IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALI RAZAK, *et al.*	:	
	:	
v.	:	**No. 16-cv-0573**
	:	
UBER TECHNOLOGIES, INC, *et al.*	:	

ORDER

AND NOW, this day of , 2016, upon consideration of Defendants' motion for judgment on the pleadings and Plaintiffs' response thereto, it is hereby ORDERED and DECREED that said motion is DENIED.

BY THE COURT:

_____

Baylson, J.

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PLAINTIFFS' ANSWER TO
DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

For the reasons set forth in the following memorandum of law, incorporated herein by reference, Plaintiffs respectfully request this Court to deny Defendants' motion for judgment on the pleadings.

Respectfully submitted,

s/ John K. Weston

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PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

I. FACTS

Plaintiffs are UberBLACK drivers who operate in Philadelphia, Pennsylvania. They bring this action to recover wages, overtime, unreimbursed expenses and penalties under the Fair Labor Standards Act (FLSA),[1] the Pennsylvania Minimum Wage Act (PMWA),[2] and the Pennsylvania Wage Payment and Collection Law (WPCL).[3] The complaint alleges that defendant Uber Technologies, Inc. and its wholly-owned subsidiary, Gegen LLC, misclassified UberBLACK drivers as independent contractors when in fact they were employees under both state and federal law. The suit is brought as an FLSA collective action

[1] 29 U.S.C. §201 *et seq.*

[2] 43 P.S. §333.101 *et seq.*

[3] 43 P.S. §260.1 *et seq.*

and as a Rule 23 class action. Defendants filed an answer to the complaint, then unsuccessfully sought dismissal in lieu of arbitration, and now request judgment on the pleadings.

Except as noted below, Defendants accurately summarize the allegations of the complaint, at pages 4-5 of Defendants' memorandum of law in support of the motion.

II. DISCUSSION

A. Most of Defendants' motion for judgment on the pleadings is actually a motion for a more definite statement under FRCP 12(e).

Much, if not most, of Defendants' motion is devoted to their claim that the complaint lacks sufficient factual details to support its six causes of action.[4] Were this a genuine problem – that is, if Defendants actually were unable to understand the complaint – then the problem should have been raised by a Rule 12(e) motion for a more definite statement. It appears, however, that Defendants were able to understand the complaint well enough to confidently file an answer and affirmative

[4] "On its face, however, Plaintiffs' Complaint fails to assert sufficient factual allegations to plausibly state a claim to relief as to *any* of the purported causes of action." Defendants' memorandum of law, at page 2.

defenses.[5] Consequently, because they did not file a Rule 12(e) motion prior to filing their answer, the issue has been waived.[6]

B. The complaint fully complies with the *Twombly-Iqbal*[7] requirement that it set forth facts supporting plausible causes of action.

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face."... A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged… The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully.[8]

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[5] Answer, ECF No. 7.

[6] FRCP 12(e):

> **Motion for a More Definite Statement**. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. ***The motion must be made before filing a responsive pleading*** and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

Emphasis added.

[7] Respectively, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

[8] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citations to *Twombly* omitted).

The complaint clearly alleges that the plaintiff drivers have a contract with Defendants;[9] that Defendants misclassify the drivers as independent contractors when, in fact, they are employees;[10] that Defendants do not pay the drivers even minimum wages,[11] much less overtime wages;[12] that Defendants require the drivers to pay Uber's profit, as well as other operating expenses like gas, tolls, maintenance and uniform costs;[13] and that Defendants withhold money from the driver's earnings in order to pay the driver's Parking Authority fees, car payments, and insurance payments. [14] These are all facts, which support a conclusion that Defendants unquestionably "acted unlawfully." Neither *Twombly* nor *Iqbal* requires more.[15]

[9] Complaint ¶¶24-36, 40-49; s*ee also* Defendants' Motion to Dismiss, ECF No. 15, which relied on the parties' written agreement in seeking arbitration.

[10] Complaint ¶¶17, 89-93, 107.

[11] Complaint ¶¶126-127, 140, 146.

[12] Complaint ¶¶135, 147.

[13] Complaint ¶¶43-48 and 96.

