

Jesse S. Brar, Utah Bar # 9469  
Email: [jbrar@xmission.com](mailto:jbrar@xmission.com)  
670 East 3900 South, Suite 101  
Salt Lake City, Utah 84107  
Telephone: (801) 269-9541  
Facsimile: (801) 269-9581

Sharon Preston, Utah Bar # 7690  
Email: [sharon.preston@yahoo.com](mailto:sharon.preston@yahoo.com)  
670 East 3900 South, Suite 101  
Salt Lake City, Utah 84107  
Telephone: (801) 269-9541  
Facsimile: (801) 269-9581

*Attorneys for Plaintiffs*

---

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

---

Paula Self, Linda Duncan, Sheri Kiddy, Leslie  
Demull, and Timothy Van Hoose Individually  
and on Behalf of Others Similarly Situated,

Plaintiffs,

vs.

TPUSA, Inc. and Teleperformance Group,  
Inc., Corporations,

Defendants.

**PLAINTIFFS' RESPONSE AND  
MEMORANDUM OF LAW IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR A MORE DEFINITE  
STATEMENT UNDER FRCP 12( e)  
AND  
MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT**

**JURY DEMANDED**

Case No.: 2:08-CV-395 PMW

Judge: Hon. Paul M. Warner

---

## TABLE OF CONTENTS

|  |    |
|--|----|
| I. INTRODUCTION .....  | 1  |
| II. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT .....   | 2  |
| III. LEGAL ARGUMENT.....   | 3  |
| A. Plaintiffs’ Motion for Leave to File Second Amended Complaint<br>Should Be Granted .....  | 3  |
| 1. The Amended Claims Are Not Frivolous, Have Merit,<br>And Are Legally Sufficient .....   | 5  |
| 2. Defendants Will Not Be Unduly Prejudiced.....   | 5  |
| 3. Plaintiffs Have Not Unduly Delayed or Acted in Bad Faith.....   | 6  |
| 4. No Reason Exists to Deny Plaintiffs’ Motion for Leave to<br>File Their First Amended Complaint .....  | 6  |
| B. Defendants’ Motion for More Definite Statement Should Be Denied .....   | 7  |
| 1. Plaintiffs’ Second Amended Complaint Complies With Rule 8(a) and<br>Claims under States’ Wage Payment and Minimum Wage Statutes<br>Provides Fair Notice to the Defendants ..... | 9  |
| 2. Plaintiffs’ Second Amended Complaint Provides Fair Notice of Breach<br>Of Express or Implied Contract and Unjust Enrichment Claims .....  | 10 |
| a. Breach of Express or Implied Contract Claims .....  | 11 |
| b. Unjust Enrichment Claims .....  | 14 |
| IV. CONCLUSION .....   | 15 |

Representative Plaintiffs, Paula Self, Linda Duncan, Sheri Kiddy, Leslie Demull, and Timothy Van Hoose ("Representative Plaintiffs"), by and through their attorneys Jesse S. Brar and Sharon L. Preston, hereby submit the following Counter-Motion and Response to Defendants' Motion for a More Definite Statement.

In response and opposition Plaintiffs, pursuant to FRCP 15 of the Fed. R. Civ. P., respectfully file this counter-motion to seek leave of this Court to file the attached proposed Second Amended Complaint. (Attached as Exhibit A). Plaintiffs submit this response and counter motion based upon the pleadings and papers on file herein, the points and authorities attached hereto, and any oral arguments the Court may entertain at the hearing of this matter.

## **I. INTRODUCTION**

Plaintiffs filed their First Amended Complaint which asserted claims for unpaid overtime wages under the Fair Labor Standards Act, 29 U.S.C. §§201 *et seq.* Plaintiffs filed their claim individually and as a collective action under the FLSA, 29 U.S.C. §216(b), on behalf of others similarly situated. Additionally, the First Amended Complaint also asserted claims for unpaid non-overtime wages (for weeks where plaintiffs and other proposed class members worked less than 40 hours in a week) under state laws including state wage and hour laws, breach of contract, and unjust enrichment. Plaintiffs are seeking class action treatment under Rule 23 of the Fed. R. Civ. P. for their state law claims.

