "wages" in the amount contracted or agreed to between the parties. 820 ILCS 115/2.

62. At hire and continuing thereafter, Defendant agreed, promised and contracted to pay its employees who are assigned to an 8-hour shift at a rate of one and a half times their regular rate of pay for all hours worked over 8 in any day. See Exhibits A-D, attached.

63. At hire and continuing thereafter, Defendant agreed, promised and contracted to pay its employees at a rate of two times their regular rate of pay for all consecutive hours worked over 12. See Exhibits A-D, attached.

64. Defendant made the aforementioned agreement, promise and contract orally and in writing. Exhibits "A and B", attached hereto are the relevant parts of 3M Employee Handbooks for 1996 and 2002 and Exhibit "C" attached hereto is Defendant's On-Line Timecard Entry Hourly Payroll Manual. In addition, the promises and agreements set forth in Exhibits "A," "B" and "C" were reinforced by defendant to Plaintiffs and the class on numerous occasions from at least December 1997 and continuing through the present, both verbally and in writings such as Exhibit "D", a 3M communication which reiterates the promises.

65. At all relevant times, Defendant agreed to pay Plaintiffs and the class of similarly situated employees for all hours worked, at their promised rates, including promised overtime and doubletime rates set forth above, and Defendant had the ability to pay said wages.

66. At all relevant times, Defendant refused and/or failed to pay Plaintiffs and other similarly situated employees for all hours worked as follows:

- a. Plaintiffs and the class are/were required to don protective clothing and other PPE prior to reporting to their work stations. Defendant does not pay its employees for the time it takes to don their protective clothing and other PPE and to walk from their locker rooms to their work stations.
- b. Plaintiffs and the class are/were required to report to their work stations prior to the start of their scheduled shifts to engage in shift relief. Defendant does not pay its employees for reporting to their work stations prior to the start of their scheduled shift.
- c. Plaintiffs and the class are/were required to doff their protective clothing and other PPE and don street clothes prior to leaving the facility. On information and belief, Defendant does not always pay for its employees to doff their uniforms and change into street clothes.

67. Defendant was required to pay Plaintiffs and the class members the overtime and regular wages described above, in each and every pay period. 820 ILCS 115/3.

68. Plaintiffs and all similarly situated employees have been damaged by Defendant's violation of the IWPCA, outlined above, in an amount not presently ascertainable.

69. Defendant knew, or should have known, of the IWPCA requirement to pay

employees the agreed to wage for all hours worked and that the activities described herein are “work” for which employees must be compensated. Defendant’s violations of the IWPCA were willful.

70. On November 30, 2007, Plaintiff Lueders made a demand for payment of said unpaid wages on behalf of herself and the class pursuant to 705 ILCS 225/1. Defendant failed to pay said wages in response.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and the class they represent ask the court:

- A. To order Defendant to make an accounting of all the hours worked and wages paid to the Plaintiffs and to each and every class member they represent commencing at least in December 1997 through and to the present;
- B. To enter judgment in favor of the Plaintiffs and the class they represent, and against the Defendant for the back wages due, plus prejudgment interest.
- C. To award reasonable attorney’s fees and costs of this action as provided by the Illinois Attorneys Fees In Wage Actions Act, 705 ILCS 225/1.
- D. To enter an injunction requiring Defendant to comply with the Illinois Wage Payment and Collection Act in the future; and,
- E. For such other and further relief as may be just in law and in equity.

COUNT III
BREACH OF CONTRACT

71. Plaintiffs reallege and restate paragraphs 1-69, as if fully set forth herein.

72. As set forth in paragraphs 63 to 65, above, defendant promised orally and in

writing to pay Plaintiffs and the class overtime and double time, as so described.

73. Defendant disseminated its offer and promise to pay overtime and double-time as described in paragraphs 62 to 64 above to Plaintiffs and to each class member, verbally, and in writing, including, but not limited to, Exhibit “A - D” attached.

74. Plaintiffs and the class accepted defendant’s offer by working for defendant.

75. Defendant breached its contract to so pay Plaintiffs and the class with respect to the hours described in paragraph 68, above.

76. As a result of said breach, Plaintiffs and the class suffered damages, including the non-payment of the contracted wages.

77. On November 30, 2007, Plaintiff Lueders made a demand for payment of said unpaid wages on behalf of herself and the class pursuant to 705 ILCS 225/1. Defendant did not pay said wages in response to this demand.

