

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

STARR MONTGOMERY,  
and others similarly situated,

Plaintiffs,

v.

C.A. No.: 3:22-cv-185-N  
**COLLECTIVE ACTION**

FRITO-LAY, INC.,  
ROLLING FRITO-LAY SALES, LP, and,  
FL TRANSPORTATION, INC.,

Defendants.

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**AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, STARR MONTGOMERY (hereinafter sometimes referred to as “Plaintiff”), and others similarly situated, by and through her undersigned counsel, hereby sues Defendants, FRITO-LAY, INC., ROLLING FRITO-LAY SALES, LP, and FL TRANSPORTATION, INC. (collectively hereinafter sometimes referred to as “Defendants”), and in support thereof states as follows:

**INTRODUCTION**

1. This is a collective action by Plaintiff, and others similarly situated, who elect opt into this action (the “Collective”) against their employers for unpaid wages pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.* Plaintiff seeks damages for unpaid overtime, liquidated damages, and a reasonable attorney’s fee and costs.

**JURISDICTION**

2. This claim is properly before this Court pursuant to 28 U.S.C. § 1331, since this claim arises under federal law, and by the private right of action conferred in 29 U.S.C. § 216(b).

### **VENUE**

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(1) because Defendants have offices located in Dallas County, Texas.

### **THE PARTIES**

4. Plaintiff is an individual residing in Tarrant County, Texas.

5. Plaintiff was at all times material employed by Defendant, FRITO-LAY, INC., from July 22, 2021, to the present, as a product packer in Dallas County, Texas.

6. Defendant, FRITO-LAY, INC., is a corporation existing under the laws of the State of Delaware and maintains offices in Dallas County, Texas.

7. Defendant, ROLLING FRITO-LAY SALES, LP, is a limited partnership existing under the laws of the State of Delaware and maintains offices in Dallas County, Texas.

8. Defendant, FL TRANSPORTATION, INC., is a corporation existing under the laws of the State of Delaware and maintains offices in Dallas County, Texas.

9. Defendant, FRITO-LAY, INC., manufactures, sells corn chips, potato chips, and other snack foods throughout the United State of America and is an employer as defined by 29 U.S.C. § 203(d). FRITO-LAY, INC. is a wholly owned subsidiary or PepsiCo, Inc.

10. Defendant, ROLLING FRITO-LAY SALES, LP, sells corn chips, potato chips, and other snack foods manufactured by FRITO-LAY, INC. throughout the United State of America and is an employer as defined by 29 U.S.C. § 203(d). ROLLING FRITO-LAY SALES, LP is a wholly owned subsidiary of Pepsico, Inc.

11. Defendant, FL TRANSPORTATION, INC., transports corn chips, potato chips, and other snack foods manufactured by FRITO-LAY, INC. throughout the United State of America and is an employer as defined by 29 U.S.C. § 203(d). FL TRANSPORTATION, INC. is a wholly owned subsidiary of Pepsico, Inc.

12. Defendants have employees subject to the provisions of 29 U.S.C. § 206 in the facility where Plaintiff is employed.

13. At all times material to this complaint, Defendants, jointly and severally, employed two or more employees and had an annual dollar volume of sales or business done of at least \$500,000.00.

14. At all times material to this complaint, Defendants, jointly and severally, were an enterprise engaged in interstate commerce, operating a business engaged in commerce or in the production of goods for commerce as defined by § 3(r) and 3(s) of the Act, 29 U.S.C. §§ 203(r)-(s).

15. At all times material to this Complaint, Defendants were the employers of the Plaintiff and others similarly situated, and, as a matter of economic reality, Plaintiff and others similarly situated were dependent upon Defendants for their employment.

16. Additionally, Plaintiff and others similarly situated were individually engaged in commerce and produced goods for commerce and their work was directly and

vitaly related to the functioning of Defendant's business activities. Specifically, Plaintiff, and others similarly situated, responsible for the manufacture, sales and transportation of products for interstate commerce.

17. Defendants use Kronos time-keeping software and applications. On or about December 11, 2021, Kronos was hit with a ransomware attack. As a result, Defendants could not access the hours Plaintiff and others similarly situated worked.

18. Instead of paying Plaintiff and all others similarly situated for the actual amount of overtime worked, Defendants paid Plaintiff and all others similarly situated based upon their average earnings. Defendants continue to pay Plaintiff and others similarly situated on this average earnings basis despite the fact that during this period of time Plaintiff and others similarly situated were working and continue to work excessive overtime due to staffing shortages. Plaintiff estimates that she and her co-workers worked as many as 20 hours of overtime per workweek from December 11, 2021, through the present for which they were not compensated at a rate of one and one-half time their regular rates for each hour of overtime worked.