Defendants filed a motion to dismiss Plaintiffs original complaint, but after the Plaintiffs filed their First Amended Complaint,<sup>1</sup> Defendants withdrew their Motion to Dismiss. In their Motion to Dismiss, which was subsequently withdrawn, Defendants asserted that Utah Payment of Wages Act (“UPWA”) does not provide a private right to recover unpaid wages. However, Plaintiffs assert in their separate Response to Defendants’ second Motion to Dismiss, that UPWA in fact does provide a private right of action to recover unpaid non-overtime wages.<sup>2</sup>

In response to the Defendants’ Motion for More Definite Statement, Plaintiffs’ are filing this Memorandum in Opposition and this Motion for Leave to File the Second Amended Complaint.

## **II. MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Pursuant to Rule 15, Federal Rules of Civil Procedure, Plaintiffs submit this Motion for Leave to File their Second Amended Complaint for violation of the Fair Labor Standards Act of 1938, 29 U.S.C. §§201 *et seq.*, for unpaid overtime wages; and violations of State laws for unpaid non-overtime wages.

Plaintiffs file this Motion for Leave to File their Second Amended Complaint to add several opt-in plaintiffs as Named Party plaintiffs; clarify the claims for unpaid non-overtime wages under the wage payment laws of the states of Florida, Illinois, Indiana, Ohio, South

---

<sup>1</sup> Plaintiffs’ First Amended Complaint was filed as of right under Rule 15(a) of the Fed. R. Civ. P. Defendant’s Motion to Dismiss was “not a responsive pleading within the meaning of [Fed. R. Civ. P.] 15(a)” and therefore Plaintiffs were allowed to file an amended complaint as of right. *Hafen v. Carter*, 248 Fed. Appx. 43, \*46 (attached as Exhibit 1); *see also Adams v. Campbell County Sch. Dist.*, 483 F.2d 1351, 1353 (10<sup>th</sup> Cir. 1973) (attached as Exhibit 2).

<sup>2</sup> Whether the UPWA provides a private right of action to recover unpaid non-overtime wages is an issue appropriately addressed in the Defendant’s Motion to Dismiss and the Plaintiffs’ Response to it.

Carolina, Texas and Utah. Additionally, the Second Amended Complaint adds claims for violations of minimum wage laws for the aforementioned states. Finally, the Second Amended Complaint clarifies Plaintiffs' claims under theories of breach of express or implied contracts for unpaid non-overtime wages; and under equitable theory of unjust enrichment for non-overtime wages under the laws of the aforementioned states.<sup>3</sup>

For the reasons set forth herein, Plaintiffs pray the Court grant them leave to file their Second Amended Complaint, attached hereto as Exhibit A.

### III. LEGAL ARGUMENT

#### A. **Plaintiffs' Motion for Leave to File Second Amended Complaint Should Be Granted**

Under rule 15(a) of the Federal Rules of Civil Procedure, leave to amend pleadings "shall be freely given when justice so requires." *Fed. R. Civ. P. 15(a)*. Rule 15(a) further states that "[a] party may amend his pleading *once* as a matter of course at any time before a responsive pleading is served...[o]therwise, a party may amend his pleading only by leave of court or by written consent of the adverse party." *Id.* (Emphasis added). "The liberal granting of motions for leave to amend reflects the basic policy that pleadings should enable a claim to be heard on its merits." *Calderon v. Kansas Dep't of Social & Rehab. Servs.*, 181 F.3d 1180, 1886 (10<sup>th</sup> Cir. 1999) (attached as Exhibit 3); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (attached as Exhibit 4). Additionally, the Tenth Circuit notes that "[t]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome

---

<sup>3</sup> Plaintiffs respectfully reserve their right to add additional parties as Named Party Plaintiffs and additional claims under the State laws of Georgia, Idaho, Missouri, New Mexico, and Pennsylvania as discovery in this action starts and progresses.

and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” *Triplett v. Leflore County*, 712 F.2d 444, 446 (10<sup>th</sup> Cir. 1983) (attached as Exhibit 5).