[14] Complaint ¶¶45-47.

[15] Plaintiffs' claim for breach of fiduciary duty – Count 8 of the complaint – is separately discussed below.

That Defendants are able to accurately summarize these facts demonstrates the sufficiency of the complaint.[16] Defendants' actual objection is not that the operative, ultimate facts are inadequately set forth, but that the complaint should contain more detail. Specifically, Defendants believe that the complaint should specify the number of hours each driver worked; the applicable rate of pay for each driver; the total unpaid wages due; the amount of improper deductions from each driver's pay; the drivers' dates of employment; the locations the drivers worked; and who hired or fired them. The objection is groundless, for two reasons. First, these are details, not operative facts, and neither *Twombly* nor *Iqbal* disapproved of FRCP 8(a)(2)'s requirement that the complaint consist of "a short and plain statement of the claim showing that the pleader is entitled to relief." Second, the complaint alleges – and, for purposes of this motion, the allegations are true – that Defendants did not keep a record of how many hours the drivers worked each day and each week.[17] Doing so is the employer's burden under the FSLA, 29 U.S.C. §211(c). The employer's failure to do so permits this Court to approximate damages, based upon other evidence. *Anderson v. Mt. Clemens Pottery Co*., 328

[16] See, in particular, pages 4-5 of Defendants' memorandum of law.

[17] Complaint ¶96(e), 103.

U.S. 680, 688 (1946).[18] That other evidence will be the subject of forthcoming discovery.

That said, there is no doubt that trial court decisions on the level of fact pleading required in FLSA ***overtime*** litigation are all over the map. For every *Jian Zhong v. August August Corp*., 498 F. Supp. 2d 625, 628 (S.D. N.Y. 2007) ("where the plaintiff alleges violations of the FLSA's minimum and overtime wage provisions, the complaint should, at least approximately, allege the hours worked for which these wages were not received") there seems to be a *Nicholson v. UTi Worldwide, Inc*., No. 3:09-cv-722-JPG-DGW, 2010 U.S. Dist. LEXIS 138468, 2010 WL 551551, *4 (S.D. Ill. Feb. 12, 2010) ("While *Zhong* may be right that a plaintiff should plead his rate of pay and the wages due, no rule requires that he do so"). The Third Circuit reached what it considers the middle ground in *Davis v. Abington Mem. Hosp*., 765 F.3d 236, 243 (3d Cir. 2014), at least insofar as FLSA overtime pleading goes. According to *Davis*,a plaintiff must sufficiently allege forty hours of work in a given workweek as well as some uncompensated time in excess of the forty hours. A plaintiff need not identify the exact dates and times

[18] As noted in *Integrity Staffing Sols., Inc. v. Busk*, ___ U.S. ___, 135 S. Ct. 513, 517 (2014), *Anderson*'s holding that the time spent walking from timeclocks to work benches was compensable was superseded by passage of the Portal-to-Portal Act. There is no question that *Anderson*'s holding on §211(c) remains valid. See, *e.g., Martin v. Selker Bros., Inc*., 949 F.2d 1286, 1297 (3d Cir. 1991) ("The burden of any consequent imprecision from the absence of an employer's records must be borne by that employer").

that he or she worked overtime. *Davis*, at 765 F.3d 243. Plaintiffs here allege that they were not paid overtime which was due to them; see, *e.g.*, complaint ¶¶96, 135. Defendants' failure to keep records, as discussed above, absolves Plaintiffs from the requirement of pleading any further details.

In the end, the facts set forth in the complaint pass the *Twombly-Iqbal* test because they are facts clearly unique to ***these*** parties, rather than "a formulaic recitation of the elements of a cause of action" which could apply to ***any*** parties.[19] The details sought by Defendants – to the extent that they can be found – will be provided in discovery, as is proper under the federal rules.

C. The complaint adequately alleges that Defendants knew that Plaintiffs worked and were not paid minimum wage or overtime.

At pages 12-14 of their brief, Defendants make the somewhat astounding claim that they did not know plaintiffs were working for them – or, at least, that the complaint does not say so. In fact, the complaint describes in considerable detail how Defendants arrange fares for the drivers, choosing which driver will carry which passenger; how Defendants collect the passenger's fare; and how Defendants pay a portion of that fare to the driver.[20] Defendants' answer even

[19] *Twombly*, *supra.* at 550 U.S. 555.

[20] See complaint ¶¶24-49.

admits some of these allegations.[21] Defendants obviously knew that Plaintiffs were working. The details of employment – the dates, hours and so on – are matters Defendants are required to keep track of, as discussed in the preceding section. Defendants' objection to the complaint, on this basis, is groundless.

D. Defendants' failure to keep records and post notices are not separate causes of action – but they are important allegations.

Defendants correctly note that their failure to keep adequate records, and their failure to prominently post FLSA notices, do not create private causes of action. Yet they are important allegations, with serious implications, for two reasons. As previously discussed, the failure to keep adequate records allows this Court to approximate damages. *Anderson v. Mt. Clemens Pottery Co*., 328 U.S. 680, 688 (1946). And Defendants' failure to post notice of the drivers' FLSA rights tolls the statute of limitations. *Kamens v. Summit Stainless, Inc*., 586 F. Supp. 324, 328 (E.D. Pa. 1984) ("An employer's failure to post a statutorily required notice [under the FLSA] tolls the running of any period of limitations"), citing *Bonham v. Dresser Industries*, 569 F.2d 187, 193 (3d Cir. 1978); *Cisneros v. Jinny Beauty Supply Co*., No. 03 C 1453, 2004 U.S. Dist. LEXIS 2094, 2004 WL 524482, at *1 (N.D. Ill. Feb. 6, 2004) ("[A]n employer's failure to post a

[21] The answer unreservedly admits ¶¶29 and 48, and, except for one reservation, admits ¶30.

notice required by 29 C.F.R. §516.4 tolls the FLSA statute of limitations until an employee acquire a general awareness of his rights").[22] Both allegations are properly in the complaint.

E. Plaintiffs' seventh cause of action – for violation of Pennsylvania's Wage Payment and Collection Law – alleges both a contract and a failure to pay wages due.

Defendants argue (at pages 15-16 of their memorandum of law) that claims based on Pennsylvania's Wage Payment and Collection Law must establish a contract between the employer and the employee. The complaint does so, in ¶¶24-49, and particularly in ¶¶33-35, describing the manner in which Defendants contact the driver and the driver accepts the fare, and in ¶¶40-49, describing the manner in which the driver is paid, and the requirements Defendants demand of the driver. This arrangement was, in some part, memorialized in the driver agreements attached to Defendants' earlier motion seeking arbitration.[23] This is basic offer-acceptance-consideration contract formation, which even involves an electronic

[22] Defendants' affirmative misconduct is not required as a condition of equitable tolling. *Santos v. United States*, 559 F.3d 189, 203 (3d Cir. 2009); *Valdez v. United States*, 518 F.3d 173, 183 (2d Cir. 2008) ("The relevant question is not the intention underlying defendants' conduct, but rather whether a reasonable plaintiff in the circumstances would have been aware of the existence of a cause of action.").

[23] *See* Coleman Declaration, ECF No. 15-1.

"writing." Defendants' motion effectively contests only whether this amounts to an employment contract, which is a question of fact and law best left for trial.

And, yet again, Defendants object that the complaint lacks detail – copies of the drivers' earnings statement, dates of payment and so on. As discussed earlier, these are not the ultimate facts required of a complaint, nor are they Plaintiffs' burden to produce.

F. The eighth cause of action adequately describes a confidential relationship between Defendants and their drivers.

The complaint alleges that Defendants owed a fiduciary duty to their UberBLACK drivers, and that Defendants breached that duty by establishing the Uber-X program, a program in direct competition with UberBLACK which distastrously undercut the UberBLACK drivers' compensation by giving favored treatment to the Uber-X drivers.

Pennsylvania law permits Plaintiffs to establish a fiduciary relationship.

