IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF IOWA

CENTRAL DIVISION

NORMAN DAVIS, IV; APRIL ANN WILCOX; AND GARY MOTARIE, Initially, and on Behalf of All Others Similarly Situated, Plaintiffs, vs. TPI COMPOSITES, INC. AND TPI IOWA, LLC, Defendant.	No. 4:11-cv-00233-JAJ-TJS **ORDER**

This matter comes before the Court pursuant to Defendant TPI Composites, Inc.'s[1] Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(6) filed on May 25, 2011. [Dkt. No. 11.] The Court refers to the individual plaintiffs collectively as "Plaintiffs." TPI removed this case originally filed in the Iowa District Court in and for Jasper County on May 19, 2011. [Dkt. No. 1.] The originally filed complaint was attached to the notice of removal as Exhibit A. On June 14, 2011, Plaintiffs filed a First Amended Class Action Complaint, among other things, adding Defendant TPI Iowa, LLC to the suit. [Dkt. No. 15.] The Court refers to the defendants collectively as "TPI."

The Court finds that Plaintiffs have complied with Fed. R. Civ. P. 8 and has alleged sufficient facts upon which claims against TPI can be based. Accordingly, the Court denies the motion.

I. BACKGROUND

The individual plaintiffs, Norman Davis IV, April Ann Wilcox, and Gary Motarie,

[1] Although Defendant TPI Iowa, LLC was not a party at the time the motion to dismiss was filed, this order applies with equal force.

all worked as hourly, non-exempt employees for TPI. [First Amended Compl., Dkt. No. 15, ¶¶ 1-4.] Plaintiffs bring this case on behalf of themselves and others who currently work, or worked, as hourly, non-exempt employees for TPI in the State of Iowa at any time during the three-year period immediately preceding the filing of the Complaint. *Id.* ¶ 5.

TPI is a global provider of composite wind blades to major turbine manufacturers. *Id.* ¶ 6. TPI Iowa, LLC is an Iowa limited liability company located in Newton, Iowa, believed to be wholly owned by TPI Composites, Inc. *Id.* ¶ 7. TPI Composites, Inc.'s headquarters are located in Scottsdale, Arizona. *Id.* ¶ 6.

The TPI Iowa plant only manufactures wind turbine blades and has two basic operation processes, "molding" or "finishing." *Id.* ¶¶ 14-15. The production occurs in one building that is evenly divided between the two processes, with each division having two supervisors per shift, team leaders, and other production workers. *Id.* ¶¶ 16-17. The Plaintiffs are all production workers who shared, *inter alia*, similar job titles, pay plans, job descriptions, job duties, uniforms, and work hours. *Id.* ¶ 18. The wage and hour practices and policies are uniform and TPI managed and supervised Plaintiffs' work, including the amount and recording of time worked. *Id.* ¶ 19-20. Plaintiffs, as non-exempt employees, are paid an hourly rate. *Id.* ¶ 21.

According to the complaint, TPI routinely required or permitted Plaintiffs to work more than 40 hours per workweek without proper overtime compensation. *Id.* ¶ 22. Plaintiffs were required to arrive before the start of their scheduled shift to perform such work duties as: donning disposable coverall suits; obtaining and donning respirators; obtaining and donning goggles and/or safety glasses; obtaining and donning ear protective devices; and obtaining and donning gloves (collectively, "safety gear"). *Id.* ¶ 23. Plaintiffs were also required to perform work during their breaks and meal times, as well as stay after the end of their scheduled shift to don and doff the safety gear. *Id.* ¶¶ 24-25.

The additional time required to don and doff the safety gear required Plaintiffs to regularly work more than their scheduled time per workweek. *Id.* ¶ 26. This time was not

recorded and Plaintiffs did not receive overtime compensation. *Id.* ¶¶ 26-28.

Plaintiffs now seek to maintain this suit as a collective action pursuant to 29 U.S.C. § 216(b) on behalf of themselves and the class of persons listed in the complaint. Plaintiffs allege that TPI's practices violated the Iowa Wage Payment Statute, Iowa Code §§ 91A, *et seq.*, and the Fair Labor Standards Act, 29 U.S.C. § 201, *et. seq.* Plaintiff Davis separately alleges (explained in more detail below) that he was terminated in retaliation for filing this suit.

