

**COMMONWEALTH OF KENTUCKY
52ND JUDICIAL CIRCUIT
GRAVES CIRCUIT COURT
CIVIL BRANCH
CIVIL ACTION NO. _____**

ELIJAH JOHNSON, INDIVIDUALLY and
on BEHALF of OTHERS SIMILARLY SITUATED,
303 Windhaven Street, Apartment 5
Mayfield, Kentucky 42066

PLAINTIFFS

vs.

MAYFIELD CONSUMER PRODUCTS, LLC,
112 Industrial Drive
Mayfield, Kentucky 42066

DEFENDANT

**SERVE REGISTERED AGENT:
CHARLES S. FOSTER,
205 NORTH 6th STREET
MAYFIELD, Kentucky 42066**

**CLASS ACTION CIVIL COMPLAINT

PRELIMINARY STATEMENTS

1. This is a civil action by the Plaintiffs Elijah Johnson (hereinafter Plaintiff Johnson), 303 Windhaven Street, Apartment 5, Mayfield, Kentucky 42066, individually and on behalf of Others Similarly Situated, hereinafter referred to as Plaintiffs), against Mayfield Consumer Products, LLC, (hereinafter Defendant), for its violation of KRS Chapter 338. This civil action is authorized under Kentucky CR 23 and statutory law per KRS 446.070. Hickey v. General Electric Company also authorize this civil action, 539 S.W.3d 19 (Ky. 2018); *Saint Joseph Healthcare, Inc. v. Thomas*, 487 S.W.3d 864 (Ky. 2016); and KRS 411.184(2).

2. CR 23.01 provides that: “Subject to the provisions of [CR] 23.02, one or more members of a class may sue or be sued as representative parties on behalf of all only if (a) the class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to the class, (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (d) the representative parties will fairly and adequately protect the interests of the class.” *United Propane Gas, Inc. v. Purcell*, 533 S.W.3d 199 (Ky. App. 2017).

PARTIES

3. Elijah Johnson, (hereinafter Plaintiff Johnson), is the Plaintiff and is a natural person over the age of 18 years. He is also a citizen of the Commonwealth of Kentucky 303 Windhaven Street, Apartment 5, Mayfield, Kentucky 42066, and was working the night shift for the Defendant on December 10, 2021, at 112 Industrial Drive, Mayfield, Kentucky 42066, when the tornado hit and destroyed the Defendant’s place of business when he suffered injuries.

4. The Other Person Similarly Situated are Plaintiffs that are natural persons over the age of 18 years and were working the night shift for the Defendant on December 10, 2021, at 112 Industrial Drive, Mayfield, Kentucky 42066, when the tornado hit and destroyed the Defendant’s place of business and caused their injuries. Moreover, in the case sub judice, (a) this class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to this class, (c) the claims of Plaintiff’s Johnson, the representative party, are typical of the claims of the class, (d) Plaintiff Johnson, the representative party, will fairly and adequately protect the interests of this class, (e) the prosecution of separate actions by individual members of the class would create a risk of

inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; (f) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy, (g) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests. *United Propane Gas, Inc. v. Purcell*, 533 S.W.3d 199 (Ky. App. 2017).

5. Mayfield Consumer Products, LLC, 112 Industrial Drive, Mayfield, Kentucky 42066, is the Defendant and is a for profit corporation incorporated in the State of Kentucky. The Defendant list its Registered Agent name and address as: **CHARLES S. FOSTER, 205 NORTH 6TH STREET, MAYFIELD, KENTUCKY 42066.**

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties and over the subject matter by virtue of KRS Chapter 338; KRS 446.070; KRS 411.184(2); and because the amount in dispute exceeds the minimum dollar amount needed to establish jurisdiction in this Court.

7. This Court is the proper place of venue pursuant to KRS Chapter 338; KRS 446.070; KRS 411.184(2); and because all the unlawful acts and/or unlawful omissions complained herein all occurred at Mayfield Consumer Products, LLC, 112 Industrial Drive, Mayfield, Kentucky 42066.

STATUTE OF LIMITATIONS

8. The statute of limitations applicable to Plaintiff Johnson and the other similarly situated Plaintiffs' claims under KRS Chapter 338; KRS 446.070; and KRS 411.184(2) have not expired and do not bar their said claims in the case sub judice.

9. There are currently no pending administrative charges with any state or federal agencies under KRS Chapter 338; and KRS 446.070.

COUNT

10. Since 1972, the mission of the Kentucky OSH Program has been to prevent any detriment to the safety and health of all public and private sector employees arising out of exposure to harmful conditions or practices at places of work.

11. Kentucky employers shall furnish employment and places of employment which are free from recognized hazards that are causing, or are likely to cause, death or serious physical harm to employees; and comply with the occupational safety and health regulations, standards, and rules issued pursuant to KRS Chapter 338.

