



May 31, 2013

VIA HAND DELIVERY

Clerk, Civil Department
Circuit Court of Maryland for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204-0754

Re: *Liverpool v. Baltimore County Public Schools, et al.*
Civil Action No. 03-C-11-011570

Dear Ms. Miller,

Enclosed for filing in the above referenced matter, please find Plaintiff's First Amended Complaint, along with an associated exhibit.

Also enclosed is a duplicate copy of the first page of the Amended Complaint, which I ask that you date stamp and return to the *courier*.

Very truly yours,

Judd G. Millman
Attorney for Plaintiff

Enclosures

cc: Mr. Jefferson L. Blomquist, Esq. (via U.S. mail)
Attorney for Defendants

**IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE COUNTY**

ETTA LIVERPOOL
9705 Marriottsville Road
Randallstown, Maryland 21133

*

Plaintiff,

*

Civil Action No. 03-C-12-001109

*

v.

BALTIMORE COUNTY PUBLIC
SCHOOLS
6901 Charles Street
Towson, Maryland 21204

*

*

BALTIMORE COUNTY BOARD OF
EDUCATION (see paragraph 12, below)

*

*

DALE RAUENZAHN
6901 Charles Street
Towson, Maryland 21204

*

ANDREW PARISER
6901 Charles Street
Towson, Maryland 21204

*

-or-
3011 Katewood Court, Apt. 4
Baltimore, Maryland 21209

*

*

Defendants.

* * * * *

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff Etta Liverpool, by and through counsel, files this First Amended Complaint against Defendants Baltimore County Public Schools, Baltimore County Board of Education, Dale Rauenzahn and Andrew Pariser (hereinafter collectively "BCPS" or "Defendants"), and states as follows:

INTRODUCTION

1. This lawsuit arises out of BCPS's intentional and unlawful conduct in the manner in which it compensated Plaintiff, including, but not limited to, the following: (a) failure to provide compensation for all hours worked; (b) failure to compensate at the legally required, minimum wage, straight-time and overtime premium rates; (c) unlawful withholding of earned compensation upon termination; and (d) unlawful wage garnishments during employment.

2. As a result of BCPS's unlawful conduct, BCPS is liable to Plaintiff for violations of the Fair Labor Standards Act, Maryland Wage and Hour Law ("MWHL") and Maryland Wage Payment and Collection Law ("MWPCCL"), as well as breach of contract. *See* MD. CODE ANN., Lab. & Empl., §§ 3-401, et seq., 3-501, et seq.; 29 U.S.C. § 201, *et seq.*

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims presented herein pursuant to the MWHL and MWPCCL. MD. CODE ANN., Lab. & Empl., §§ 3-427, 3-507.

4. This Court has subject matter jurisdiction over the claims presented herein pursuant to FLSA. 29 U. S. C. §216(b). In addition, this Court has supplemental and ancillary jurisdiction over Plaintiffs' FLSA and breach of contract claims since they are so related and intertwined with Plaintiff's claims under the MWHL and MWPCCL that they are part of the same case and controversy.

5. Venue is appropriate in Baltimore County because this is a judicial district wherein BCPS conducts business, it is the location of the principal office of BCPS and it is a judicial district wherein the majority of the unlawful employment practices described herein occurred.

PARTIES

A. *Plaintiff.*

6. Etta M. Liverpool (hereinafter “Liverpool” or “Plaintiff”) lives in the State of Maryland and is a resident of Baltimore County. She worked for BCPS from 2005 until on or about October 19, 2011.

B. *Defendants.*

7. Baltimore County Public Schools is a Maryland entity with its principal office located in Baltimore County, Maryland and is subject to the personal jurisdiction of the Courts of the State of Maryland.

8. Baltimore County Public Schools was Plaintiff’s employer within the meaning of the MWHL.

9. Baltimore County Public Schools was Plaintiff’s employer within the meaning of the MWPCCL.

10. Baltimore County Public Schools was Plaintiff’s employer within the meaning of the FLSA.

11. Baltimore County Public Schools generates in excess of \$500,000 in revenues per year.

12. Defendants aver that Plaintiff was not employed by Baltimore County Public Schools. *See* BCBOE’S Answers to Plaintiff’s First Set of Continuing Interrogatories, Answer No. 1. Rather, Defendants aver that Plaintiff was employed by “Baltimore County Board of Education.” (*Id.*) The Department of Assessments and Taxations charter records do not indicate the existence of an entity identified as Baltimore County Board of Education. In addition,

Plaintiff was employed by an entity which held itself out as “Baltimore County Public Schools” and which almost universally represented itself to her as “Baltimore County Public Schools.” Irrespective, and to the extent necessary for Plaintiff to properly assert the claims described herein, Plaintiff includes Baltimore County Board of Education as a Defendant in this lawsuit.

13. On information and belief, Defendant Dale Rauenzahn is the Executive Director of Baltimore County Public Schools, is a resident of the State of Maryland, and an “employer” as that term is defined by Maryland and Federal law. *See* Md. Code Ann., Lab. & Empl. §§ 3-401, 3-501; 29 U.S.C. § 201, *et seq.* At all relevant times, this Defendant acted directly or indirectly in the interest of Baltimore County Public Schools with regard to the Liverpool.

14. On information and belief, Defendant Andrew Pariser holds the position of Coordinator within Baltimore County Public Schools, is a resident of the State of Maryland, and an “employer” as that term is defined by Maryland and Federal law. *See* Md. Code Ann., Lab. & Empl. §§ 3-401, 3-501; 29 U.S.C. § 201, *et seq.* At all relevant times, this Defendant acted directly or indirectly in the interest of Baltimore County Public Schools with regard to the Liverpool.

15. Whenever in this Complaint it is alleged that BCPS committed any act or omission, it is meant that BCPS’s officers, directors, vice-principals, agents, servants, regional managers, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of BCPS or was done in the routine and normal course and scope of employment of BCPS officers, directors, vice-principals, agents, servants, regional managers or employees.

FACTUAL ALLEGATIONS

A. *Introduction.*

16. Ms. Liverpool was hired by BCPS in 2005 as a Transition Specialist, and was eventually promoted to the position of Transition Coordinator.

17. She remained continuously employed in this position until receiving a letter on October 25, 2011 from Andrew Pariser, her direct supervisor, informing her that her employment had been terminated as of October 19, 2011.

18. Throughout her employment, Ms. Liverpool was compensated on an hourly basis. At the time of her termination, Ms. Liverpool was being compensated at an hourly rate which varied between \$28.26 per hour and \$33.91 per hour.

B. *Scheduled hours.*

19. As an employee compensated on an hourly basis, Ms. Liverpool was required to record her hours by way of a timesheet and the hours were submitted to BCPS via facsimile.

20. BCPS expected Ms. Liverpool to only record on her timesheet the hours which BCPS assigned her to work and not the actual hours worked (*e.g.* if Ms. Liverpool was assigned to work from 8:30 a.m. to 4:30 p.m., but actually worked 8:15 a.m. to 4:45 p.m., BCPS expected Ms. Liverpool to only record on her timesheet that she worked the from 8:30 a.m. to 4:30 p.m.).

21. BCPS was aware that the hours recorded on the timesheet were not an accurate reflection of the actual hours worked and that Ms. Liverpool worked additional hours which were not recorded on her timesheet.

22. At the beginning of her employment, BCPS assigned Ms. Liverpool to work a part-time schedule.

23. At some point, BCPS assigned Ms. Liverpool to a schedule which required her to work from approximately 8:30 am to 3:00 pm, and later extended her schedule to 8:30 a.m. to 4:30 p.m.

C. *Failure to provide compensation for all hours worked.*

24. Liverpool was instructed by BCPS that, irrespective of the hours actually worked, she was only to record certain BCPS approved hours on her timesheets.

25. The BCPS approved hours fluctuated during the period of Liverpool's employment.

26. BCPS was aware that Liverpool worked many hours which were unpaid, including work prior to 8:30 a.m., work after the scheduled conclusion of her work shift, work during her meal-break period and work performed away from the office.

(i) *Unpaid labor performed prior to 8:30 a.m.*

27. Liverpool was typically scheduled to commence her workday at 8:30 a.m.

28. Liverpool performed job related duties prior to 8:30 a.m.

29. Unpaid labor performed by Liverpool during this period included, but was not limited to, communicating via telephone with other BCPS employees in regards to work related matters and reviewing, responding and otherwise corresponding in regards to work related matters via email.

