

FILED
U. S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JAN 03 2019

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

JAMES W. McCORMACK, CLERK
By: [Signature] DEF. CLERK

**JENNIFER BERRY, Individually and on
Behalf of All Others Similarly Situated**

PLAINTIFF

vs.

No. 4:19-cv-006-JM

RAZORS EDGE PIZZA, INC.

DEFENDANT

ORIGINAL COMPLAINT – COLLECTIVE ACTION

COMES NOW Plaintiff Jennifer Berry (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys Chris Burks and Josh Sanford of the Sanford Law Firm, PLLC, and for her Original Complaint – Collective Action against Defendant Razors Edge Pizza, Inc. (“Defendant”), does hereby state and allege as follows:

~~This case assigned to District Judge~~ Moody
~~and to Magistrate Judge~~ Harris

I. PRELIMINARY STATEMENTS

1. This is a collective action brought by Plaintiff Jennifer Berry, individually and on behalf of all employees who performed work at varying rates of pay for Defendant at any time within a three-year period preceding the filing of this Complaint.

2. Plaintiff brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) and the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* (“AMWA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, and costs, including reasonable attorneys’ fees, as a result of Defendant’s failure to pay Plaintiff and all other hourly-paid employees lawful overtime compensation for hours worked in excess of forty (40) hours per week.

3. Upon information and belief, for at least three (3) years prior to the filing of this Complaint, Defendant has willfully and intentionally committed violations of the FLSA and the AMWA as described, *infra*.

II. JURISDICTION AND VENUE

4. The United States District Court for the Eastern District of Arkansas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

5. This complaint also alleges AMWA violations, which arise out of the same set of operative facts as the federal cause of action herein alleged; accordingly, this state cause of action would be expected to be tried with the federal claim in a single judicial proceeding. Therefore, this Court has supplemental jurisdiction over Plaintiff's AMWA claims pursuant to 28 U.S.C. § 1367(a).

6. Defendant conducts business in this District and a substantial part of the events alleged herein occurred in this District.

7. The witnesses to overtime wage violations alleged in this Complaint reside in this District.

8. The acts alleged in this Complaint had their principal effect within the Western Division of the Eastern District of Arkansas, and venue is proper in this Court pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

9. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

10. Plaintiff is a resident and citizen of Saline County.

11. Within the three (3) years preceding the filing of this Complaint, Plaintiff worked for Defendant in Little Rock.

12. Defendant Razors Edge Pizza, Inc., owns and operates several pizza delivery establishments in Little Rock under the name Domino's Pizza.

13. Plaintiff was employed by Defendant within the past three years as an hourly-paid employee.

14. At all times material herein, Plaintiff and those similarly situated to Plaintiff have been entitled to the rights, protections and benefits provided under the FLSA and the AMWA.

15. Defendant Razors Edge Pizza, Inc., is a domestic for-profit corporation registered and licensed to do business in the State of Arkansas.

16. Defendant is an "employer" within the meanings set forth in the FLSA and AMWA, and was, at all times relevant to the allegations in this Complaint, Plaintiff's employer, as well as the employer of the members of the class and collective.

17. During each of the three years preceding the filing of this Complaint, Defendant employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person, including goods or materials typically used in the fast food industry.

18. At all relevant times, Defendant continuously employed at least four (4) employees.

19. At all relevant times, Defendant's gross volume of sales made or business done has exceeded \$500,000.00 per year.

20. Defendant's registered agent for service of process is Lance L. Benner, 22 Summerland Court, Little Rock, Arkansas 72227.

IV. FACTUAL ALLEGATIONS

21. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as if fully set forth in this section.

22. During part of the three (3) years prior to the filing of this lawsuit, Plaintiff worked for Defendant as an hourly-paid employee at one of Defendant's restaurants in Little Rock.

23. Plaintiff and other employees were paid an hourly rate by Defendant.

24. The basic duties of Plaintiff and other hourly-paid employees included, but were not limited to, delivering food to Defendant's customers, preparing food and cleaning the store.

25. Defendant recorded the regular working time of Plaintiff and other hourly-paid employees via time clock.

26. Plaintiff and other hourly-paid employees worked more than forty (40) hours in most workweeks.

27. Defendant routinely scheduled Plaintiff and other hourly-paid employees to work more than forty (40) hours in a single workweek.

28. For hours worked up to forty (40) hours per workweek, Plaintiff's and other hourly-paid employees' rates of pays varied based on what work they were performing.

29. Defendant had a practice of paying Plaintiff and other hourly-paid employees one and one-half (1.5) times their lowest rate of pay for any hours worked in excess of forty (40) hours per workweek.

30. Defendant did not take all rates of pay into account when calculating Plaintiff's and other hourly-paid employees' rate of pay for hours worked in excess of forty (40) hours per workweek.

31. Plaintiff and other hourly-paid employees were paid a regular hourly rate of around \$5.50 for time they spent driving and delivering food to customers.