WHEREFORE, Plaintiffs and the class they represent ask the court:

- A. To order Defendant to make an accounting of all the hours worked and wages paid to the Plaintiffs and to each and every class member they represent commencing at least in December 1997 through and to the present;
- B. To enter judgment in favor of the Plaintiffs and the class they represent, and against the Defendant for the back wages due, plus prejudgment interest.
- C. To award reasonable attorney’s fees and costs of this action as provided by the Illinois Attorneys Fees in Wage Actions Act, 705 ILCS 225/1.
- D. For such other and further relief as may be just in law and in equity.

COUNT IV
FAIR LABOR STANDARDS ACT

78. Plaintiffs, Barbara Lueders, Dean Bruner, Paul Dannels, Mark Heppner, Linda Herron, Lutz Meyer, John Piersol, William Swanson, Robert Wells, Steven Wright, and Beth Zuidema, reallege and restate paragraphs 1-37, as if fully set forth herein.

79. Pursuant to the FLSA, 29 U.S.C. §201 *et seq.* and the Portal to Portal Act, 29 U.S.C. §251 *et. seq.*, Plaintiffs, Barbara Lueders, Dean Bruner, Paul Dannels, Mark Heppner, Linda Herron, Lutz Meyer, John Piersol, William Swanson, Robert Well, Steven Wright, Beth Zuidem, are entitled to compensation at a rate of at least the minimum wage for all hours worked and at a rate not less than one and one-half her regular rate of pay for all hours worked in excess of forty (40) in any week during the two (2) years preceding the filing of this Complaint.

80. At all relevant times, Defendant was an “employer” within the meaning of the FLSA, 29 U.S.C. §203(d) and the Portal to Portal Act, 29 U.S.C. §262(a), and, as such, was required but refused and/or failed to pay Plaintiffs minimum wage for all hours worked and overtime at time and one half for certain hours worked, as follows:

- a. Plaintiffs are/were required to don their protective clothing and other PPE prior to reporting to their work station. Defendant did not pay Plaintiffs for the time it takes to don their protective clothing and other PPE and to walk from their locker room to their work station.
- b. Plaintiffs are/were required to report to their work station approximately 15-30 minutes prior to the start of their scheduled shift time. Defendant did not pay Plaintiffs for reporting to their work station prior to their scheduled shift time.
- c. Plaintiffs are/were required to doff their protective clothing and other PPE,

shower, and don street clothes prior to leaving the facility. Defendant does not always pay Plaintiffs to doff their protective clothing and other PPE and change into street clothes.

81. The aforementioned failure to pay minimum wages and overtime by Defendant violates the minimum wage and overtime provisions of the FLSA 29 U.S.C. §213 (a)(1).

82. Plaintiffs have been damaged by Defendant's violation of the FLSA in an amount not presently ascertainable.

WHEREFORE, Plaintiffs pray that this Court enter judgment as follows:

- A. For the full amount of wages due for all hours worked, including overtime compensation, and an equal amount in liquidated damages, plus pre-judgment interest for the 2 years preceding the filing of this Complaint;
- B. For reasonable attorney's fees and costs; and
- C. For such other and further relief as this Court deems necessary and just.

COUNT V
WILFUL VIOLATION OF THE FLSA

83. Plaintiffs, Barbara Lueders, Dean Bruner, Paul Dannels, Mark Heppner, Linda Herron, Lutz Meyer, John Piersol, William Swanson, Robert Wells, Steven Wright, Beth Zuidema, reallege and restate paragraphs 78-82, as if fully set forth herein.

84. Defendant knew or should have known of the FLSA and Portal to Portal Act requirements to pay employees minimum wage for all hours worked and overtime for all hours over 40 worked in a week. The aforementioned failure to pay minimum wages and overtime by Defendant was willful, entitling Plaintiffs to compensation at a rate of not less than one and one-

half times their regular rate of pay for all hours worked in excess of 40 in any given week during the three (3) years preceding the filing of this Complaint.

WHEREFORE, Plaintiffs pray that this Court enter judgment as follows:

- A. For the full amount of wages due for all hours worked, including overtime compensation, and an equal amount in liquidated damages, plus pre-judgment interest for the three years preceding the filing of this Complaint;
- B. For reasonable attorney's fees and costs; and
- C. For such other and further relief as this Court deems necessary and just.

Respectfully submitted,

/s/Colleen M. McLaughlin
One of Plaintiffs Attorneys

A JURY OF 12 PERSONS IS DEMANDED.

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