30. Liverpool was not compensated for the work she performed prior to 8:30 am.

(ii) *Unpaid labor performed during Liverpool's meal-break period.*

31. Liverpool was instructed to deduct 30 minutes from the time recorded on her daily timesheets to account for a meal-break period, irrespective of whether such meal-break period was provided.

32. Liverpool regularly worked through her meal-break period and was not compensated for the labor performed.

33. Unpaid labor performed by Liverpool during her meal-break period included, but was not limited to, answering incoming phone calls, reviewing, responding and otherwise corresponding in regards to work related matters via email, providing counseling in relation to incarcerated individuals at the detention center, responding to inquiries from the Department of Labor, Licensing and Regulation in relation to individuals incarcerated at the detention center, assisting incarcerated individuals in regards to General Educational Development (*i.e.* obtainment of a "G.E.D. diploma"), completing various types of paperwork relating to her job responsibilities, and providing general counseling on educational matters.

(iii) Unpaid labor performed after the scheduled conclusion of Liverpool's shift.

34. Liverpool regularly performed labor after the scheduled conclusion of her workday and was not compensated for this labor.

35. Unpaid labor performed by Liverpool after the scheduled conclusion of her workday included, but was not limited to, answering incoming phone calls, reviewing, responding and otherwise corresponding in regards to work related matters via email, providing counseling in relation to incarcerated individuals at the detention center, responding to inquiries from the Department of Labor, Licensing and Regulation in relation to individuals incarcerated at the detention center, assisting incarcerated individuals in regards to General Educational

Development (*i.e.* obtainment of a “G.E.D. diploma”), completing various types of paperwork relating to her job responsibilities, and providing general counseling on educational matters.

(iv) *Unpaid labor performed away from the office.*

36. BCPS issued Liverpool a BCPS-owned laptop computer in order to allow Liverpool to perform work away from the office.

37. Unpaid labor performed by Liverpool away from the office and outside of normal work hours included, but was not limited to, reviewing, responding and otherwise corresponding in regards to work related matters via email and completing various types of paperwork relating to her job responsibilities.

38. Timesheets issued to Liverpool for the purpose of recording her time did not permit Liverpool to record labor performed on weekends.

D. *Failure to compensate Liverpool at the overtime premium rate.*

39. Liverpool regularly worked in excess of 40 hours during a seven-day workweek.

40. Pursuant to Maryland and Federal law, Liverpool was entitled to be compensated at the overtime premium rate of time-and-one-half for hours worked in excess of 40 during a seven-day workweek.

41. BCPS only compensated Liverpool at her straight time rate for all hours worked and did not compensate her at the legally required overtime premium rate.

E. *Failure to pay final two paychecks.*

42. Liverpool’s final paycheck was to be received on or about October 28, 2011, and was to compensate her for the period of October 1–14, 2011.

43. BCPS failed to issue Liverpool her legally owed compensation for the period of October 1–14, 2011.

44. In addition, Liverpool was entitled to be compensated for the period of October 15–19, 2011.

45. BCPS failed to issue Liverpool her legally owed compensation for the period of October 15–19, 2011.

F. *Unlawful pay deductions.*

46. BCPS regularly made unlawful deductions and/or garnishments from Liverpool's compensation.

47. Examples of paystubs issued by BCPS to Liverpool which reflect unlawful wage deductions include, but many not be limited to, paystubs issued with the following "pay dates": October 1, 2010; February 18, 2011; and March 4, 2011.

48. BCPS did not obtain written authorization from Liverpool to deduct these amounts from her compensation.

G. *Failure to accurately track hours worked.*

49. BCPS does not utilize a time-clock, sign-in sheet or any other means of accurately tracking the hours of its nonexempt employees, including Liverpool.

50. BCPS willfully disregards its obligation to maintain accurate records of hours worked by nonexempt employees, including Liverpool.

51. Hours worked are recorded solely via a timesheet. Liverpool was specifically instructed by BCPS to record her hours in a manner which was not reflective of the actual hours

worked. On information and belief, BCPS was aware that such tracking system resulted in inaccurate time records where Plaintiff was not compensated for all hours worked.

H. *Estimate of unpaid and overtime hours worked.*

52. Based upon the above described facts, Plaintiff regularly worked many hours for BCPS which were entirely unpaid. Plaintiff also often worked in excess of forty (40) hours in a single workweek and was only compensated at her respective straight-time rate, if at all.

53. While the unpaid hours and hours in excess of forty (40) which Plaintiff worked per workweek varied, on information and belief, Plaintiff regularly worked between approximately 3 and 15 hours of unpaid or overtime hours during most weeks of her employment with BCPS when the above described practices were followed.

54. On information and belief, BCPS attempted to evade Maryland law while duping the Plaintiff into believing that they were only entitled to compensation pursuant to the arbitrary pay system designed by BCPS and described above. Accordingly, Liverpool did not maintain precise records demonstrating the actual number of hours which they worked every workweek over the course of her employment. Rather, Liverpool only recorded the hours worked in the manner in which she was instructed by BCPS.

55. Liverpool can only provide her best estimate of the unpaid and overtime hours she, in good faith, believes she worked during the statutory period relevant to this litigation. Liverpool does not have records demonstrating the precise number of unpaid or overtime hours she worked per workweek.

56. BCPS had an affirmative legal duty to maintain accurate records of hours worked by Plaintiff.

I. BCPS acted “willfully.”

57. BCPS acted willfully, as that term is used in the context of the MWHL, FLSA and MWPCCL, in their failure to properly compensate Plaintiff for all hours worked and to compensate Plaintiff at her proper overtime premium rate.

58. BCPS knew, or had reason to know, that Plaintiff was performing work which was for the benefit of BCPS while Plaintiff was not receiving any compensation and/or was not being properly compensated at the proper overtime premium rate.

59. Despite the fact that BCPS knew, or had reason to know, Plaintiff was performing work for BCPS’s benefit during periods when Plaintiff was not being compensated properly, BCPS continued to allow Plaintiff to perform this work and failed to properly compensate her for this work.

60. The factual basis for establishing “willfulness,” and that BCPS knew Plaintiff was performing work which was for the benefit of BCPS and for which Plaintiff was not receiving full or proper compensation, is described throughout this Complaint and includes, but is not limited to, the following: (1) on information and belief, BCPS was aware of the wage and hour laws, were aware of the fact that they were not in compliance with the applicable laws, and failed to make appropriate corrections to come within compliance with the applicable State laws; (2) BCPS was aware that Plaintiff regularly worked “off the clock”; (3) BCPS regularly instructed Plaintiff to perform “overtime” work with the intention of not paying Plaintiff at the applicable overtime premium rate and without identifying any exemption which may have permitted BCPS to avoid paying Plaintiff at the applicable overtime premium rate; and (4) BCPS concocted the above described illegal pay scheme for the purpose of compensating Plaintiff for fewer hours

than Plaintiff was legally entitled to receive, not compensating Plaintiff at the overtime premium rate, and otherwise not properly compensating Plaintiff.

J. *Facts which implicate Defendants Dale Rauenzahn and Andrew Pariser.*

61. Defendants Dale Rauenzahn and Andrew Pariser were “employers” as that term is defined by the MWHL, FLSA and MWPCCL, and, as such, are personally liable for the claims alleged herein.

(i) *Dale Rauenzahn.*

62. On information and belief, Dale Rauenzahn is Executive Director of BCPS.

63. Plaintiff recognized Dale Rauenzahn as a Director of BCPS and someone who had the authority to hire and fire BCPS employees and, on information and belief, Dale Rauenzahn did hire and fire BCPS employees.

64. On information and belief, Dale Rauenzahn had the authority to establish, and contributed a significant role to establishing, the terms and conditions of Plaintiff’s employment.

65. On information and belief, Dale Rauenzahn instructed, or gave approval of, employees performing labor for which he knew BCPS was not properly compensating its employees.

66. Dale Rauenzahn was recognized as having the authority to control and direct conditions of employment. On information and belief, Dale Rauenzahn exercised his control over conditions of employment by issuing directives to be carried out by his subordinates.

67. On information and belief, Dale Rauenzahn knew of and authorized the illegal pay practices described herein.

68. On information and belief, Dale Rauenzahn was responsible for the payment of the BCPS employee wages and was fully aware of and approved the illegal pay practices described herein.