Rule 15(d) of the Federal Rules of Civil Procedure also allows plaintiffs to supplement their pleadings to set forth post-complaint transactions or occurrences or events. *Gillihan v. Shillinger*, 872 F.2d 935, 941 (10<sup>th</sup> Cir. 1989) (attached as Exhibit 6). Leave to supplement, like leave to amend, should be freely given when justice so requires. *Mathews v. Diaz*, 426 U.S. 67, 75, 75 n.9 (1976) (attached as Exhibit 7); *See also Walker v. United Parcel Service, Inc.*, 240 F.3d 1268, 1278 (10<sup>th</sup> Cir. 2001) (Such leave "should be liberally granted unless good reason exists for denying leave, such as prejudice to the defendants.") (attached as Exhibit 8).

Generally, the Court will refuse leave to amend only on “a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiency by amendments previously allowed, or futility of amendment.” *Maxwell v. Barney*, 2007 U.S. Dist. LEXIS 49181 at \*2 (D. Utah 2007) (attached as Exhibit 9).

Here, Plaintiffs’ motion should be freely granted because: (i) amendment would not be futile. (a) Plaintiffs' claims for unpaid non-overtime wages under the “wage payment” and minimum wage laws of the states of Florida, Illinois, Indiana, Ohio, South Carolina, Texas and Utah provide for recovery of such unpaid wages; and (b) breach of express or implied contracts and equitable theory of unjust enrichment provide for alternative grounds for recovery under the laws of these states; (ii) Defendants will not be unduly prejudiced; and (iii) Plaintiffs have not unduly delayed or acted in bad faith in moving for leave to amend.

**1. The Amended Claims Are Not Frivolous, Have Merit, and Are Legally Sufficient**

It is well-settled that, “the court may deny a motion to amend when the desired change clearly is frivolous or advances a claim that is legally insufficient on its face, but if a proposed amendment is not clearly futile, then denial of leave to amend is improper.” *Adam v. Kansas Wesleyan Univ.*, 1996 U.S. Dist. LEXIS 4192 at \*3 (D. KS 1996) (citing *6 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d*, § 1487 at 637 (2<sup>nd</sup> Ed. 1990) (internal quotation marks omitted) (attached as Exhibit 10). “Otherwise, the substantive merits of a claim or defense should not be considered on a motion to amend.” *Id.* (internal quotation marks omitted).

Here, Plaintiffs' Proposed Amended Complaint plainly states causes of action under the laws of the states of Florida, Illinois, Indiana, Ohio, South Carolina, Texas and Utah; and alternative causes of action for breach of express or implied contract, and unjust enrichment.

**2. Defendants Will Not Be Unduly Prejudiced**

Another factor is whether the amendment would prejudice the nonmoving party. “Courts typically find prejudice *only* when the amendment unfairly affects the defendants ‘in terms of preparing their defense to the amendment’... “Most often, this occurs when the amended claims arise out of a subject matter different from what was set forth in the complaint and raise significant new factual issues.” *Edizone, L.C. v. Cloud Nine*, 2008 U.S. Dist. LEXIS 33970 at \*12 (D. Utah April 24, 2008) (attached as Exhibit 11), citing *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 (10<sup>th</sup> Cir. 2006).

Defendants will not be prejudiced by the addition of opt-in plaintiffs as Named Party Plaintiffs; and the addition of claims for unpaid wages under state laws, breach of contract, and unjust enrichment. Plaintiffs' motion for leave to amend merely seeks to clarify its earlier complaint and provides alternative grounds for recovery based on facts already alleged, requiring no additional facts or discovery. First, Plaintiffs' claims to recover unpaid non-overtime wages under state wage payment and minimum wage laws, breach of contract, and unjust enrichment are based upon the same set of operative facts as alleged in their initial Complaint and will not require any additional discovery. Finally, the Defendants are already equipped with all discoveries that are pertinent to Plaintiffs' claims.

**3. *Plaintiffs Have Not Unduly Delayed or Acted in Bad Faith***

Plaintiffs have filed their motion for leave to amend in response to Defendants' Motion for More Definite Statement and before the expiration of the time granted to it by the Court (pursuant to the stipulation for grant of extension of time by Defendants). Here, Defendants have not yet filed a responsive pleading, and the discovery has not begun in this case. Plaintiffs file this motion in good faith and have not acted in bad faith. The grant of Plaintiffs' motion to amend would not cause any undue delay in the progress of litigation to trial.

