

IN THE AMERICAN ARBITRATION ASSOCIATION

PEARL DE LA CRUZ, individually and on behalf of a class of others similarly situated,

Claimant,

v.

MASCO RETAIL CABINET GROUP, LLC, an Ohio limited liability corporation; and MASCO CORPORATION, a Delaware corporation,

Respondents.

Case No. 11 164 01156 0812 166

CLASS ARBITRATION COMPLAINT

Claimant Pearl De La Cruz brings this action on behalf of herself and all others similarly situated against Masco Retail Cabinet Group, LLC and Masco Corporation, and alleges as follows:

1. This case is a wage and hour action to vindicate the substantive rights afforded employees by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* ("FLSA"). The deliberate and systemic failure of Respondents to pay their employees their earned wages and overtime compensation violates the FLSA.

JURISDICTION AND VENUE

2. The FLSA authorizes private rights of action to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Claimant's FLSA claim is based on 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. Venue in this arbitration tribunal is proper under Respondents' Dispute Resolution Policy, which calls for mediation and arbitration before the American Arbitration Association.

PARTIES

4. Claimant Pearl De La Cruz resides in Seattle, Washington. She has been employed by Respondents in Washington since August 2004 as a retail sales representative.

5. Respondent Masco Corporation is a Delaware corporation with its principal place of business in Michigan. Masco does business in the State of Washington and nationwide.

6. Respondent Masco Retail Cabinet Group, LLC ("MRCG") is an Ohio limited liability corporation with its principal place of business in Ohio. In January 2008, KraftMaid Cabinetry merged into MRCG, which is a wholly owned subsidiary of Masco. MRCG does business in the State of Washington and nationwide.

7. Claimant is informed and believes, and based thereon alleges, that at all relevant times MRCG was controlled by and acted in all respects relevant to this action as the agent of Masco. Claimant is also informed and believes, and based thereon alleges, that Masco and MRCG carried out a joint scheme, business plan, or policy, and the acts of each Respondent are legally attributable to the other Respondent. Masco's control over MRCG exceeds the control normally exercised by a parent corporation.

FACTUAL BACKGROUND

8. Masco describes itself as "one of the world's largest manufacturers of brand-name consumer products for the home improvement and new home construction markets."

Masco describes MRCG as “a leading supplier of cabinetry for the home – for kitchen, bath, home office, laundry, lower level spaces and every room in between.”

9. Respondents employ retail sales representatives to travel to retail stores where MRCG’s products are available for sale. The average store visit lasts approximately two to three hours. The retail sales representatives inspect displays, distribute product literature and train retail store employees on MRCG products. They also travel to customers’ homes to examine MRCG products that are the subject of customer warranty complaints, and take calls from customers and retail store employees about MRCG products. In performing their duties, retail sales representatives are required to deliver a consistent company-mandated message and presentation about MRCG products. Retail sales representatives do not typically make sales and do not negotiate the terms of the sale of MRCG products with the retail stores, which are usually established customers.

10. Retail sales representatives are unable to complete their store and customer visits and satisfactorily perform their job duties without working in excess of forty hours per week on a regular basis. They typically work sixty to seventy hours per week, and often work on Saturday and Sunday. They either drive or fly to the stores and sometimes travel for weeks at a time. Respondents provide a company car for retail sales representatives to use in traveling to their assigned stores and to customers’ homes.

11. Respondents misclassify their retail sales representatives as “exempt” employees under the FLSA and do not pay them overtime wages.

CLASS ACTION ALLEGATIONS

12. Because the AAA does not provide an equivalent opt-in collective action procedural mechanism as that provided for in 29 U.S.C. § 216(b), Claimant brings this case as an opt-out class action under the American Arbitration Association's Supplementary Rules for Class Arbitrations on behalf of a class defined as "all current and former employees of KraftMaid Cabinetry and/or MRCG who worked as retail sales representatives in the United States at any time during the last three years." *See Long John Silvers Restaurants, Inc. v. Cole*, 514 F.3d 345 (4th Cir. 2008).