(ii) Andrew Pariser.

69. On information and belief, Andrew Pariser holds the title of Coordinator within BCPS and was Liverpool's direct supervisor.

70. Plaintiff recognized Andrew Pariser as a BCPS employee who had the authority to hire and fire BCPS employees and Andrew Pariser did hire and fire BCPS employees, including directly terminating Liverpool.

71. On information and belief, Andrew Pariser had the authority to establish, and contributed a significant role to establishing, the terms and conditions of Plaintiff's employment.

72. On information and belief, Andrew Pariser instructed, or gave approval of, employees performing labor for which he knew BCPS was not properly compensating Plaintiff.

73. Andrew Pariser was recognized as having the authority to control and direct conditions of employment. On information and belief, Andrew Pariser exercised his control over conditions of employment by issuing directives to be carried out by his subordinates.

74. On information and belief, Andrew Pariser knew of and authorized the illegal pay practices described herein.

75. On information and belief, Andrew Pariser was responsible for the payment of the Plaintiff's wages and was fully aware of and approved the illegal pay practices described herein.

DAMAGE DEMAND ESTIMATE

76. Liverpool seeks the maximum amount of damages to which she is entitled and capable of recovering under all applicable laws based upon the Counts alleged herein.

77. The information necessary to calculate Liverpool's losses are, on information and belief, in large part presently in the exclusive possession of Defendants.

78. Notwithstanding the above and pursuant to Maryland Rule 2-305, Liverpool estimates that the total damages she has incurred are not less than approximately \$38,878 (in addition to attorneys' fees, costs, pre- and post- judgment interest, and liquidating or trebling of the \$38,878 as permitted by statute), and therefore demands payment of no less than same, in addition to all other relief demanded herein.

79. Liverpool reserves the right to amend her damage demand at any time.

COUNT I

Maryland Wage and Hour Law

MD. CODE ANN., Lab & Empl. § 3-401, *et seq.*

(Failure to pay wages owed for all hours worked and failure to pay overtime)

80. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

81. Plaintiff, who was not paid for all hours actually worked, is protected by the MWHL, and is entitled to be paid at her regular hourly rate and at a rate that is not less than minimum wage for each hour worked. MD. CODE ANN., Lab & Empl. § 3-413(b).

82. BCPS did not compensate Plaintiff at her regular hourly rate for each hour worked. *Id.* at §§ 3-415(a), 3-420.

83. BCPS's failure to pay Plaintiff her appropriate wages for all hours worked violated MWHL. *Id.* at § 3-413(b).

84. Plaintiff was entitled to be compensated for all hours worked and to be compensated at 1.5 times her regular hourly rate for each hour worked over forty (40) in a single workweek. *Id* at §§ 3-415, 3-420.

85. BCPS did not compensate Plaintiff for all hours worked and did not compensate her at 1.5 times her regular hourly wage for each hour worked over forty (40) in a single workweek.

86. BCPS's failure to compensate Plaintiff for all hours worked and at 1.5 times her regular hourly wage for each hour in excess of forty (40) hours per workweek violated MWHL. *Id.*

87. BCPS's failure to compensate Plaintiff entirely for the period of October 1–19, 2011 was in violation of the MWHL.

88. BCPS failed to accurately track and record the hours worked by Plaintiff.

89. As the direct and proximate result of BCPS's violations of the MWHL, Plaintiff suffered significant damages.

90. Pursuant to the MWHL, BCPS is liable to Plaintiff for all hours worked which were not compensated and for the difference between the wages paid to them and the wages required by statute, plus reasonable attorneys' fees, pre- and post- judgment interest, fees and costs. *Id.* at § 3-427(a).

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

a. Unpaid wages due under the MWHL (including all unpaid regular-time, minimum wage and overtime wages);

- b. Treble, or alternatively liquidated, damages multiplied times the unpaid wages due and owing;
- c. Pre- and post-judgment interest;
- d. Reasonable attorneys' fees and costs incurred in pursuing this action;
- e. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law;
- f. A determination that Defendants' failed to accurately track and record the hours worked by Plaintiff; and
- g. Such other and further relief as this Court deems necessary and proper.

COUNT II
Maryland Wage Payment and Collection Law
MD. CODE ANN., Lab & Empl. § 3-501, *et seq.*
(Failure to timely and regularly pay all wages earned)

91. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

92. Pursuant to the MWPCCL, BCPS must pay Plaintiff all wages due at regular pay periods. MD. CODE ANN., Lab. & Empl. § 3-502. "Wage" is defined as "all compensation that is due to an employee for employment." This definition has been amended by the Maryland legislature to clarify that the statute is intended to specifically include overtime wages. *Id.* at § 4-501(c).

93. Pursuant to MWPCCL, BCPS must pay Plaintiff all wages due for work that Plaintiff performed before the termination of employment on, or before, the day on which the employee would have been paid had her employment not been terminated. *Id.* at § 3-505.

94. Plaintiff has not been compensated her full measure of wages for all hours worked and was not compensated at the proper overtime premium rate for hours worked in excess of forty (40) in a single workweek.

95. By failing to timely pay Plaintiff her wages when due, BCPS violated the MWPCCL. *Id.* at §§ 3-502, 505.

96. BCPS did not withhold Plaintiff's wages as a result of a *bona fide* dispute.

97. In addition, BCPS regularly made deductions from the wages of Plaintiff without receiving proper written authorization.

98. In addition, BCPS failed to compensate Plaintiff for labor performed during the period of October 1–19, 2011.

99. As the direct and proximate result of BCPS's violations of the MWPCCL, Plaintiff suffered significant damages.

100. Because more than two weeks have elapsed from the date on which BCPS was required to have paid the wages, BCPS is liable to Plaintiff for her unpaid wages, plus an additional amount up to three (3) times the unpaid wages, reasonable attorneys' fees, interests and costs. *Id.* at § 3-507.2.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

a. Unpaid wages due under the MWPCCL (including all unpaid regular-time, minimum wage, wages due for the period of October 1–14, 2011, wages due for the period of October 15–19, 2011, and overtime wages);

- b. Treble, or alternatively liquidated, damages multiplied times the unpaid wages due and owing;
- c. Pre- and post-judgment interest;
- d. Reasonable attorneys' fees and costs incurred in pursuing this action;
- e. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law; and
- f. Such other and further relief as this Court deems necessary and proper.

COUNT III
Violation of the Fair Labor Standards Act of 1938
29 U.S.C. § 201, *et seq.*
Failure to Pay Overtime Wages

101. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

102. This count arises from Defendants' violation of the Fair Labor Standards Act of 1938, 29 U.S.C. section 201, *et seq.*, in relation to Defendants' failure to pay Plaintiff all wages owed (including straight time, minimum wage and overtime wages) and for hours worked (including hours up to forty and hours in excess of forty in a single work week).

103. Plaintiff was regularly directed by Defendant to work, and did so work, in excess of forty hours in a seven day workweek.

104. Defendants required Plaintiff to work hours for which she was not compensated at all, including: (1) hours that were up to forty hours in a seven day workweek; and (2) hours that were in excess of forty hours in a seven day workweek.

105. Pursuant to the FLSA, during all weeks that Plaintiff worked in excess of forty hours, Plaintiff was entitled to be compensated at a rate of one-half times Plaintiff's regular rate of pay.

106. Pursuant to the FLSA, Plaintiff was entitled to be compensated at Plaintiff's straight-time rate (and at a rate which was not below the applicable minimum wage rate) for all hours worked up to forty hours in a single work week.

107. Defendant did not compensate Plaintiff at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty hours in each individual workweek.

108. Defendant did not compensate Plaintiff at her straight-time rate (and at a rate which was not below the applicable minimum wage rate) for all hours worked up to forty hours in a single work week.

109. Defendants' failure to pay straight time wages and overtime wages for time worked in excess of forty hours per workweek was a violation of the FLSA, 29 U.S.C. section 201, *et seq.*

110. Defendants' failure to accurately track and record the hours worked by Plaintiff violated the FLSA.

111. Defendants' failure and refusal to pay straight time wages and overtime wages for time worked in excess of forty hours per week was a willful violation of the FLSA.