**4. *No Reason Exists to Deny Plaintiffs' Motion for Leave to File Second Amended Complaint***

The leave to amend or supplement a complaint "shall be freely given when justice so requires," FRCP 15(a); *see Forman v. Davis*, 371 U.S. 178, 230 (1962) (attached as Exhibit 4). The Supreme Court has stated that a trial court should not deny a motion for leave to amend without an "apparent or declared reason." *Id.* at 182 (U.S. 1962). The *Forman* Court enumerated

reasons why a motion to amend could properly be denied: “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party... [and] futility of amendment.” *Id.* If none of these reasons is present, then “the leave sought should, as the rules require, be freely given.” *Id.*

Plaintiffs argue that none of the reasons enumerated by the Supreme Court is present in the instant case before this Court. First, there is no indication, and it is not the case, that leave to amend is requested in bad faith or as a dilatory tactic. Second, the party seeking leave to amend has not asked the court repeatedly for leave to amend; indeed, this is the first such request. Third, there is no prejudice to Defendants as Defendants are well aware of the facts as they were alleged in the Plaintiffs’ initial Complaint. Defendants have been on notice since the filing of the initial Complaint regarding the continued violations of the FLSA (for unpaid overtime wages) and State laws (for unpaid non-overtime wages). Finally, the addition of the new claims is not futile or of the type subject to dismissal under Fed. R. Civ. P. 12(b)(6).

None of the reasons suggested by the Court for denial of a motion to amend exist here. Consequently, Plaintiffs respectfully request that this Court grant the leave to amend.

**B. Defendants’ Motion for More Definite Statement Should Be Denied**

The Court should deny Defendants’ Motion for More Definite Statement (hereinafter “Motion”), filed pursuant to Fed. R. Civ. P. 12(e), as moot because in response to the Motion, Plaintiffs have attached the proposed Second Amended Complaint which satisfies the Rules, federal form, and the case law. The Defendants must therefore be required to file a responsive pleading. Plaintiffs’ Second Amended Complaint is detailed as to the nature of Plaintiffs’ claims against Defendants and the basis thereof, and clearly apprises Defendants of both the facts

serving as the basis for Plaintiffs' claims and the legal theories upon which those claims are based. The Complaint is sufficient under all traditional rules of notice pleading, as interpreted by the Tenth Circuit and the U.S. Supreme Court. Moreover, applicable law distinctly disfavors the Motion brought by Defendants, particularly when, as here, the facts sought are the proper subjects of discovery.

A party may move for a more definite statement of any pleading that is "so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading." Fed. R. Civ. P. 12(e). The Federal Rules of Civil Procedure require "a short and plain statement of the claim" that will give defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957) (quoting Fed.R.Civ.P. 8(a)(2)) (attached as Exhibit 12).

If a complaint satisfies the requirements of Fed. R. Civ. P. 8(a) and fairly notifies the opposing party of the nature of the claim, the motion should be denied. *Home Design Services, Inc. v. B&B Custom Homes, LLC*, 2006 U.S. Dist. LEXIS 83270, \*16 (D.Colo. 2006) (attached as Exhibit 13). Here the Second Amended Complaint provides ample and fair notice to Defendants of the nature of claims against them.

Rule 12(e) motions for a more definite statement "are looked upon with disfavor and are consistently denied 'where the information sought by the motion could easily be obtained by discovery.'" *CFMT, Inc. v. Yieldup Int. Corp.*, No. Civ. A. 95-549-LON, 1996 WL 33140642, \*1, 1996 U.S. Dist. LEXIS 22795, \* (D.Del. Apr. 5, 1996) (attached as Exhibit 14); see also *United States v. Gustin-Bacon Division*, 426 F.2d 539, 543 (10<sup>th</sup> Cir. 1970) (attached as Exhibit 15); *Advantage Homebuilding, LLC v. Assurance Co. of Am.*, 2004 WL 433914, at \*1, 2004 U.S.