II. ANALYSIS

A. Standard of Review

Federal Rule of Civil Procedure 8 requires that a complaint present "a short and plain statement of the claim showing that the pleader is entitled to relief." The court may only consider matters within the pleadings. *Moble Sys. Corp. v. Alorica Cent., L.L.C.*, 543 F.3d 978, 982 (8th Cir. 2008). To survive a 12(b)(6) motion, the claim "may be supported by showing any set of facts consistent with the allegations in the complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 563 (2007). The complaint must also "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009)); *Ritchie v. St. Louis Jewish Light*, 630 F.3d 713, 716 (8th Cir. 2011) (quoting *Northstar Indus., Inc. v. Merrill Lynch & Co.*, 576 F.3d 827, 832 (8th Cir. 2009)).

While not a "probability requirement," the "plausibility standard requires a plaintiff to show at the pleading stage that success on the merits is more than a 'sheer possibility.'" *Id.* To adequately state a claim, the plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555; *see also Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010) (citing *C.N. v. Willmar Pub. Sch., Indep. Sch. Dist. No. 347*, 591 F.3d 624, 629-30 (8th Cir. 2010)). "Factual allegations must be enough to raise a right to relief above the speculative level . . . ." *Twombly*, 550 U.S. at 555 (citing 5 C. Wright & A. Miller, Federal Practice and

Procedure § 1216, at 235-36 (3d ed. 2004)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 555).

When analyzing the adequacy of a complaint's allegations under Rule 12(b)(6), the court must accept as true all of the complaint's factual allegations and view them in the light most favorable to the plaintiff. *See Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 508 n.1 (2002); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("when ruling on a defendant's motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint" (citations omitted)). "The issue is not whether plaintiffs will ultimately prevail, but rather whether they are entitled to offer evidence in support of their claims." *United States v. Aceto Agr. Chemicals Corp.*, 872 F.2d 1373, 1376 (8th Cir. 1989) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), overruled on other grounds, *Davis v. Scherer*, 468 U.S. 183 (1984) (quotation marks omitted)).

Further, "the complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." *Braden*, 588 F.3d at 594 (citations omitted). "Ultimately, evaluation of a complaint upon a motion to dismiss 'is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Id.* (citing *Iqbal*, 129 S. Ct. at 1950).

B. Applying the Pleading Standards to the First Amended Complaint

Defendant TPI argues that the action must be dismissed because the petition does not contain sufficient factual allegations to show that Plaintiffs are entitled to the relief sought pursuant to *Twombly* and Rule 8. TPI alternatively contends that because TPI Composites Inc. did not employ Plaintiffs directly and is a holding company, the petition fails to state a claim upon which relief can be granted.

Here, the Court accepts as true all of the First Amended Complaint's factual allegations and views them in the light most favorable to Plaintiffs. *Pardus*, 551 U.S. at 94.

The Court finds that the complaint states "enough facts to state a claim that is plausible on its face." *Twombly*, 550 U.S. at 570.

At this stage in the pleadings, the Court need only determine if the facts sufficiently allege a cause of action, and the Court finds that they do. Section 207(a) of the Fair Labor Standards Act requires employees working in excess of forty hours per week to be paid "not less than one and one-half times the regular rate at which he is employed." 29 U.S.C. § 207(a)(2). Further, the Iowa Wage Payment Statute requires employers to pay its employees "all wages due," including "all wages earned" for any employee suspended or terminated. Iowa Code §§ 91A.3, 91A.4. In this context, "wages" is defined as "compensation owed by an employer for . . . labor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation." *Id.* § 91A.2.

The Court accepts as true that Plaintiffs were required to work additional time to don and doff the safety gear without receiving overtime compensation. The Court also must accept as true that this time was not recorded and occurred outside the scheduled shift. Accordingly, the Court finds that Plaintiffs have identified the claims adequately enough to survive a motion to dismiss.

Plaintiff Norman Davis IV also raises a retaliation claim against TPI. According to the complaint, Plaintiff Davis, through his attorneys, notified TPI on March 18, 2011, of its failure to pay all regular and overtime wages as required by Iowa and federal law. TPI terminated Davis' employment on March 24, 2011. This sufficiently alleges a violation of Iowa public policy, Iowa Code Section 91A.10(5) ("An employer shall not discharge or in any other manner discriminate against an employee because the employee has filed a complaint, assigned a claim, or brought an action under this section, or has cooperated in bringing any action against an employer."), and 29 U.S.C. § 215(a)(3) ("it shall be unlawful for any person . . . to discharge or in any other manner discriminate against an employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter . . . ."). The Court must accept as true that Davis

was terminated for the reasons stated in the complaint. This claim is also adequate to survive a motion to dismiss.

The Court finds that the First Amended Complaint cured any deficiencies in the original complaint. The motion to dismiss is denied.

Upon the foregoing,

IT IS ORDERED that the motion to dismiss [Dkt No. 11] is denied.

DATED this 3d day of August, 2011.

JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA