

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

HAMPDEN, ss.

CIVIL ACTION NO.: 24CV200

CRYSTAL SIEDEL and CYNTHIA
WAGNER, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

GPM INVESTMENTS, LLC.

Defendant.

04/11/2024

CLASS ACTION COMPLAINT AND JURY DEMAND

I. INTRODUCTION

1. Employers in Massachusetts must pay the wages, including any accrued, but unused, vacation time and/or paid time off (“PTO”), of “any employee discharged from such employment ...in full on the day of his discharge,” and of any employee who voluntarily leaves their employment, “in full on the following regular pay day.” Massachusetts Wage Act (the “Wage Act”), M.G.L. c. 149 § 148 (emphasis added).

2. Employers in Massachusetts who institute an annual leave plan or PTO leave plan, in which employers combine sick leave, personal leave, vacation leave, and/or any other types of leave into one general category, must unambiguously designate the amount of hours or days of the leave that is considered vacation time. *See* Massachusetts Office of the Att’y Gen. Fair Labor Div., *Advisory Op. 99/1* (1999) at Page 2. Employers who fail to do so, or who fail to properly notify employees of such a designation, violate the Wage Act for any unpaid PTO time.

3. Here, Defendant, GPM Investments, LLC (“Defendant” or “GPM”), violated the Massachusetts Wage Act by failing to pay out accrued PTO upon the separation of its employees and by failing to appropriately designate PTO and provide notice of the same. Accordingly, Defendant is liable for three (3) times the amount of the unpaid wages (less any amounts paid), plus interest, costs, and attorneys’ fees. *See* M.G.L. c. 149 § 150; *see Reuter v. City of Methuen*, 184 N.E.3d 772, 781 (Mass. 2022).

4. As a result of Defendant’s illegal conduct in violation of the Wage Act, Defendant retained, for its own use, hundreds of thousands of dollars that should have been paid to Plaintiffs, Ms. Crystal Siedel (“Plaintiff Siedel”) and Ms. Cynthia Wagner (“Plaintiff Wagner”) (Plaintiff Siedel and Plaintiff Wagner, collectively, “Plaintiffs”), and all other similarly situated employees on the date of their involuntary termination, or on the pay period subsequent to an employee’s voluntary separation from their employment (the “Class” or “Class Members”) (Plaintiffs and Class, collectively, “Plaintiffs”).

II. PARTIES

5. Defendant, GPM Investments, LLC, is limited liability company (LLC), formed under the laws of the State of Delaware, with a principal office located at 8565 Magellan Parkway, Suite 400, Richmond, Henrico County, VA 23227-1172. Defendant has a Massachusetts office located at 246 Cottage Street, Springfield, Hampden County, MA 01104. Defendant’s Massachusetts Resident Agent is Corporation Service Company, located at 84 State Street, Boston, Suffolk County, MA 02109.

6. Plaintiff, Crystal Siedel, is an adult resident of Hampden County, Massachusetts.

7. Plaintiff, Cynthia Wagner, is an adult resident of Hampden County, Massachusetts.

III. JURISDICTION

8. This Court has jurisdiction over this matter pursuant to M.G.L. c. 149 §§ 148; 150.

9. On March 22, 2024, Plaintiff Siedel received authorization from the Massachusetts Office of the Attorney General, Fair Labor Division, to pursue claims for unpaid wages, on behalf of herself, and on behalf of all other similarly situated employees, against Defendant (copy of Private Right of Action Authorization attached as Exhibit “A”).

10. On March 21, 2024, Plaintiff Wagner received authorization from the Massachusetts Office of the Attorney General, Fair Labor Division, to pursue claims for unpaid wages, on behalf of herself, and on behalf of all other similarly situated employees, against Defendant (copy of Private Right of Action Authorization attached as Exhibit “B”).

IV. FACTS

11. Defendant owns and operates approximately thirty (30) Pride gas stations and convenience stores in Massachusetts.

12. On or about December 7, 2022, Defendant hired Plaintiff Siedel as a Regional Environmental Manager.

13. On or about December 7, 2022, Defendant hired Plaintiff Wagner as a Category Manager.

14. At all times relevant, Defendant maintained a “paid time off” (“PTO”) plan in which Defendant combines sick leave, personal leave, vacation leave, and/or any other types of leave into one general category that employees may use at their discretion.

15. Upon information and belief, Plaintiffs and the Class were able to use all time in their PTO leave banks at their discretion. Specifically, Defendant permitted Plaintiffs and the

Class to utilize the entire amount of PTO as “vacation,” as expressed in Defendant’s Associate Handbook.

16. Per Defendant’s Associate Handbook, “PTO may be used for vacation, preventive health care, dental care, personal business, family emergencies and most other elective absences.”

17. Further, Defendant’s Associate Handbook states that “unused PTO is not paid out upon termination of employment (except where required by law).”

18. Defendant’s Associate Handbook made no mention as to how many days of PTO could be attributed to vacation, sick time, personal time, etc.

19. On February 5, 2024 after working for Defendant for over one year, Plaintiff Siedel voluntarily resigned from her position.

20. At the time of Plaintiff Siedel’s voluntary separation, she possessed approximately 183 hours of accrued, but unused, PTO in her leave bank.

21. On or about February 16, 2024, Defendant tendered Plaintiff Siedel her final wages (which should have included all PTO remaining in her leave bank pursuant to the Wage Act, M.G.L. c. 149 § 148), however, Plaintiff Siedel’s final check only included her pay for final hours worked and for approximately 24 hours, or three days, of her accrued, but unused, PTO.

22. After receiving her final paycheck, Plaintiff Siedel contacted Defendant to inquire about the status of the payment for the remainder of her accrued, but unused, PTO in her leave bank.

23. Upon information and belief, Defendant informed Plaintiff Siedel that Defendant only classifies 24 hours, or three days, of an employee’s total PTO leave bank as “vacation time.”

24. Plaintiff Siedel was never noticed, orally, in writing, or otherwise, of any such policy in which Defendant only designated 24 hours, or three days, of PTO leave as vacation time.

25. Defendant's purported designation of vacation leave misrepresents its actual policy, which is to permit workers to use any or all of their accrued PTO time as vacation time per the terms of its Associate Handbook.

26. Defendant purported vacation designation is designed to circumvent its obligations under the Massachusetts Wage Act to pay its employees the cash value of all accrued but unused vacation time upon an employee's separation from employment.

27. Defendant paid Plaintiff Siedel for only 2) hours, or three days, which was a fraction of the accrued PTO that she possessed at the time of her separation.

28. On January 19, 2024 after working for Defendant for over one year, Plaintiff Wagner voluntarily resigned from her position.

29. At the time of Plaintiff Wagner's voluntary separation, she possessed approximately 208 hours of accrued, but unused, PTO in her leave bank.

30. On or about January 26, 2024, Defendant tendered Plaintiff Wagner her final wages (which should have included all PTO remaining in her leave bank pursuant to the Wage Act, M.G.L. c. 149 § 148); however, Plaintiff Wagner's final check only included her pay for final hours worked.

31. On or about February 2, 2024, Defendant tendered Plaintiff Wagner a payment for her PTO (which should have included all PTO remaining in her leave bank pursuant to the Wage Act, M.G.L. c. 149 § 148), however, Plaintiff Wagner's check only included her pay for approximately 24 hours of her accrued, but unused, PTO.

32. Defendant maintains a policy and/or practice of failing to pay employees who are involuntarily terminated, or who voluntarily separate, from their employment for the value of the employee's accrued, but unused, PTO.

V. CLASS ACTION ALLEGATIONS

33. Defendant failed to pay Plaintiffs and the Class for all accrued, but unused, PTO, as of the date of their involuntary termination or voluntary separation from their employment as required by M.G.L c. 149 § 148.

34. Plaintiffs bring this action on behalf of themselves and on behalf of all other Members of the Massachusetts Class.

35. The Massachusetts Class is defined as follows:

All Massachusetts employees of GPM Investments, LLC who possessed more than three days of accrued PTO at the time of their separation from employment with GPM Investments, LLC during the three years immediately preceding this lawsuit through the date of final judgment in this matter.

36. Class certification for these Massachusetts state law claims is appropriate under Rule 23 of the Massachusetts Rules of Civil Procedure because all the requirements of the Rule 23 are met.

37. The Class is so numerous that joinder of all Members is impracticable. Upon information and belief, there are hundreds of workers who were employed by Defendant and subjected to the policies and practices challenged herein during the period of the claim.

38. There are questions of law and fact common to the Class, including whether Defendant failed to compensate Plaintiffs and the Class Members for accrued, but unused, PTO when they were involuntarily terminated, or voluntarily separated, from their employment with Defendant.

39. The claims of the Plaintiffs are typical of those of the Class Members. The claims of the Plaintiffs encompass Defendant's challenged course of conduct. Furthermore, the claims of the Plaintiffs are based on the same legal theories as the claims of the Putative Class Members. The legal issues as to the violation of the Wage Act by Defendant's conduct applies equally to Plaintiffs and to the Class.

40. Plaintiffs will fairly and adequately protect the interests of the Class. The claims of the Plaintiffs are not antagonistic to those of the Putative Class, and Plaintiffs hired counsel skilled in the prosecution of class actions.

41. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action is the superior method of adjudication because it presents few management difficulties, conserves the resources of the Parties and the court system, protects the rights of each Class Member, and maximizes recovery to Plaintiffs and the Class Members.

42. Based upon the foregoing, Defendant violated the Wage Act by failing to pay Plaintiffs and the Class Members for all wages, including their earned, but unused, PTO on the date of their involuntary termination, or on the pay day subsequent to their voluntary separation from their employment.

VI. LEGAL CLAIMS

COUNT I: Violation of the Massachusetts Wage Act

43. Plaintiffs reallege and incorporate herein the allegations contained in each and every other paragraph of this Complaint.

44. Defendant failed to pay all earned wages to Plaintiffs and the Class, including accrued, but unused, PTO on the date of their involuntary termination, or voluntary separation

from their employment, and therefore, Defendant is liable for three times the amount of the unpaid wages, plus interest, costs, and attorneys' fees. M.G.L. c. 149 § 150.

VI. DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves, and on behalf of all others similarly situated, requests that the Court:

- A. Certify this Action as a class action pursuant to M.G.L. c. 149 § 148;
- B. In the alternative, certify this case as a class action pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure;
- C. Appoint Plaintiffs as Class Representatives;
- D. Appoint the undersigned as Class Counsel;
- E. Grant Class-wide judgment in favor of Plaintiffs and the Class against Defendant;
- F. Award Plaintiffs and the Class treble damages (less any amounts paid) pursuant to M.G.L. c. 149 §§ 148; 150;
- G. Award Plaintiffs and the Class all pre-judgment and post-judgment interest on these damages pursuant to M.G.L. c. 149 §§ 148; 150;
- H. Award attorneys' fees and costs incurred by Plaintiffs in filing this Action pursuant to M.G.L. c. 149 §§ 148; 150;
- I. Award service awards to each of the Plaintiffs; and
- J. Award such other relief as the Court deems just.

VII. JURY DEMAND

Plaintiffs, on behalf of themselves, and on behalf of all others similarly situated, demand a trial by jury as to the allegations contained in this Complaint.

Dated: April 11, 2024

Respectfully submitted,

The Plaintiffs,
CRYSTAL SIEDEL and CYNTHIA
WAGNER, on behalf of themselves, and on
behalf of all others similarly situated,

By their Attorneys,

/s/ Raymond Dinsmore

Raymond Dinsmore, Esq. (BBO # 667340)

Richard E. Hayber, Esq. (BBO # 569131)

Ryan B. Guers, Esq. (BBO # 713870)

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*Attorneys for Plaintiffs and the Putative
Class Members*

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

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March 22, 2024

Raymond Dinsmore, Esq.
Hayber, McKenna & Dinsmore, LLC
One Monarch Place, Suite 1340
Springfield, MA 01144

RE: Crystal Siedel
Request for Private Right of Action against GPM Investments, LLC

Dear Attorney Dinsmore:

Thank you for contacting the Office of the Attorney General's Fair Labor Division.

Massachusetts General Laws Chapter 149, § 150, and Chapter 151, §§ 1B and 20 establish a private right of action for employees who believe they are victims of certain violations of the state wage laws.

This letter is to inform you that we are authorizing you to pursue this matter through a private civil lawsuit. If you elect to sue in civil court, you may bring an action on your own or your clients' behalf, and on behalf of other similarly situated workers.

This office will not pursue an investigation or enforcement at this time.

Sincerely,

Fair Labor Division
Office of the Massachusetts Attorney General
(617) 727-3465

<p>This document contains important information. Please have it translated immediately.</p> <p>В данном документе содержится важная информация. Вам необходимо срочно сделать перевод документа.</p> <p>Este documento contiene información importante. Por favor, consiga una traducción inmediatamente.</p> <p>تحتوي هذه الوثيقة على معلومات هامة. يرجى ترجمتها فوراً.</p> <p>Docikman sa gen enfòmasyon enpòtan. Tanpri fè yon moun tradwi l touswit.</p>	<p>Questo documento contiene informazioni importanti. La preghiamo di tradurlo immediatamente.</p> <p>Este documento contém informações importantes. Por favor, traduza-lo imediatamente.</p> <p>此文件含有重要信息。請立即找人翻譯。</p> <p>본 문서에는 중요한 정보가 포함되어 있습니다. 본 문서를 즉시 번역하도록 하십시오.</p> <p>Tài liệu này có chứa thông tin quan trọng. Vui lòng dịch tài liệu này ngay.</p>	<p>ខេត្តសាវណ្ណសម័យនេះ បំបែកខ្លួនឡើងវិញ។ រដ្ឋាភិបាលខេត្តសាវណ្ណសម័យនេះ បំបែកខ្លួនឡើងវិញ។</p> <p>ឯកសារនេះមានន័យសំខាន់ ។ សូមបញ្ជូនឯកសារនេះ ។</p> <p>Ce document contient des informations importantes. Veuillez le faire traduire au plus tôt.</p>
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EXHIBIT B



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
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March 21, 2024

Raymond Dinsmore, Esq.
Hayber, McKenna & Dinsmore, LLC
One Monarch Place, Suite 1340
Springfield, MA 01144

RE: Cynthia Wagner
Request for Private Right of Action against GPM Investments, LLC

Dear Attorney Dinsmore:

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