Dist. LEXIS 3595, \* (D.Kan. Mar. 5, 2004) (citing *Resolution Trust Corp. v. Thomas*, 837 F.Supp. 254, 355 (D.Kan.1993)) (attached as Exhibit 16); *Gibson v. Deep Delta Contractors, Inc.*, No. 97-3791, 2000 WL 28174, at \*6, 2000 U.S. Dist. LEXIS 10876, \* (E.D.La. Jan. 14, 2000) (a “motion for a more definite statement will not be granted where the moving party can reasonably respond to the non-movant's pleading, but wants the non-movant to plead additional information that could otherwise be later gained through discovery.”) (citations omitted) (attached as Exhibit 17); *Federal Deposit Ins. Corp. v. Fidelity and Deposit Co. of Maryland*, 118 F.R.D. 435, 437 (M.D.La. 1988) (“If additional information is needed by the defendant, the defendant may utilize the liberal discovery procedures set forth in the Federal Rules of Civil Procedure.”) (citing *Merchants & Farmers State Bank v. Fidelity & Casualty Company of New York*, 791 F.2d 1141, 1145 (5<sup>th</sup> Cir. 1981)) (attached as Exhibit 18); *See generally* 5A C. Wright and A. Miller, *Federal Practice and Procedure* § 1377(2<sup>nd</sup> ed. 1990) (noting that “the situations in which making a Rule 12(e) motion is appropriate have been limited drastically”).

***1. Plaintiffs’ Second Amended Complaint Complies With Rule 8(a) and Claims under States’ Wage Payment and Minimum Wage Statutes Provides Fair Notice to the Defendants***

When evaluating a motion for more definite statement under Rule 12(e), the Court must assess the complaint in light of the minimal pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Under Rule 8(a), as long as Defendants are able to respond to the Complaint, if only with simple denial, in good faith and without prejudice, the Complaint is sufficient. *See Advanced Communications Technologies, Inc. v. Li*, No. 05 Civ. 4628, 2005 WL 3215222, 2005 U.S. Dist. LEXIS 30135, \* (S.D.N.Y. Nov. 30, 2005) (attached as Exhibit 19).

In this case, Plaintiffs' Second Amended Complaint sets out the underlying facts for their claims. *See Second Amended Complaint*, Paragraphs 56-72 (Attached as Exhibit A). These are allegations based upon factual experiences of the Plaintiffs. They describe specific happenings, and not a mere generalized description of the off-the-clock work for which the Plaintiffs were not compensated. The factual allegations provided more detail than "a plain and simple statement" required by Rule 8. These factual allegations form the basis for their various causes of actions to recover unpaid overtime and non-overtime wages. The claims under state laws clearly state the statutory basis for recovery of unpaid non-overtime and minimum wages under the laws of the states of Florida, Illinois, Indiana, Ohio, South Carolina, Texas and Utah.

**2. *Plaintiffs' Second Amended Complaint Provides Fair Notice of Breach of Express or Implied Contract and Unjust Enrichment Claims***

Defendants in their Motion contend that the lack of detail in Plaintiffs' breach of contract claim is defective. *Defendants' Motion for More Definite Statement*, Page 5. Defendants contend that "Plaintiffs have not alleged...the basic elements of these alleged contracts, including whether they were express or implied, when they were entered into, facts reflecting an "agreement," and who the parties to the contracts were in each of the eleven states." *Id.* at Page 6. This contention is without merit. Rule 8(a) which requires only that plaintiff plead a short, plain statement of the ground upon which he is entitled to relief. As noted above, the Second Amended Complaint meets this standard.

A motion for more definite statement should not be granted merely because the pleading lacks detail; rather, the standard to be applied is whether the claims alleged are sufficiently specific to enable a responsive pleading in the form of a denial or admission. *Advantage*

*Homebuilding, LLC v. Assurance Co. of Am.*, No. 03-2426-KHV, 2004 WL 433914, at \*1, 2004 U.S. Dist. LEXIS 3595, \* (D.Kan. Mar. 5, 2004) (attached as Exhibit 16); *see also Shaffer v. Eden*, 209 F.R.D. 460, at 464 (D. Kan. 2002) (attached as Exhibit 20); *Cox v. Maine Maritime Academy*, 122 F.R.D. 115 (D.Me.1988) (attached as Exhibit 21); *School Dist. of Kansas City v. State of Missouri*, 460 F.Supp. 421 (W.D.Mo.1978) (attached as Exhibit 22). Here, Plaintiffs' Second Amended Complaint alleges claims for alternative relief under common-law theories of breach of express or implied contract and equitable theory of unjust enrichment in the states of Florida, Illinois, Indiana, Ohio, South Carolina, Texas and Utah.