**VIOLATION OF THE OVERTIME PROVISIONS OF  
THE FAIR LABOR STANDARDS ACT**

19. Beginning on or about December 11, 2021, Defendants repeatedly and willfully violated Sections 7 and 15 of the Fair Labor Standards Act by failing to compensate Plaintiff and others similarly situated at a rate not less than one and one-half times the regular rate of pay for each hour worked in excess of 40 in a workweek.

20. Defendants employ over 21,000 non-exempt workers in these three companies.

21. Pending any modifications necessitated by discovery, Plaintiff preliminarily defines this Class as follows:

All current or former employees of FRITO-LAY, INC., ROLLING FRITO-LAY SALES, LP, and, FL TRANSPORTATION, INC who were non-exempt under the FLSA, and who worked for these entities in the United States between December 11, 2021 and February 12, 2022

22. This action is properly brought as a collective action for the following reasons:

- a. The Class is so numerous that joinder of all Class Members is impracticable.
- b. Numerous questions of law and fact regarding the liability of Defendants are common to the Class and predominate over any individual issues which may exist.
- c. The claims asserted by Plaintiff are typical of the claims of Class Members and the Class is readily ascertainable from Defendants' own records. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.
- d. Plaintiff will fairly and adequately protect the interests of Class Members. The interests of Class Members are coincident with, and not antagonistic to, those of Plaintiff. Furthermore, Plaintiff is represented by experienced class action counsel.
- e. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members which would establish incompatible standards of conduct for Defendants.
- f. The prosecution of separate actions by individual Class Members would create a risk of adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

- g. Defendants acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

23. For the foregoing reasons, Plaintiff shall seek an order from this Court authorizing Plaintiff to issue class notification of this action as an “opt-in” collective action pursuant to 29 U.S.C. §216(b) for all claims asserted by Plaintiff. Class notice of this opt-in collective is appropriate because Plaintiff’s claims are nearly identical to those of other Class Members. Plaintiff and Class Members are similarly situated, have substantially similar or identical job requirements and pay provisions, and are subject to Defendants’ common practice, policy or plan regarding employee wages and hours.

24. In addition to the named Plaintiff, numerous employees and former employees of Defendants are similarly situated to Plaintiff in that they have been denied overtime compensation while employed by Defendants.

25. Plaintiff is representative of these other employees and is acting on behalf of their interests as well as Plaintiff’s own interests in bringing this action.

26. Defendants either knew about or showed reckless disregard for the matter of whether its conduct was prohibited by the FLSA and failed to act diligently with regard to its obligations as employers under the FLSA.

27. Defendants failed to act reasonably to comply with the FLSA, and so Plaintiff, and all others similarly situated, are entitled to an award of liquidated damages in an equal amount as the amount of unpaid overtime pay pursuant to 29 U.S.C. § 216(b).

28. The acts described in the above paragraphs violate the Fair Labor Standards

Act, which prohibits the denial of overtime compensation for hours worked in excess of 40 per workweek.

29. As a result of Defendants' unlawful conduct, Plaintiff and all others similarly situated are entitled to actual and compensatory damages, including the amount of overtime which was not paid that should have been paid.

30. Plaintiff and all others similarly situated are entitled to an award of reasonable and necessary attorneys' fees, costs, expert fees, mediator fees and out-of-pocket expenses incurred by bringing this action pursuant to 29 U.S.C. § 216(b) and Rule 54(d) of the Federal Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, STARR MONTGOMERY, and all others similarly situated, demand Judgment against Defendants, jointly and severally, for the following:

- a. Determining that the action is properly maintained as or collective action, certifying Plaintiff as the class representative, and appointing Plaintiff's counsel as counsel for Class Members;
- b. Determine, based on all available evidence, whether and to whom the opt-in notice should be distributed;
- c. Awarding Plaintiff and Class Members declaratory and/or injunctive relief as permitted by law or equity;
- d. Awarding Plaintiff and Class Members their compensatory damages, service awards, attorneys' fees and litigation expenses as provided by law;
- e. Awarding Plaintiff and Class Members their pre-judgment, moratory interest as provided by law, should liquidated damages not be awarded;
- f. Awarding Plaintiff and Class Members liquidated damages and/or statutory penalties as provided by law;

- g. Awarding Plaintiff and Class Members such other and further relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff, STARR MONTGOMERY, and others similarly situated, demands a jury trial on all issues so triable.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I filed the foregoing via the Court's CM/ECF Electronic Filing System, which will send an electronic copy to all counsel of record.

Respectfully submitted, April 20, 2022.

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**ATTORNEYS FOR PLAINTIFF**