> A confidential relationship exists when "one person has reposed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side, or weakness, dependence or justifiable trust, on the other." *Estate of Clark*, 467 Pa. 628, 635, 359 A.2d 777, 781 (1976). (citation omitted). A business association may be the basis of a confidential relationship "only if one party surrenders substantial control over some portion of his affairs to the other." *In Re: Estate of Scott*, 455 Pa. 429, 433, 316 A.2d 883, 886 (1974).[24]

[24] *Commonwealth, DOT v. E-Z Parks, Inc.*, 620 A.2d 712, 717 (Pa. Cmnwlth.

The complaint's eighth cause of action alleges, in detail, exactly these factors, specifically as they pertain to plaintiff-drivers; see ¶¶155-165. Because of these gross disparities in the strength of Uber and of each UberBLACK driver, Uber has the power to take advantage of, ***or*** to exercise undue influence over, the driver.[25] These are questions of fact, which, for purposes of this motion, must be taken as true.

Defendants cite a Pennsylvania case which recognizes such a cause of action. *Babiarz v. Bell Atlantic–Pennsylvania, Inc.*, 2001 WL 1808554, No. 1863 August Term 2000 (C.P. Phila. July 10, 2001) involved an employer which solicited its employees for innovative ideas.[26] The plaintiff-employee submitted a marketing plan, which the employer adopted. The employee claimed that the employer refused to compensate the employee, failed to keep the plan confidential from other branches of the company, and did not give credit to the employee for his submission, despite the employer's alleged assurances that the employee would receive credit for his idea. The *Babiarz* complaint – as the UberBLACK drivers' complaint in this case – alleged that the employer breached its fiduciary duty to the

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1993).

[25] "[O]ur law does not require both "overmastering influence and. . .weakness, dependence or trust." *Basile v. H & R Block*, 777 A.2d 95, 101 (Pa.Super. 2001).

[26] Because the case does not appear in the LEXIS database, a copy is attached to this memorandum of law.

employee. Judge Herron, at pages 20-22 of the opinion, discussed Pennsylvania's law regarding the establishment, and breach, of a fiduciary duty, holding: "This court now finds that the plaintiff has sufficiently stated the elements for a breach of fiduciary duty based on the alleged confidential relationship." *Babiarz*, at page 20.

This is not *dicta*. A Pennsylvania court has held that claims effectively identical to those raised in the eighth cause of action of Plaintiffs' complaint are actionable under Pennsylvania law. Defendants' motion for judgment on Plaintiffs' fiduciary claims should be denied.

G. Defendants' violations of criminal/regulatory statutes are not separate causes of action – but they are important allegations.

As Defendants point out, the complaint alleges that Defendants established the Uber-X program in violation of a variety of Pennsylvania's regulatory and criminal statutes. Defendants object that these statutes do not provide private causes of action, and in that respect Defendants are correct. The allegations are nevertheless important to demonstrate the extent of Defendants' breach of their fiduciary duties to Plaintiffs. Not only did Defendants establish a direct and favored competitor, but they did so in violation of clear law, as demonstrated by the complaint's inclusion, at ¶178, of the Philadelphia Parking Authority's notice of the violations:

> As you are probably aware, on October 17, 2014, your company decided to roll out Uber-X in Philadelphia. ***Uber did this knowingly and intentionally*** without acquiring the proper certifications and ***in violation of the law***. Uber-X, which deploys unregulated family cars driven by uncertified drivers, is considered to be an illegal service provider by the PPA.[27]

It is small answer to say that that, for a bit more than two months this year, Uber-X was temporarily "lawful." The point is that when Defendants formed Uber-X, and for years afterward, it was an illegal operation – and, hence, a clear breach of Defendants' fiduciary duty to Plaintiffs.