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

a. Judgment against Defendant for violation of the overtime wage provisions of the FLSA;

b. Judgment that Defendants' violations as described above were willful;

- c. An award in an amount equal to Plaintiff's unpaid back wages;
- d. An award to Plaintiff for the amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon, subject to proof at trial;
- e. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. section 216 and all other applicable laws;
- f. An award of prejudgment interest to the extent liquidated damages are not awarded;
- g. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law;
- h. A determination that Defendants' failed to accurately track and record the hours worked by Plaintiff; and
- i. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

COUNT IV
Breach of Contract
(As to Defendants' failure to pay Plaintiff's earned wages between October 1–19, 2011.)

112. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

113. Defendant promised and represented to Plaintiff that he would be compensated for the hours she worked.

114. Relying upon Defendants' promise, Plaintiff performed work for Defendants' benefit.

115. Thereafter, Defendants refused to compensate Plaintiff for the periods of October 1–19, 2011.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

- a. Payment for all wages earned by Plaintiff and not paid by Defendants;
- b. Pre- and post-judgment interest; and
- c. Such other and further relief as this Court deems necessary and proper.

JURY DEMAND

116. Plaintiff demands a trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

117. Plaintiff prays that this Honorable Court:

- a. Pursuant to Maryland Rule 2-305, award judgment to Plaintiff in an amount which is not less than \$38,878.
- b. Declare that BCPS committed one or more of the following acts:
 - i. Violated the MWHL with respect to Plaintiff;;
 - ii. Violated the FLSA with respect to Plaintiff
 - iii. Violated the MWPCL and withheld Plaintiff and all other similarly situated employees' wages without any *bona fide* dispute;
 - iv. Failed to compensate Plaintiff for all earned wages;
 - v. Failed to compensate Plaintiff for wages earned between the periods of October 1–19, 2011; and
 - vi. Any other declaration as the Court deems appropriate;

c. Award judgment in the amount of the difference between the wages actually paid and the wages lawfully owed, as provided under the MWHL. MD. CODE ANN., Lab. & Empl. § 3-427(a); 29 U.S.C. § 201, *et seq.*;

d. Award judgment in the amount of all back wages due and unpaid as provided in the MWHL, FLSA and MWPCCL. MD. CODE ANN., Lab. & Empl. §§ 3-427, 3-507.2, *et seq.*; 29 U.S.C. § 201, *et seq.*

e. Award judgment in the amount of all unlawful wage deductions or garnishments as provided in the MWHL, FLSA and MWPCCL. MD. CODE ANN., Lab. & Empl. §§ 3-427, 3-507.2, *et seq.*;

f. Award a total judgment in an amount equal to three times the amount of wages due, as provided for in the MWPCCL. MD. CODE ANN., Lab. & Empl. § 3-507.2. Alternatively, award a total judgment in an amount equal to two times the amount of wages due, as provided for in the FLSA.

g. Award restitution and/or disgorgement of profits;

h. Award pre-judgment interest;

i. Award interest due on unpaid wages;

j. Award reasonable attorneys' fees and the costs of this action as provided under the MWHL, FLSA and MWPCCL. MD. CODE ANN., Lab. & Empl. §§ 3-427(d), 3-507.2;

k. Award reasonable attorneys' fees in the event of an appeal, as well as post-judgment interest consistent with applicable law; and

l. Award any such further relief this Honorable Court deems just and proper to award.

May 30, 2013

Respectfully submitted,



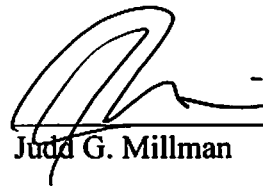
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Towson, Maryland 21204
Telephone: (410) 522-1020
Facsimile: (410) 522-1021

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, hereby, certify that on May 30, 2013, a copy of the foregoing Amended Complaint, along with the associated exhibit, were served *via* U.S. First Class mail upon the following:

Jefferson L. Blomquist
FUNK & BOLTON
36 South Charles Street
12th Floor
Baltimore, Maryland 21201
Attorney for Defendants



Judd G. Millman

Liverpool
v.
Baltimore County Public Schools, et al.

Civil Action No. 03-C-12-1109-OC

PLAINTIFF'S AMENDED COMPLAINT

Exhibit

“A”

(Plaintiff's Amended Complaint with
red-lining to highlight amendments.)

IN THE CIRCUIT COURT OF MARYLAND
FOR BALTIMORE COUNTY

Formatted: Left: 1.5", Right: 0.5", Top: 1.5"

ETTA LIVERPOOL
9705 Marriottsville Road
Randallstown, Maryland 21133

*On behalf of herself and on behalf of all
other similarly situated employees.*

Plaintiff,

Civil Action No. 03-C-12-
001109

v.

BALTIMORE COUNTY PUBLIC
SCHOOLS
6901 Charles Street
Towson, Maryland 21204

Serve Resident Agent:
Carla M. Jespersen
415 Crest Lane
Westminster, Maryland 21157

BALTIMORE COUNTY BOARD OF
EDUCATION (see paragraph 12, below)

DALE RAUENZAHN
6901 Charles Street
Towson, Maryland 21204

ANDREW PARISER
6901 Charles Street
Towson, Maryland 21204
-or-
3011 Katewood Court, Apt. 4
Baltimore, Maryland 21209

Defendants.

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* * * * *

CLASS ACTION CIVIL COMPLAINT
FOR EQUITABLE AND MONETARY RELIEF PLAINTIFF'S FIRST AMENDED
COMPLAINT

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Plaintiff Etta Liverpool ~~on behalf of herself and all other similarly situated current and former non-exempt employees known and unknown thereafter "Class"~~, by and through counsel, files this ~~Class Action Civil Complaint for Equitable and Monetary Relief~~ First Amended Complaint against Defendants Baltimore County Public Schools, Baltimore County Board of Education, Dale Rauenzahn and Andrew Pariser (hereinafter collectively "BCPS" or "Defendants"), and states as follows:

INTRODUCTION

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1. This lawsuit arises out of BCPS's intentional and unlawful conduct in the manner in which it compensated its employees Plaintiff, ~~in the following particulars including, but not limited to, the following:~~ (a) failure to provide compensation for all hours worked; (b) failure to compensate at the legally required, minimum wage, straight-time and overtime premium rates; (c) unlawful withholding of earned compensation upon termination; and (d) unlawful wage garnishments during employment.

2. ~~The Class all share or shared similar job titles, job skills and job responsibilities and were subject to the same terms and conditions of employment, as well as the same systemic failure by BCPS to properly compensate them for all wages earned.~~

3. As a result of BCPS's willful failure to properly compensate its employees for all wages due and owing unlawful conduct, BCPS is liable to the Class Plaintiff for violations of the Fair Labor Standards Act, Maryland Wage and Hour Law ("MWHL") and Maryland Wage

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Payment and Collection Law ("MWPCCL"), as well as breach of contract. See MD. CODE ANN., Lab. & Empl., §§ 3-401, et seq., 3-501, et seq.; 29 U.S.C. § 201, et seq.

~~4. Upon information and belief, the Class consists of over one hundred (100) individuals who are similarly situated to Liverpool and who are currently or were previously employed by BCPS.~~

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims presented herein pursuant to the MWHL and MWPCCL. MD. CODE ANN., Lab. & Empl., §§ 3-427, 3-507.

~~5.4. This Court has subject matter jurisdiction over the claims presented herein pursuant to FLSA. 29 U. S. C. §216(b). In addition, this Court has supplemental and ancillary jurisdiction over Plaintiffs' FLSA and breach of contract claims since they are so related and intertwined with Plaintiff's claims under the MWHL and MWPCCL that they are part of the same case and controversy.~~

6.5. Venue is appropriate in Baltimore County because this is a judicial district wherein BCPS conducts business, it is the location of the principal office of BCPS and it is a judicial district wherein the majority of the unlawful employment practices described herein occurred.

PARTIES

A. Plaintiff.

7.6. Etta M. Liverpool (hereinafter "Liverpool" or "Plaintiff") lives in the State of Maryland and is a resident of Baltimore County. She worked for BCPS from 2005 until on or about October 19, 2011.

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~~B. Other Similarly Situated Employees.~~

~~8. In addition to Plaintiffs, BCPS employed, and/or does employ, other similarly situated non-exempt employees who share or shared similar job titles, job skills and job responsibilities and who were subjected to the same unlawful terms and conditions of employment, as well as the same systematic failure by BCPS to compensate them for all wages properly due and owing.~~

~~9. These persons are or were employed by BCPS as part of its workforce in Maryland and are or were BCPS's employees as that term is defined by the MWHL and MWPCL.~~

~~10. Upon information and belief, there are more than one hundred (100) similarly situated persons who had similar job titles, job skills, job responsibilities, were subjected to the same willful and illegal pay practices, and were employed by BCPS as that term is defined by the MWHL and MWPCL.~~

CB. Defendants.

7. Baltimore County Public Schools is a Maryland entity with its principal office located in Baltimore County, Maryland and is subject to the personal jurisdiction of the Courts of the State of Maryland.

8. Baltimore County Public Schools was Plaintiff's employer within the meaning of the MWHL.

9. Baltimore County Public Schools was Plaintiff's employer within the meaning of the MWPCL.

10. Baltimore County Public Schools was Plaintiff's employer within the meaning of the FLSA.

11. Baltimore County Public Schools generates in excess of \$500,000 in revenues per year.

12.12. Defendants aver that Plaintiff was not employed by Baltimore County Public Schools. See BCBOE'S Answers to Plaintiff's First Set of Continuing Interrogatories, Answer No. 1. Rather, Defendants aver that Plaintiff was employed by "Baltimore County Board of Education." (Id.) The Department of Assessments and Taxations charter records do not indicate the existence of an entity identified as Baltimore County Board of Education. In addition, Plaintiff was employed by an entity which held itself out as "Baltimore County Public Schools" and which almost universally represented itself to her as "Baltimore County Public Schools." Irrespective, and to the extent necessary for Plaintiff to properly assert the claims described herein, Plaintiff includes Baltimore County Board of Education as a Defendant in this lawsuit.

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12.13. On information and belief, Defendant Dale Rauenzahn is the Executive Director of Baltimore County Public Schools, is a resident of the State of Maryland, and an "employer" as that term is defined by Maryland and Federal law. See Md. Code Ann., Lab. & Empl. §§ 3-401, 3-501; 29 U.S.C. § 201, et seq. At all relevant times, this Defendant acted directly or indirectly in the interest of Baltimore County Public Schools with regard to the Liverpool.

13.14. On information and belief, Defendant Andrew Pariser holds the position of Coordinator within Baltimore County Public Schools, is a resident of the State of Maryland, and an "employer" as that term is defined by Maryland and Federal law. See Md. Code Ann., Lab. & Empl. §§ 3-401, 3-501; 29 U.S.C. § 201, et seq. At all relevant times, this Defendant acted

directly or indirectly in the interest of Baltimore County Public Schools with regard to the Liverpool.

14.15. Whenever in this Complaint it is alleged that BCPS committed any act or omission, it is meant that BCPS's officers, directors, vice-principals, agents, servants, regional managers, or employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of BCPS or was done in the routine and normal course and scope of employment of BCPS officers, directors, vice-principals, agents, servants, regional managers or employees.

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15. ~~At all relevant times, BCPS was the "employer" to the Class, as that term is defined by Maryland law. BCPS regularly caused, instructed, or allowed the Class to work during periods when BCPS intended that the individual Class members were to be "off the clock" and not receiving compensation.~~

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FACTUAL ALLEGATIONS

A. *Introduction.*

16. Ms. Liverpool was hired by BCPS in 2005 as a Transition Specialist, and was eventually promoted to the position of Transition Coordinator.

17. She remained continuously employed in this position until receiving a letter on October 25, 2011 from Andrew Pariser, her direct supervisor, informing her that her employment had been terminated as of October 19, 2011.

18. Throughout her employment, Ms. Liverpool was compensated on an hourly basis. At the time of her termination, Ms. Liverpool was being compensated at an hourly rate which varied between \$28.26 per hour and \$33.91 per hour.

B. *Scheduled hours.*

19. As an employee compensated on an hourly basis, Ms. Liverpool was required to record her hours by way of a timesheet and the hours were submitted to BCPS via facsimile.

20. BCPS expected Ms. Liverpool to only record on her timesheet the hours which BCPS assigned her to work and not the actual hours worked (*e.g.* if Ms. Liverpool was assigned to work from 8:30 a.m. to 4:30 p.m., but actually worked 8:15 a.m. to 4:45 p.m., BCPS expected Ms. Liverpool to only record on her timesheet that she worked the from 8:30 a.m. to 4:30 p.m.).

21. BCPS was aware that the hours recorded on the timesheet were not an accurate reflection of the actual hours worked and that Ms. Liverpool worked additional hours which were not recorded on her timesheet.

22. At the beginning of her employment, BCPS assigned Ms. Liverpool to work a part-time schedule.

23. At some point, BCPS assigned Ms. Liverpool to a schedule which required her to work from approximately 8:30 am to 3:00 pm, and later extended her schedule to 8:30 a.m. to 4:30 p.m.

C. *Failure to provide compensation for all hours worked.*

24. Liverpool was instructed by BCPS that, irrespective of the hours actually worked, she was only to record certain BCPS approved hours on her timesheets.

25. The BCPS approved hours fluctuated during the period of Liverpool's employment.

26. BCPS was aware that Liverpool worked many hours which were unpaid, including work prior to 8:30 a.m., work after the scheduled conclusion of her work shift, work during her meal-break period and work performed away from the office.

(i) *Unpaid labor performed prior to 8:30 a.m.*

27. Liverpool was typically scheduled to commence her workday at 8:30 a.m.

28. Liverpool performed job related duties prior to 8:30 a.m.

29. Unpaid labor performed by Liverpool during this period included, but was not limited to, communicating via telephone with other BCPS employees in regards to work related matters and reviewing, responding and otherwise corresponding in regards to work related matters via email.

30. Liverpool was not compensated for the work she performed prior to 8:30 am.

(ii) *Unpaid labor performed during Liverpool's meal-break period.*

31. Liverpool was instructed to deduct 30 minutes from the time recorded on her daily timesheets to account for a meal-break period, irrespective of whether such meal-break period was provided.

32. Liverpool regularly worked through her meal-break period and was not compensated for the labor performed.

33. Unpaid labor performed by Liverpool during her meal-break period included, but was not limited to, answering incoming phone calls, reviewing, responding and otherwise corresponding in regards to work related matters via email, providing counseling in relation to incarcerated individuals at the detention center, responding to inquiries from the Department of Labor, Licensing and Regulation in relation to individuals incarcerated at the detention center, assisting incarcerated individuals in regards to General Educational Development (*i.e.* obtainment of a "G.E.D. diploma"), completing various types of paperwork relating to her job responsibilities, and providing general counseling on educational matters.

(iii) Unpaid labor performed after the scheduled conclusion of Liverpool's shift.

34. Liverpool regularly performed labor after the scheduled conclusion of her workday and was not compensated for this labor.

35. Unpaid labor performed by Liverpool after the scheduled conclusion of her workday included, but was not limited to, answering incoming phone calls, reviewing, responding and otherwise corresponding in regards to work related matters via email, providing counseling in relation to incarcerated individuals at the detention center, responding to inquiries from the Department of Labor, Licensing and Regulation in relation to individuals incarcerated at the detention center, assisting incarcerated individuals in regards to General Educational

Development (*i.e.* obtainment of a “G.E.D. diploma”), completing various types of paperwork relating to her job responsibilities, and providing general counseling on educational matters.

(iv) Unpaid labor performed away from the office.

36. BCPS issued Liverpool a BCPS-owned laptop computer in order to allow Liverpool to perform work away from the office.

37. Unpaid labor performed by Liverpool away from the office and outside of normal work hours included, but was not limited to, reviewing, responding and otherwise corresponding in regards to work related matters via email and completing various types of paperwork relating to her job responsibilities.

38. Timesheets issued to Liverpool for the purpose of recording her time did not permit Liverpool to record labor performed on weekends.

D. Failure to compensate Liverpool at the overtime premium rate.

39. Liverpool regularly worked in excess of 40 hours during a seven-day workweek.

40. Pursuant to Maryland and Federal law, Liverpool was entitled to be compensated at the overtime premium rate of time-and-one-half for hours worked in excess of 40 during a seven-day workweek.

41. BCPS only compensated Liverpool at her straight time rate for all hours worked and did not compensate her at the legally required overtime premium rate.

E. Failure to pay final two paychecks.

42. Liverpool's final paycheck was to be received on or about October 28, 2011, and was to compensate her for the period of October 1-14, 2011.