a. Breach of Express or Implied Contract Claims

The essential elements of a contract include “offer and acceptance, competent parties, and consideration.” *Golden Key Realty, Inc. v. Mantas*, 699 P.2d 730, 732 (Utah 1985) (attached as Exhibit 23). Plaintiffs' Second Amended Complaint, in paragraphs 196 through 213, alleges that at the time of hiring Plaintiffs and other members of the proposed State Subclasses, Defendants made an expressly made an offer either in writing or orally to pay them a specific amount of non-overtime hourly wage for each hour of work performed. Plaintiffs and other hourly-paid employees accepted that offer and in consideration performed the work required by Defendants and provided their labor and services to Defendants. Therefore, the essential elements of contract formation were present here, and a valid express or implied-in-fact contract was formed between the Defendants and their hourly-paid employees.

Moreover, an employer-employee relationship is generally contractual. *See Rodriguez v Benson Properties Inc.*, 716 F. Supp. 275 (WD Tex 1989) (attached as Exhibit 24). This is true whatever its terms or form. *See Nilsson v Mapco*, 764 P. 2d 95 (Idaho App 1988) (employment

contract can be formed by either express or implied agreement) (attached as Exhibit 25). Thus, the fact that employment is at-will and may be terminated by either party at any time for any reason, or no reason, will not negate the contractual nature of the relationship. *See, e.g., Jordan v Duff & Phelps Inc.*, 815 F. 2d 429 (7<sup>th</sup> Cir Ill 1987) cert dismiss 485 US 901 (1988) (employment at-will is contractual relationship) (attached as Exhibit 26); *Nilsson v Mapco*, 764 P. 2d 95 (at-will employment doctrine does not negate existence of employment contract). *See also Thompson v St Regis Paper Co.*, 685 P. 2d 1081 at 1087 (1984) (parties to employment relationship not evidenced by written contract and indefinite in duration have contract obligating employer to pay employee for work performed) (attached as Exhibit 27). Thus the very nature of employer-employee relationship between the Defendants and Plaintiffs (employees) is contractual.

“The elements of a prima facie case for breach of contract claim are: (1) a contract, (2) performance by the party seeking recovery, (3) breach of the contract by the other party, and (4) damages.” *Customs & Classics v. Bonneville St. Rods, LLC*, 2007 U.S. Dist. LEXIS 40818 at \*8, Slip Copy, 2007 WL 1601483 (D. Utah 2007) citing *Bair v. Axiom Design, L.L.C.*, 2001 UT 20, 20 P.3d 388, 392 (Utah 2001) (attached as Exhibit 28). In this case, Plaintiffs and other members of the proposed State Subclasses performed work and provided their labor and services to Defendants pursuant to an express or implied contract with the Defendants. Defendants breached the contract by failing to pay wages to Plaintiffs for all non-overtime hours worked, and as a consequence of the breach of contract, Plaintiffs suffered damages in the form of lost wages and interest.

Other courts have examined motions for a more definite statement within the context of contract claims and have found that “as long as defendant has reasonable notice of plaintiff’s contract-based claim, the motion for a more definite statement will be denied.” 5C *Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure* § 1377 (3d ed. 2004) (gathering cases). That is, under lenient federal pleading rules, breach of contract claim need only plead facts sufficient to notify the defendant that an agreement has been violated. See *Murphy v. White Hen Pantry*, 691 F.2d 350, 352 (7<sup>th</sup> Cir. 1982) (attached as Exhibit 29). In *MacDonald v. Astor*, 21 F.R.D. 159 (S.D.N.Y. 1957) where in an action attorneys seeking recovery for professional services rendered (similar to the instant case for unpaid wages for work performed), defendant’s request for a more definite statement of the plaintiffs’ theory (quantum meruit or contract), the date and place of the promise to pay, whether the contract was oral or written, and for a more definite statement of the nature of the plaintiffs’ services was denied. *MacDonald v. Astor*, 21 F.R.D. 159 (S.D.N.Y. 1957) attached as Exhibit 30).