12. KRS 338.031 states in relevant parts: "(1) Each employer: (a) Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; (b) Shall comply with occupational safety and health standards promulgated under this chapter." Thus, the Kentucky OSH law required the Defendant to **provide a workplace free from serious recognized hazards** including tornados and comply with standards, rules, and regulations issued under KRS Chapter 338.

13. On Friday, December 10, 2021, the Defendant required Plaintiff Johnson and 109 others similarly situated employees to continue to work at its place of business even though

the Defendant knew or should have known about the expected tornado and the danger of serious bodily injuries and death to its employees if its employees were required to remain at its place of business during the pendency of the expected tornado. Defendant had up to three and half hours before the tornado hit its place of business to allow its employees to leave its worksite as safety precautions. Thus, Defendant showed flagrant indifference to the rights of Plaintiff Johnson and to the other similarly situated Plaintiffs with a subjective awareness that such conduct will result in human death and/or bodily injuries.

14. The Defendant refused to allow Plaintiff Johnson and 109 others similarly situated employees to leave work before the tornado actually hit its place of business even though the Defendant had at least 3 hours' notice of the danger this tornado posed to its place of business and to its aforementioned employees. Thus, Defendant showed flagrant indifference to the rights of Plaintiff Johnson and to the other similarly situated Plaintiffs with a subjective awareness that such conduct will result in human death and/or bodily injuries.

15. The Defendant even threaten to terminate any employee that left because of the expected tornado in the hours before the tornado actually hit its place of business. Defendant showed flagrant indifference to the rights of Plaintiff Johnson and to the other similarly situated Plaintiffs with a subjective awareness that such conduct will result in human death and/or bodily injuries.

16. One published news report by Bruce Schreiner, Published: December 15, 2021, at 6:37

AM ES states the following:

MAYFIELD, Ky. (AP) — An employee of the Kentucky candle factory where eight workers were killed by a tornado said Tuesday that a supervisor threatened her with written disciplinary action if she went home early because storms were approaching.

Haley Conder, who worked at the Mayfield Consumer Products factory on and off for 10 years, also questioned why the company did not encourage workers to go home — or at least give them a better understanding of the danger — between a first tornado siren around 6 p.m. Friday and another one around 9 p.m., shortly before the tornado hit.

“They (the company) had from 6 o’clock to 9 o’clock to allow us to go home, to tell us really what was going on and that we needed to prepare ourselves for the worst,” Conder told The Associated Press in a phone interview. “It was nothing like that. Not one supervisor told us what was really going on.”

... More than 100 people were working on holiday candle orders when the twister leveled the facility. The scale of the damage initially stoked fears that scores of workers could be found dead in the rubble.

17. Another published news report by Eileen Street, Kentucky Published 3:43 PM ET December 14, 2021, states the following:

LOUISVILLE, Ky. — Last Friday, Dec. 10, 110 employees were working at Mayfield Consumer Products, the candle factory in Mayfield destroyed by a tornado. A volunteer spokesperson for Mayfield consumer products told Spectrum News 1 on Tuesday that out of the 110 people at the factory Friday night, eight are confirmed dead and the rest have been accounted for.... Jamie Brien also worked that night. The floor supervisor at Mayfield Consumer Products told Spectrum News 1 he called the production manager Thursday night.

“And asked him you, you know, ‘How was we going to deal with the storm?’ That it was supposed to be pretty bad, you know, the following night,” Brien said. “And he just said, ‘We would deal with it as it unfolded,’ and that’s what we did.” ... “When the alarm went off the second time, yes, that’s when I thought, ‘Man, we should’ve probably sent everybody home,’” Brien said. “You know, ‘Here we go again,’ and the storm is intensified from, you know, 5:30 [p.m. CST] when the other alarm had went off.... Parsons-Perez didn’t think twice about going to work Friday. The Chicago native said she is used to severe weather.

Reflecting back on Friday, Parsons-Perez said she believed that her immediate supervisor did everything he should have to protect her and her co-workers. However, she wasn’t sure about the decisions made by those above her supervisor.

“Whoever his boss is probably should have said, ‘We probably don’t need to make those candles today. Maybe we should wait.’ But they didn’t,” Parsons-Perez said.

18. Another published news report by Deon J. Hampton Dec 13, 2021, 3:57 PM EST

Updated December 14, 2021, 7:49 AM EST, states the following:

MAYFIELD, Ky. — As a catastrophic tornado approached this city Friday, employees of a candle factory — which would later be destroyed — heard the warning sirens and wanted to leave the building. But at least five workers said supervisors warned employees that they would be fired if they left their shifts early.

For hours, as word of the coming storm spread, as many as 15 workers beseeched managers to let them take shelter at their own homes, only to have their requests rebuffed, the workers said."

"Supervisors and team leaders told employees that leaving would probably jeopardize their jobs, the employees said."

"If you leave, you’re more than likely to be fired,” Emery said she overheard managers tell four workers standing near her who wanted to leave. “I heard that with my own ears.”

... About 15 people asked to go home during the night shift shortly after the first emergency alarm sounded outside the facility, said another employee, Haley Conder. There was a three- to four-hour window between the first and second emergency alarms when workers should have been allowed to go home, she said.

...Elijah Johnson, 20, was working in the back of the building when several employees wanting to head home walked in to speak with supervisors. He joined in on the request.

“I asked to leave and they told me I’d be fired,” Johnson said. “Even with the weather like this, you’re still going to fire me?” he asked.

“Yes,” a manager responded, Johnson told NBC News.

Johnson said managers went so far as to take a roll call in hopes of finding out who had left work.

DAMAGES

19. Based on the foregoing, the Defendant violated KRS Chapter 338 thereby causing Plaintiff Johnson and 109 others similarly situated employees to suffer bodily injuries as a direct or substantial or proximate cause of Defendant's actions and/or omission on December 10, 2021, at its place of business by refusing to allow its employees to leave and/or by threatening disciplinary actions against them even though Defendant knew or should have known that it was dangerously unsafe for its employees to remain working at its place of business during the approaching tornado. Therefore, Defendant showed flagrant indifference to the rights of Plaintiff Johnson and to the other similarly situated Plaintiffs with a subjective awareness that such conduct will result in human death and/or bodily injuries.

20. Defendant specifically intended to cause tangible or intangible injury to the Plaintiff Johnson and to the other similarly situated Plaintiffs.

21. Defendant conducted its above-mentioned actions and/or the omissions by the Defendant both were with a flagrant indifference to the rights of Plaintiff Johnson and to the rights of the other similarly situated Plaintiffs with a subjective awareness that such conduct will result in human death and/or bodily injuries.

22. As a direct and/or substantial result of the above-described actions of Defendant, Plaintiff Johnson and the other similarly situated Plaintiffs are entitled to recover from Defendant a total monetary damage amount in the case sub judice in excess of the minimum dollar amount needed to establish jurisdiction in this Court including, but not limited to the following:

(a) compensatory; (b) punitive damages; (c) prejudgment interest at the legal rate; (d) post judgment interest at the legal rate; (e) litigation expenses/court costs; and (f) attorney's fees for Defendant's violation of KRS Chapter 338 pursuant KRS 446.070; KRS 411.184(2); and *Saint Joseph Healthcare, Inc. v. Thomas*, 487 S.W.3d 864 (Ky. 2016).

23. Based on the foregoing, in the case sub judice, (a) this class is so numerous that joinder of all members is impracticable, (b) there are questions of law or fact common to this class, (c) the claims of Plaintiff Johnson, the representative party, are typical of the claims of the class, (d) Plaintiff Johnson, the representative party, will fairly and adequately protect the interests of this class, (e) the prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; (f) the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy, (g) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

24. Plaintiff Johnson and the other similarly situated Plaintiffs are entitled to have this court certify this class as a matter of law. *United Propane Gas, Inc. v. Purcell*, 533 S.W.3d 199 (Ky. App. 2017).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Johnson and the other situated Plaintiffs respectfully request the following:

1. Enter an order certifying this class per CR 23;
2. Enter a judgment in Plaintiff Johnson's favor and in the other situated Plaintiffs' favor against Defendant for the following: (a) compensatory damages; (b) punitive damages in total monetary damage amount in excess of the minimum dollar amount needed to establish jurisdiction in this Court for Defendant's violation of KRS Chapter 338 pursuant to KRS 446.070; KRS 411.184(2); *Saint Joseph Healthcare, Inc. v. Thomas*, 487 S.W.3d 864 (Ky. 2016), in the case sub judice.
3. Award attorney's fees and litigation expenses/costs to Plaintiff Johnson and the other situated Plaintiffs in total monetary damage amount in excess of the minimum dollar amount needed to establish jurisdiction in this Court.
5. Award Plaintiff Johnson and the other situated Plaintiffs prejudgment interest at the prevailing legal rate and/or post judgment interest at the prevailing legal rate.
6. Allow a trial by jury on all issues so triable.
7. Award Plaintiff Johnson and the other situated Plaintiffs any and all other relief which the law demands of Defendant in accordance with all applicable Kentucky law.

Respectfully submitted,

WILLIAM L. DAVIS
108 PASADENA DRIVE
SUITE 200
LEXINGTON, KY 40503
(859) 260-1997 (OFFICE)
(859) 260-1310 (FAX)
WMLDAVIS@HOTMAIL.COM