43. BCPS failed to issue Liverpool her legally owed compensation for the period of October 1-14, 2011.

44. In addition, Liverpool was entitled to be compensated for the period of October 15–19, 2011.

45. BCPS failed to issue Liverpool her legally owed compensation for the period of October 15–19, 2011.

F. *Unlawful pay deductions.*

46. BCPS regularly made unlawful deductions and/or garnishments from Liverpool's compensation.

47. Examples of paystubs issued by BCPS to Liverpool which reflect unlawful wage deductions include, but many not be limited to, paystubs issued with the following "pay dates": October 1, 2010; February 18, 2011; and March 4, 2011.

48. BCPS did not obtain written authorization from Liverpool to deduct these amounts from her compensation.

G. *Failure to accurately track hours worked.*

49. BCPS does not utilize a time-clock, sign-in sheet or any other means of accurately tracking the hours of its nonexempt employees, including Liverpool.

50. BCPS willfully disregards its obligation to maintain accurate records of hours worked by nonexempt employees, including Liverpool.

51. Hours worked are recorded solely via a timesheet. Liverpool and ~~on information and belief other employees are well~~ were specifically instructed by BCPS to record ~~their~~ her hours in a manner which was not reflective of the actual hours worked. On information and belief, BCPS was aware that such tracking system resulted in inaccurate time records where ~~employees Plaintiff was not compensated were not paid~~ for all hours worked.

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H. *Estimate of unpaid and overtime hours worked.*

52. Based upon the above described facts, the ~~Class~~Plaintiff regularly worked many hours for BCPS which were entirely unpaid. The ~~Class~~Plaintiff also often worked in excess of forty (40) hours in a single workweek and ~~were~~was only compensated at ~~their~~her respective straight-time rate, if at all.

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53. While the unpaid hours and hours in excess of forty (40) which the ~~Class~~Plaintiff worked per workweek varied, on information and belief, the ~~Class~~Plaintiff regularly worked between approximately 3 and 15 hours of unpaid or overtime hours during most weeks of their her employment with BCPS when the above described practices were followed.

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54. On information and belief, BCPS attempted to evade Maryland law while duping the ~~Class~~Plaintiff into believing that they were only entitled to compensation pursuant to the arbitrary pay system designed by BCPS and described above. Accordingly, Liverpool, ~~and presumably other members of the Class as well,~~ did not maintain precise records demonstrating the actual number of hours which they worked every workweek over the course of their her employment. Rather, Liverpool, ~~and presumably other members of the Class as well,~~ only recorded the hours worked in the manner in which ~~they~~she ~~was~~were instructed by BCPS.

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55. Liverpool, ~~and presumably other members of the Class as well,~~ can only provide their her best estimate of the unpaid and overtime hours ~~they~~she, in good faith, believes ~~they~~she worked during the statutory period relevant to this litigation. Liverpool, ~~and presumably other members of the Class as well,~~ ~~does~~do not have records demonstrating the precise number of unpaid or overtime hours ~~they~~she worked per workweek.

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56. BCPS had an affirmative legal duty to maintain accurate records of hours worked by the ClassPlaintiff.

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~~57. Since the Class was subject to systemic illegal pay practices, it is believed that all similarly situated employees in the Class suffered in the same or similar way and, as such, worked the same or similar number of hours for which they too were not properly compensated, as described more fully above.~~

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1. BCPS acted "willfully."

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~~58.57.~~ BCPS acted willfully, as that term is used in the context of the MWHL, FLSA and MWPCl, in their failure to properly compensate the ClassPlaintiff for all hours worked and to compensate the Class at their Plaintiff at her proper overtime premium rate.

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~~59.58.~~ BCPS knew, or had reason to know, that the Class was Plaintiff was performing work which was for the benefit of BCPS while the ClassPlaintiff was not receiving any compensation and/or were was not being properly compensated at the proper overtime premium rate.

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~~60.59.~~ Despite the fact that BCPS knew, or had reason to know, the ClassPlaintiff was performing work for BCPS's benefit during periods when the ClassPlaintiff was not being compensated properly, BCPS continued to allow the Class Plaintiff to perform this work and failed to properly compensate them her for this work.

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~~61.60.~~ The factual basis for establishing "willfulness," and that BCPS knew the ClassPlaintiff was performing work which was for the benefit of BCPS and for which the ClassPlaintiff was not receiving full or proper compensation, is described throughout this Complaint and includes, but is not limited to, the following: (1) on information and belief, BCPS

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was aware of the wage and hour laws, were aware of the fact that they were not in compliance with the applicable laws, and failed to make appropriate corrections to come within compliance with the applicable State laws; (2) BCPS was aware that the Class Plaintiff regularly worked “off the clock”; (3) BCPS regularly instructed the Class Plaintiff to perform “overtime” work with the intention of not paying the Class Plaintiff at the applicable overtime premium rate and without identifying any exemption which may have permitted BCPS to avoid paying the Class Plaintiff at the applicable overtime premium rate; and (4) BCPS concocted the above described illegal pay scheme for the purpose of compensating the Class Plaintiff for fewer hours than the Class Plaintiff was legally entitled to receive, not compensating the Class Plaintiff at the overtime premium rate, and otherwise not properly compensating Plaintiff the Class.

J. *Facts which implicate Defendants Dale Rauenzahn and Andrew Pariser.*

~~62-61.~~ Defendants Dale Rauenzahn and Andrew Pariser were “employers” as that term is defined by the MWHL, FLSA and MWPC, and, as such, are personally liable for the claims alleged herein.

(i) Dale Rauenzahn.

~~63-62.~~ On information and belief, Dale Rauenzahn is Executive Director of BCPS.

~~64-63.~~ The Class Plaintiff recognized Dale Rauenzahn as a Director of BCPS and someone who had the authority to hire and fire BCPS employees and, on information and belief, Dale Rauenzahn did hire and fire BCPS employees.

~~65-64.~~ On information and belief, Dale Rauenzahn had the authority to establish, and contributed a significant role to establishing, the terms and conditions of Plaintiff's the Class's employment.

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~~66-65.~~ On information and belief, Dale Rauenzahn instructed, or gave approval of, employees performing labor for which he knew BCPS was not properly compensating the ~~Class's~~ employees.

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~~67-66.~~ Dale Rauenzahn was recognized as having the authority to control and direct conditions of employment. On information and belief, Dale Rauenzahn exercised his control over conditions of employment by issuing directives to be carried out by his subordinates.

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~~68-67.~~ On information and belief, Dale Rauenzahn knew of and authorized the illegal pay practices described herein.

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~~69-68.~~ On information and belief, Dale Rauenzahn was responsible for the payment of the ~~Class's~~ BCPS employee wages and was fully aware of and approved the illegal pay practices described herein.

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(ii) Andrew Pariser.

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~~70-69.~~ On information and belief, Andrew Pariser holds the title of Coordinator within BCPS and was Liverpool's direct supervisor.

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~~71-70.~~ Plaintiff ~~The Class~~ recognized Andrew Pariser as a BCPS employee who had the authority to hire and fire BCPS employees and Andrew Pariser did hire and fire BCPS employees, including directly terminating Liverpool.

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~~72-71.~~ On information and belief, Andrew Pariser had the authority to establish, and contributed a significant role to establishing, the terms and conditions of Plaintiff's ~~the Class's~~ employment.

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~~73-72.~~ On information and belief, Andrew Pariser instructed, or gave approval of, employees performing labor for which he knew BCPS was not properly compensating Plaintiff~~the Class~~.

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~~74-73.~~ Andrew Pariser was recognized as having the authority to control and direct conditions of employment. On information and belief, Andrew Pariser exercised his control over conditions of employment by issuing directives to be carried out by his subordinates.

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~~75-74.~~ On information and belief, Andrew Pariser knew of and authorized the illegal pay practices described herein.

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~~76-75.~~ On information and belief, Andrew Pariser was responsible for the payment of the Plaintiff~~Class~~'s wages and was fully aware of and approved the illegal pay practices described herein.