13. The number of similarly situated employees and their geographic dispersion across the country make joinder of all similarly situated employees impracticable.

14. There are questions of fact and law common to the class that predominate over any questions affecting only individual members, including:

- a. Whether Respondents misclassified their retail sales representatives as exempt employees under the FLSA;
- b. Whether Respondents failed to pay their retail sales representatives overtime wages due and owing to them;
- c. Whether Respondents failed to accurately record and pay retail sales representatives for all hours worked.

15. A class arbitration to resolve these predominating common issues is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient resolution of these claims.

16. The Named Claimant's claims are typical of those of the class in that class members have been employed in the same or similar positions as the Named Claimant and were subject to the same or similar unlawful practices as the Named Claimant.

17. A class arbitration is the appropriate method for the fair and efficient adjudication of this controversy. Respondents have acted or refused to act on grounds generally applicable to the class. The presentation of separate actions by individual class members could create a risk of inconsistent and varying adjudications, establish incompatible standards of conduct for the Respondents, and/or substantially impair or impede the ability of class members to protect their interests.

COUNT I
Violation of the Fair Labor Standards Act of 1938

18. Claimant incorporates all preceding paragraphs as though fully set forth herein.

19. At all times material herein, Claimant has been entitled to the substantive rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

20. The FLSA regulates, among other things, the payment of overtime pay by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. § 207(a)(1).

21. Respondents are subject to the overtime pay requirements of the FLSA because they are enterprises engaged in interstate commerce and their employees are engaged in commerce.

22. Respondents violated the FLSA by misclassifying employees and failing to pay for overtime. In the course of perpetrating these unlawful practices, Respondents have also willfully failed to keep accurate records of all hours worked by their employees.

23. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from overtime pay obligations. Though Respondents classify retail sales representatives as exempt, this is an incorrect application of the law. None of the FLSA exemptions apply to Claimant or other similarly situated retail sales representatives.

24. Claimant and all similarly situated employees are victims of a uniform and company-wide compensation policy. This uniform policy, in violation of the FLSA, has been applied to all retail sales representatives employed by Respondents. On information and belief, Respondents have applied this uniform policy to all retail sales representatives nationwide.

25. Claimant and all similarly situated employees are entitled to damages equal to the mandated overtime premium pay within the three years preceding the filing of this Demand for Arbitration, plus periods of equitable tolling, because Respondents acted willfully and knew or showed reckless disregard for whether their conduct was prohibited by the FLSA.

26. Respondents have acted neither in good faith nor with reasonable grounds to believe that their actions and omissions were not a violation of the FLSA and, as a result, Claimant and other similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime pay described pursuant to Section 16(b) of the FLSA, codified at 29 U.S.C. § 216(b). Alternatively, should the Court

find Respondents did not act willfully in failing to pay overtime pay, Claimant and all similarly situated employees are entitled to an award of prejudgment interest at the applicable legal rate.

27. As a result of the aforesaid willful violations of the FLSA's overtime pay provisions, overtime compensation has been unlawfully withheld by Respondents from Claimant and all similarly situated employees. Accordingly, Respondents are liable pursuant to 29 U.S.C. § 216(b), together with an additional amount as liquidated damages, pre-judgment and post-judgment interest, reasonable attorneys' fees, and costs of this action.

PRAYER FOR RELIEF

WHEREFORE, Claimant, on her own behalf and on behalf of all others similarly situated, pray for relief as follows:

1. An order certifying this case as a class action under the AAA's Supplementary Rules on Class Arbitrations;
2. Compensatory damages;
3. Liquidated damages;
4. Attorneys' fees as allowed by Section 16(b) of the FLSA;
5. Pre- and post-judgment interest; and
6. Such other and further relief as the Court deems just and proper.

DATED: May 27, 2008

Respectfully submitted,

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