H. The complaint plausibly alleges an FLSA collective action.

Defendants argue that the complaint lacks sufficient detail to support a collective action. Once again, Defendants conflate ultimate facts and evidence. Paragraphs 94-101 of the complaint clearly state that the members of the collective action are similarly situated, that they all suffered from the same mistreatment, and that they can all be identified from Defendants' records. Neither *Woodard v. Fed Ex Freight East, Inc.*, 250 FRD 178 (M.D. Pa. 2008), *Zhong*, *supra.*, nor *Landry v. Peter Pan Bus Lines, Inc*., No. 09-11012-RWZ, 2009 U.S. Dist. LEXIS 129873, 2009 WL 9417053 (D. Mass. Nov. 20, 2009), requires – at this stage - a collective action complaint to identify each driver, the total number of drivers, their dates or

[27] Emphasis supplied.

locations of employment, their rates of pay, who hired or fired them, or the number of hours they worked. *Woodard*, indeed, holds quite the opposite:

> To determine whether a plaintiff is similarly situated to the proposed collective group, district courts in this circuit apply a two-step approach. The first step is the "notice stage," where the "court determines whether notice of the action should be given to potential class members." … ***The standard here is "fairly lenient," requiring a "modest factual showing" that plaintiff is similarly situated to the proposed group***…The initial determination usually results in conditional certification…The second step occurs ***after discovery is complete***, usually triggered by the defendant's motion for decertification. The court applies a stricter standard in analyzing the "similarly situated" issue because more information is available… If the court concludes the plaintiff is similarly situated to the other employees, the matter proceeds to trial as a collective action.[28]

Furthermore, the complaint adequately describes Defendants' FLSA violations, as has been discussed at length earlier in this brief. In sum, Defendants paid ***no*** minimum wage, ***no*** overtime, and did ***not*** reimburse expenses for UberBLACK drivers during the class period. It gets no simpler than that.

I. The complaint sufficiently alleges misclassification.

Defendants argue that the complaint fails to allege facts that address each of the "economic reality" factors set forth in *Donovan v. DialAmerica Mktg., Inc.*, 757 F.2d 1376 (3d Cir. 1985). Defendants' argument is self-defeating; on one hand, Defendants acknowledge that the complaint extensively addresses at least

[28] *Woodard v. FedEx Freight E., Inc.*, 250 F.R.D. 178, 191 (M.D. Pa. 2008). Emphasis added.

one of the six factors and, on the other hand, Defendants cite precedent holding that ***"[n]either the presence nor absence of any particular factor is dispositive*** and courts should examine the 'circumstances of the whole activity.'"[29]

For purposes of this motion, the matter should end there. The "circumstances of the whole activity" will be addressed at trial, not on a motion for judgment on the pleadings before any discovery has been undertaken or evidence submitted. In any event, the complaint adequately alleges misclassification, and Defendants' lengthy discussion of how some allegations may work in their favor at trial is very much beside the point.

J. The limitations period for Plaintiffs' claims exceeds three years.

As discussed earlier, Defendants' failure to prominently post FLSA notices tolled the limitations period – a period equaling two to three years – until the plaintiffs acquired "a general awareness" of their FLSA rights. *Kamens v. Summit Stainless, Inc., supra.*; *Bonham v. Dresser Industries, supra.*; *Cisneros v. Jinny Beauty Supply Co., supra.*

More narrowly, Defendants' conduct was willful under the FLSA. Whether Defendants actually "knew" that their operation might be subject to the FLSA is, of course, a question of fact; but if they did not, then they "recklessly disregarded"

[29] Defendant's memorandum of law, at page 27, citing *Donovan* at 757 F.2d 11382-83. Emphasis added.

the possibility.[30] The complaint describes how Defendants' entire operation displayed the hallmarks of an employer-employee relationship.[31] Defendants are sophisticated business entities, well-schooled in law and litigation (as the history of the instant matter has already demonstrated). That they were, at best, willfully blind to the FLSA extends that statute's period of limitations to three years.

K. Plaintiffs' request for injunctive relief is proper.

Defendants argue that only the government may seek injunctive relief under the FLSA, and this is correct. It is also beside the point. Plaintiffs may obtain equitable relief under their state causes of action, and specifically under their breach of fiduciary duty claim.

The complaint does not seek preliminary injunctive relief; instead, Plaintiffs seek a permanent injunction.[32] The standards for preliminary and permanent injunctions are different, *ACLU v. Black Horse Pike Reg'l Bd. of Educ*., 84 F.3d

[30] As Defendants correctly note, a circuit split in the FLSA definition of "willfulness" was resolved by the Supreme Court's decision in *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988).

[31] See complaint ¶¶ 24-49 and 89-93.