Defendants in their Motion cite *MasTec North America v. Allegiance Communications, LLC*, No. 2:06CY02296 (D.Kan. 2006) (Attached as Ex. C to Defendants’ Memorandum in Support of their Motion for More Definite Statement) as an example where a court required a more definite statement. 2006 U.S. Dist. LEXIS 84073, \* (D.Kan. 2006). However in *MasTec*, plaintiff’s complaint alleged that “Defendants agreed to make payments to MasTec for services provided to the Defendants for the construction of the entire Allegiance cable plant within the entire town limits of Herighton, Kansas.” *Id.* at \*3. Thus, the complaint in *MasTec* was much more generalized statement about services provided in construction on an entire plant, as compared to the instant case, where the Plaintiffs’ Second Amended Complaint alleges breach of

contract for unpaid non-overtime wages for specific work (described in the Second Amended Complaint in Paragraphs 56 through 71). And even faced with a much more general statement in the complaint, the Mastec court stated that “[i]n light of the restrictive attitude toward granting Rule 12(e) motions, the court finds that these statements appear to set forth the general contents of the agreement and pertinent parties, and therefore may be sufficient to survive defendants’ Rule 12(e) motion.” *Id.* at \*3. However, the court reluctantly granted defendant’s motion stating that “[b]ecause the court has already determined MasTec must amend its complaint...it sees no harm in requiring MasTech to provide more information with respect to its breach of contract claim as well.” *Id.* at \*3. Here the Second Amended Complaint provides sufficient details, and thus gives Defendants ample notice that Plaintiffs’ contract claims are based on express or implied contracts to be paid regular non-overtime wages for all hours worked.

*b. Unjust Enrichment Claims*

To prevail, on the claim for unjust enrichment, Plaintiffs must establish that: “(1) the defendant received a benefit; (2) an appreciation or knowledge by the defendant of the benefit; (3) under circumstances that would make it unjust for the defendant to retain the benefit without paying for it.” *Davies v. Olson*, 746 P.2d 264, 268-269 (Utah App. 1987) attached as Exhibit 31). In the instant case, in their proposed First Amended Complaint, the Plaintiffs have alleged a claim for unjust enrichment as an alternative to the claim for breach of contract. Plaintiffs provided their services to the Defendants by working additional off-the-clock hours. Defendants benefitted from this service and the hours of work that the Plaintiffs performed. Defendants, not only knew of this benefit, but required that the Plaintiffs provide this benefit of additional work to the Defendant. Under the circumstances of the case, it would be highly unjust for the

Defendants to retain this benefit of Plaintiffs' labor and services without paying for it. The allegations contained in the proposed Second Amended Complaint therefore provide a foundation for Plaintiffs' unjust enrichment claim, and sufficient notice to the Defendants of the basis for this claim.

In summary, Plaintiffs maintain that the Second Amended Complaint satisfies the notice pleading obligations of the Federal Rules and is, therefore, sufficiently definite to enable Defendants to file response. Complaint certainly gives Defendants adequate notice of the claims, which is all that is required by Rule 8. If Defendants genuinely believes that they do not understand an allegation of the Complaint, they should state that they lacks sufficient information to respond, and deny that allegation. Any additional information the Defendants need to defend against the Plaintiff's claims may be obtained in the discovery process and, therefore, Defendants' Motion should be denied.

#### IV. CONCLUSION

Based on the forgoing reasons Plaintiffs request that Defendants' motion for a more definite statement be denied and Plaintiffs be granted leave of this Court to file the attached Second Amended Complaint pursuant to Fed. R. Civ. P. 15. The Second Amended Complaint is attached as Exhibit A.

Respectfully submitted, this 28<sup>th</sup> day of August, 2008.

/s/Sharon Preston  
Jesse S. Brar  
Sharon L. Preston  
*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that on August 28, 2008, I electronically filed the foregoing Motion for Extension of Time with the Court using the CM/ECF system which sent notification of such filing to the following:

Gerry B. Holman  
Leslie L. Abbott  
Hannah J. Cole  
Mary C. Dollarhide

/s/Sharon Preston  
Sharon Preston  
*Attorney for the Plaintiffs*