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MWHL AND MWPL CLASS ACTION ALLEGATIONS

~~77. The Class brings this action pursuant to Maryland Rule 2-231 on behalf of themselves and a class of all past, present and future employees of BCPS working during the relevant statutory period.~~

~~78. The Class is so numerous that joinder of all such persons individually is impractical. On information and belief, the putative class exceeds 100 present and former employees of BCPS.~~

~~79. The Class has been similarly affected by BCPS's failure to fully and timely compensate its employees, as described herein.~~

~~80. The Class consists of individuals who are reluctant to raise individual claims for fear of retaliation.~~

~~81. There are questions of law or fact common to the class that predominate over any questions affecting only individual members, which include, but are not limited to, the following:~~

~~a. Whether BCPS unlawfully failed or refused to fully compensate the Class for time BCPS required such employees to perform work on BCPS's behalf;~~

~~b. Whether BCPS unlawfully failed or refused to fully compensate the Class for time BCPS required such employees to perform pre- and post-shift duties;~~

~~c. Whether BCPS failed to compensate the Class at the overtime premium rate of time and one-half for all overtime hours worked;~~

~~d. Whether BCPS's failure to fully compensate the Class was the result of a *bona fide* dispute;~~

~~e. Whether BCPS knowingly and/or willfully failed to properly compensate the Class for all hours worked and at the appropriate overtime premium rate.~~

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82. Named Plaintiff Etta Liverpool's ("Plaintiff") claims are typical of the claims of the above-described class because:

- a. Plaintiff is a members of the class;
- b. The interests of Plaintiff is co-existent with the interests of other members of the Class;
- c. Plaintiff's claims arise out of the same unlawful practices, policies and/or course of conduct that form the basis of the claims of the Class;
- d. Plaintiff's claims are based on the same legal and remedial theories as those of the Class;
- e. There is a lack of adverse interests between Plaintiff and the other members of the Class;

and

- f. Common questions of fact and law exist.

83. Plaintiff is committed to the vigorous prosecution of this action and, to that end, has retained counsel experienced in employment and class action litigation.

84. Plaintiff will fairly and adequately protect the interests of the Class.

85. The instant case meets both the predominance and superiority requirements of Maryland Rule 2-231(b)(3).

86. The common questions of law and fact regarding DCPS's illegal payment schemes and practices and its violations of Maryland's wage laws predominate over any potential individual differences in Class members' claims.

87. A class action is superior to other available methods for the fair and efficient adjudication of the class claims under Maryland's wage laws and, pursuant to Rule 2-231 of the Maryland Rules of Civil Procedure, this case should proceed as a class action with respect to the unpaid wages, overtime claims and damages owed to Plaintiff and the putative class members.

~~88. If individual actions were required to be brought by each member of the Class injured or affected, the result would be a multiplicity of actions, creating a serious hardship to members of the class, to the Court, as well as to BCPS. Accordingly, a class action is an appropriate method for the fair and efficient adjudication of this lawsuit and distribution of the common fund to which the class is entitled.~~

~~89. Because members of the class were subject to the same unlawful payment policies and procedures, class members have little interest in individually controlling the prosecution of separate actions and, in most and possibly all cases, would be unable to obtain counsel to adjudicate their individual claims.~~

~~90. To date, on information and belief, separate litigation has not commenced against BCPS for the unlawful payment practices at issue here.~~

~~91. Due to the fact that many, if not all, of the actions and events giving rise to this action took place in this judicial district, it is desirable to concentrate the litigation of the claims in this forum.~~

~~92. The case does not present individualized or exceedingly complex factual or legal issues that would render management of the suit as a class action difficult. Rather, Plaintiffs and the Class they seek to represent were all subject to the same unlawful practices that give rise to the instant complaint, and BCPS's practices and procedures present the central and overriding issues in the case.~~

~~93. The similarly situated employees may be identified from BCPS's records and may be notified of the pendency of this representative action in the manner the Court directs.~~

DAMAGE DEMAND ESTIMATE

~~94.76.~~ Liverpool seeks the maximum amount of damages to which she is entitled and capable of recovering under all applicable laws based upon the Counts alleged herein.

~~95.77.~~ The information necessary to calculate Liverpool's losses are, on information and belief, in large part presently in the exclusive possession of Defendants.

~~96.78.~~ Notwithstanding the above and pursuant to Maryland Rule 2-305, Liverpool estimates that the total damages she has incurred are ~~in the amount of not less than approximately \$34,600~~ \$38,878 (in addition to attorneys' fees, costs, pre- and post-judgment interest, and liquidating or trebling of the \$38,878 as permitted by statute), and therefore demands payment of ~~same~~ for no less than same, in addition to all other relief demanded herein.

~~97.79.~~ Liverpool reserves the right to amend her damage demand ~~after having had the opportunity to conduct discovery at any time.~~

COUNT I
Maryland Wage and Hour Law
MD. CODE ANN., Lab & Empl. § 3-401, et seq.
(Failure to pay wages owed for all hours worked and failure to pay overtime)

~~98.80.~~ Plaintiff ~~The Class~~ hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

~~99.81.~~ Plaintiff ~~The Class~~, who ~~were~~ was not paid for all hours actually worked, ~~are~~ is protected by the MWHL, and ~~are~~ is entitled to be paid at ~~their~~ her regular hourly rate and at a rate that is not less than minimum wage for each hour worked. MD. CODE ANN., Lab & Empl. § 3-413(b).

~~100.82.~~ BCPS did not compensate Plaintiff ~~the Class~~ at ~~their~~ her regular hourly rate for each hour worked. *Id.* at §§ 3-415(a), 3-420.

~~104-83.~~ BCPS's failure to pay Plaintiff the Class ~~their her~~ appropriate wages for all hours worked violated MWHL. *Id.* at § 3-413(b).

~~102-84.~~ Plaintiff was The Class ~~was~~ entitled to be compensated for all hours worked and to be compensated at 1.5 times ~~their her~~ regular hourly rate for each hour worked over forty (40) in a single workweek. *Id.* at §§ 3-415, 3-420.

~~103-85.~~ BCPS did not compensate Plaintiff the Class ~~for~~ all hours worked and did not compensate ~~them her~~ at 1.5 times ~~their her~~ regular hourly wage for each hour worked over forty (40) in a single workweek.

86. BCPS's failure to compensate Plaintiff the Class ~~for~~ all hours worked and at 1.5 times ~~their her~~ regular hourly wage for each hour in excess of forty (40) hours per workweek violated MWHL. *Id.*

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87. BCPS's failure to compensate Plaintiff entirely for the period of October 1-19, 2011 was in violation of the MWHL.

~~104-88.~~ BCPS failed to accurately track and record the hours worked by Plaintiff.

~~105-89.~~ As the direct and proximate result of BCPS's violations of the MWHL, Plaintiff the Class ~~suffered~~ significant damages.

90. Pursuant to the MWHL, BCPS is liable to Plaintiff the Class ~~for~~ all hours worked which were not compensated and for the difference between the wages paid to them and the wages required by statute, plus reasonable attorneys' fees, pre- and post- judgment interest, fees and costs. *Id.* at § 3-427(a).

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

- a. Unpaid wages due under the MWHL (including all unpaid regular-time, minimum wage and overtime wages);
- b. Treble, or alternatively liquidated, damages multiplied times the unpaid wages due and owing;
- c. Pre- and post-judgment interest;
- d. Reasonable attorneys' fees and costs incurred in pursuing this action;
- e. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law;
- f. A determination that Defendants' failed to accurately track and record the hours worked by Plaintiff; and
- g. Such other and further relief as this Court deems necessary and proper.

106.

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COUNT II
Maryland Wage Payment and Collection Law
MD. CODE ANN., Lab & Empl. § 3-501, *et seq.*
(Failure to timely and regularly pay all wages earned)

~~107.91.~~ The Class Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

~~108.92.~~ Pursuant to the MWPCCL, BCPS must pay Plaintiff its employees all wages due at regular pay periods. MD. CODE ANN., Lab. & Empl. § 3-502. "Wage" is defined as "all compensation that is due to an employee for employment." This definition has been amended by the Maryland legislature to clarify that the statute is intended to specifically include overtime wages. *Id.* at § 4-501(c).

~~109-93.~~ Pursuant to MWPCL, BCPS must pay Plaintiff ~~its employees~~ all wages due for work that Plaintiff ~~the employee~~ performed before the termination of employment on, or before, the day on which the employee would have been paid had ~~their~~ her employment not been terminated. *Id.* at § 3-505.

~~110-94.~~ Plaintiff ~~The Class~~ has not been compensated ~~its~~ her full measure of wages for all hours worked and was not compensated at the proper overtime premium rate for hours worked in excess of forty (40) in a single workweek.