[32] See complaint, Prayer for Relief (d) ("Injunctive relief requiring Uber to cease its UberX operations in Philadelphia, Pennsylvania or, in the alternative, requiring UberX to comply with PPA regulations"). Subsumed within the first prerequisite are a demonstration that the plaintiff has no adequate legal remedy, that the threatened injury is real, not imagined; and that no equitable defenses exist. *Id.*

1471 (3d Cir. 1996), and Defendants have incorrectly cited the standards for preliminary injunctive relief. To obtain a permanent injunction,

> First, the plaintiff must demonstrate that the court's exercise of equity jurisdiction is proper. Second, the plaintiff must actually succeed on the merits of its claims. Third, the plaintiff must show that the balance of equities tips in favor of injunctive relief.[33]

For all of the reasons discussed earlier in this brief, the complaint adequately describes the inequities of Defendants' Uber-X program and its devastating effect on Plaintiffs. Plaintiffs' loss of income resulting from Uber-X may not be susceptible to precise calculation ; accordingly, there is no adequate remedy at law, short of disgorgement of the profits earned by Defendants from their Uber-X operation. Permanent injunctive relief will tip the balance of equities in favor of a permanent injunction.

L. The complaint adequately pleads Local Rule 23.1 requirements.

Defendants argue that, under Local Rule 23.1, the complaint is defective because it does not cite to specific provisions of F.R.C.P. 23 and because it does not specify the size of the class. To the extent that these are supposed to be serious objections, Plaintiffs note that the complaint was filed in a Pennsylvania state court pursuant to the Pennsylvania rules of civil procedure, and was removed to this

[33] *Roe v. Operation Rescue*, 919 F.2d 857, 867 n.8 (3d Cir. 1990).

Court by Defendants.[34] It would have been entirely improper to plead under Rule 23 – much less under this Court's local rules – in the Court of Common Pleas of Philadelphia. As to the size of the class, Defendants have actual knowledge, based upon their motion to send this case to arbitration, that there are at least 244 members of the class (those who opted out of Uber's arbitration clause), a number more than sufficient to support class treatment.[35]

M. "Cabined discovery" aside - and once again - it is the employer's burden to keep records, and Plaintiffs are entitled to those records.

At the end of their brief, Defendants once again argue that it is the Plaintiffs' burden to produce their pay statements. For the reasons set forth earlier in this brief, that is simply not so under the FSLA.

N. To the extent that the Court perceives that the complaint fails to allege facts sufficient to support any of its claims, Plaintiffs request permission to file an amended complaint.

To the extent that the Court finds that the complaint inadequately pleads its claims, Plaintiffs request leave to file an amended complaint. "[A]bsent undue or substantial prejudice, an amendment should be allowed under Rule 15(a) unless

[34] Notice of Removal, ECF No. 1.

[35] *See Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 356 n.5 (3d Cir. 2013) (presuming numerosity at 40 members).

'denial [can] be grounded in bad faith or dilatory motive, truly undue or unexplained delay, repeated failure to cure deficiency by amendments previously allowed or futility of amendment.'" *Long v. Wilson*, 393 F.3d 390, 400 (3d Cir. 2004), citing *Lundy v. Adamar of New Jersey, Inc*., 34 F.3d 1173 (3d Cir. 1994). Furthermore, a formal motion to amend is not required in this circuit; *Colburn v. Upper Darby Twp*., 838 F.2d 663, 667 (3d Cir. 1988); *Dist. Council 47, AFSCME v. Bradley*, 795 F.2d 310, 316 (3d Cir. 1986).

III. CONCLUSION

Plaintiffs respectfully request that this Court deny Defendants' motion for judgment on the pleadings. Alternatively, if the Court determines that the complaint insufficiently pleads Plaintiffs' causes of action, Plaintiffs request leave to submit an amended complaint.

Respectfully submitted,
s/ John K. Weston

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CERTIFICATE OF SERVICE

JOHN K. WESTON, attorney for Plaintiffs, certifies that the foregoing document has been filed electronically and is available for viewing and downloading from the ECF system. Service has thereby been made on all parties, as follows:

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Dated: September 2, 2016

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