~~111-95.~~ By failing to timely pay ~~the Class its~~ Plaintiff ~~her~~ wages when due, BCPS violated the MWPCL. *Id.* at §§ 3-502, 505.

~~112-96.~~ BCPS did not withhold Plaintiff's ~~the Class's~~ wages as a result of a *bona fide* dispute.

97. In addition, BCPS regularly made deductions from the wages of Plaintiff ~~the Class~~ without receiving proper written authorization.

~~113-98.~~ In addition, BCPS failed to compensate Plaintiff for labor performed during the period of October 1-19, 2011.

~~114-99.~~ As the direct and proximate result of BCPS's violations of the MWPCL, Plaintiff ~~the Class~~ suffered significant damages.

100. Because more than two weeks have elapsed from the date on which BCPS was required to have paid the wages, BCPS is liable to Plaintiff ~~the Class~~ for ~~its~~ her unpaid wages, plus an additional amount up to three (3) times the unpaid wages, reasonable attorneys' fees, interests and costs. *Id.* at § 3-507.2.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

a. Unpaid wages due under the MWPCCL (including all unpaid regular-time, minimum wage, wages due for the period of October 1-14, 2011, wages due for the period of October 15-19, 2011, and overtime wages);

b. Treble, or alternatively liquidated, damages multiplied times the unpaid wages due and owing;

c. Pre- and post-judgment interest;

d. Reasonable attorneys' fees and costs incurred in pursuing this action;

e. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law; and

f. Such other and further relief as this Court deems necessary and proper.

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COUNT III
Violation of the Fair Labor Standards Act of 1938
29 U.S.C. § 201, et seq.
Failure to Pay Overtime Wages

101. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

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102. This count arises from Defendants' violation of the Fair Labor Standards Act of 1938, 29 U.S.C. section 201, et seq., in relation to Defendants' failure to pay Plaintiff all wages owed (including straight time, minimum wage and overtime wages) and for hours worked (including hours up to forty and hours in excess of forty in a single work week).

103. Plaintiff was regularly directed by Defendant to work, and did so work, in excess of forty hours in a seven day workweek.

104. Defendants required Plaintiff to work hours for which she was not compensated at all, including: (1) hours that were up to forty hours in a seven day workweek; and (2) hours that were in excess of forty hours in a seven day workweek.

105. Pursuant to the FLSA, during all weeks that Plaintiff worked in excess of forty hours, Plaintiff was entitled to be compensated at a rate of one-half times Plaintiff's regular rate of pay.

106. Pursuant to the FLSA, Plaintiff was entitled to be compensated at Plaintiff's straight-time rate (and at a rate which was not below the applicable minimum wage rate) for all hours worked up to forty hours in a single work week.

107. Defendant did not compensate Plaintiff at a rate of one and one-half times Plaintiff's regular rate for all hours worked in excess of forty hours in each individual workweek.

108. Defendant did not compensate Plaintiff at her straight-time rate (and at a rate which was not below the applicable minimum wage rate) for all hours worked up to forty hours in a single work week.

109. Defendants' failure to pay straight time wages and overtime wages for time worked in excess of forty hours per workweek was a violation of the FLSA, 29 U.S.C. section 201, et seq.

110. Defendants' failure to accurately track and record the hours worked by Plaintiff violated the FLSA.

111. Defendants' failure and refusal to pay straight time wages and overtime wages for time worked in excess of forty hours per week was a willful violation of the FLSA.

WHEREFORE, Plaintiff prays for a judgment against Defendant as follows:

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a. Judgment against Defendant for violation of the overtime wage provisions of the FLSA;

b. Judgment that Defendants' violations as described above were willful;

c. An award in an amount equal to Plaintiff's unpaid back wages;

d. An award to Plaintiff for the amount of unpaid wages owed, liquidated damages and penalties where provided by law, and interest thereon, subject to proof at trial;

e. An award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. section 216 and all other applicable laws;

f. An award of prejudgment interest to the extent liquidated damages are not awarded;

g. Award reasonable attorneys' fees and costs in the event of an appeal, as well as post-judgment interest consistent with applicable law;

h. A determination that Defendants' failed to accurately track and record the hours worked by Plaintiff; and

i. For such other and further relief, in law or equity, as this Court may deem appropriate and just.

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JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury. COUNT IV
Breach of Contract
(As to Defendants' failure to pay Plaintiff's earned wages between October 1-19, 2011.)

112. Plaintiff hereby incorporates all allegations set forth in all of the foregoing paragraphs as though fully alleged herein.

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113. Defendant promised and represented to Plaintiff that he would be compensated for the hours she worked.

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114. Relving upon Defendants' promise, Plaintiff performed work for Defendants' benefit.

115. Thereafter, Defendants refused to compensate Plaintiff for the periods of October 1-19, 2011.

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment awarding Plaintiff:

- a. Payment for all wages earned by Plaintiff and not paid by Defendants;
- b. Pre- and post-judgment interest; and
- c. Such other and further relief as this Court deems necessary and proper.

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JURY DEMAND

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116. Plaintiff demands a trial by jury on all issues triable to a jury.

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PRAYER FOR RELIEF

117. Plaintiff prays that this Honorable Court:

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- a. Certify this case as a class action pursuant to Maryland Rule 2-321(e);
- b. Appoint Plaintiff and her counsel of record to represent the Class;
- a. Pursuant to Maryland Rule 2-305, award judgment to Plaintiff in an

amount which is not less than \$38,878.

- e.b. Declare that BCPS committed one or more of the following acts:

i. _____ Violated the MWHL with respect to Plaintiff; ~~and all other similarly situated non-exempt employees;~~

ii. _____ Violated the FLSA with respect to Plaintiff

iii. _____ Violated the MWPCl and withheld Plaintiff and all other similarly situated employees' wages without any *bona fide* dispute;

iv. _____ Failed to compensate Plaintiff for all earned wages;

v. _____ Failed to compensate Plaintiff for wages earned between the periods of October 1-19, 2011; and

vi. _____ Any other declaration as the Court deems appropriate;

d.c. _____ Award judgment in the amount of the difference between the wages actually paid and the wages lawfully owed, as provided under the MWHL. MD. CODE ANN., Lab. & Empl. § 3-427(a); 29 U.S.C. § 201, *et seq.*;

e.d. _____ Award judgment in the amount of all back wages due and unpaid as provided in the MWHL, FLSA and MWPCl. MD. CODE ANN., Lab. & Empl. §§ 3-427, 3-507.2, *et seq.*; 29 U.S.C. § 201, *et seq.*

f.c. _____ Award judgment in the amount of all unlawful wage deductions or garnishments as provided in the MWHL, FLSA and MWPCl. MD. CODE ANN., Lab. & Empl. §§ 3-427, 3-507.2, *et seq.*;

g.f. _____ Award a total judgment in an amount equal to three times the amount of wages due, as provided for in the MWPCl. MD. CODE ANN., Lab. & Empl. § 3-507.2; Alternatively, award a total judgment in an amount equal to two times the amount of wages due, as provided for in the FLSA.

h.g. Award restitution and/or disgorgement of profits;
i.h. Award pre-judgment interest;
j.i. Award interest due on unpaid wages;
k.j. Award reasonable attorneys' fees and the costs of this action as provided under the MWHL, FLSA and MWPCL. MD. CODE ANN., Lab. & Empl. §§ 3-427(d), 3-507.2;
l.k. Award reasonable attorneys' fees in the event of an appeal, as well as post-judgment interest consistent with applicable law; and
m.l. Award any such further relief this Honorable Court deems just and proper to award.

May 30, 2013 ~~February 1, 2012~~
submitted,

Respectfully

Judd G. Millman
judd@luchanskylaw.com

Bruce M. Luchansky
lucky@luchanskylaw.com

LUCHANSKY LAWY, P.A.
606 Bosley, Suite 3B
Towson, Maryland 21204
Telephone: (410) 522-1020
Facsimile: (410) 522-1021

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

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I, hereby, certify that on May 30, 2013, a copy of the foregoing Amended Complaint, along with the associated exhibit, were served via U.S. First Class mail upon the following:

Jefferson L. Blomquist
FUNK & BOLTON
36 South Charles Street
12th Floor
Baltimore, Maryland 21201
Attorney for Defendants

Judd G. Millman

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