32. Defendant relied on tips paid to Plaintiff and other hourly-paid employees to raise their hourly rate to a lawful minimum wage for time Plaintiff and other hourly-paid employees spend driving and delivering food to customers.

33. Defendant had a practice of paying Plaintiff and other hourly-paid employees higher rates of pay for work they performed in the store.

34. Defendant had a practice of paying Plaintiff and other hourly-paid employees one and one-half times their lowest rate of pay for all hours over forty (40) per workweek, regardless of whether Plaintiff and other hourly-paid employees were performing tipped work.

35. Plaintiff and other hourly-paid employees worked up to five to ten hours of overtime in most workweeks for Defendant for which they were not lawfully compensated.

36. At all relevant times herein, Defendant has deprived Plaintiff and all others similarly situated of a proper overtime premium for all of the hours they worked in excess of forty (40) hours in a week.

37. Defendant knew, or showed reckless disregard for whether, the way it paid Plaintiff and all others similarly situated violated the FLSA and the AMWA.

V. REPRESENTATIVE ACTION ALLEGATIONS

38. Plaintiff repeats and re-alleges all the preceding paragraphs of this Complaint as if fully set forth in this section.

39. Plaintiff brings this claim for relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

40. Plaintiff brings her FLSA claim on behalf of herself and all other hourly-paid employees employed by Defendant at any time within the applicable statute of limitations period, who are entitled to payment of the following types of damages:

- A. Payment for all hours worked, including payment of a lawful overtime premium for all hours worked for Defendant in excess of forty (40) hours in a workweek;
- B. Liquidated damages; and
- C. Attorneys' fees and costs.

41. In conformity with the requirements of FLSA Section 16(b), Plaintiff has attached hereto as Exhibit "A" her written Consent to Join this lawsuit.

42. The relevant time period dates back three (3) years from the date on which Plaintiff's Original Complaint—Collective Action was filed and continues forward through the date of judgment pursuant to 29 U.S.C. § 255(a).

43. The members of the proposed FLSA Collective are similarly situated in that they share these traits:

- A. They were paid varying hourly rates;
- B. They recorded their time in the same manner; and

C. They were subject to Defendant's common practice of not paying a lawful overtime premium for all hours worked over forty (40) hours per work week.

44. Plaintiff is unable to state the exact number of the potential members of the FLSA Collective but believes that the group consists of approximately fifteen to twenty people.

45. Defendant can readily identify the members of the Section 16(b) Collective. The names, physical addresses, electronic mailing addresses and phone numbers of the FLSA collective action members are available from Defendant, and a Court-approved Notice should be provided to the FLSA collective action members via first class mail, email and text message to their last known physical and electronic mailing addresses and cell phone numbers as soon as possible, together with other documents and information descriptive of Plaintiff's FLSA claim.

VI. FIRST CLAIM FOR RELIEF (Individual Claim for Violation of the FLSA)

46. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as if fully set forth in this section.

47. Plaintiff asserts this claim for damages and declaratory relief pursuant to the FLSA.

48. At all relevant times, Defendant has been, and continues to be, an enterprise engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.

49. At all relevant times, Defendant was Plaintiff's "employer" within the meaning of the FLSA, 29. U.S.C. § 203.

50. 29 U.S.C. § 207 requires any enterprise engaged in commerce to pay all employees one and one-half (1.5) times their regular wage for all hours worked over

forty (40) hours in a week, unless an employee meets certain exemption requirements of 29 U.S.C. § 213 and all accompanying Department of Labor regulations.

51. Despite the entitlement of Plaintiff to lawful overtime payments under the FLSA, Defendant failed to pay Plaintiff an overtime rate of one and one-half (1.5) times her regular rate of pay for all hours worked over forty (40) in each one-week period.

52. Defendant's failure to pay Plaintiff overtime wages owed was willful.

53. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages, and costs, including reasonable attorneys' fees, for all violations that occurred within the three (3) years prior to the filing of this Complaint.

54. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

**VII. SECOND CLAIM FOR RELIEF
(Collective Action Claim for Violation of FLSA)**

55. Plaintiff repeats and re-alleges all the preceding paragraphs of this Original Complaint as if fully set forth in this section.

56. Plaintiff brings this collective action on behalf of herself and all other hourly-paid employees employed by Defendant to recover monetary damages owed by Defendant to Plaintiff and members of the putative collective for unpaid overtime compensation for all the hours she and they worked in excess of forty (40) each week.

57. Plaintiff brings this action on behalf of herself and all other hourly-paid employees, former and present, who were and/or are affected by Defendant's willful and intentional violation of the FLSA.

58. 29 U.S.C. § 207 requires employers to pay employees one and one-half (1.5) times the employee's regular rate for all hours that the employee works in excess of forty (40) per week.

59. Like Plaintiff, other hourly-paid employees regularly worked more than forty (40) hours in a week.

60. Defendant failed to pay these workers at the proper overtime rate for all hours worked in excess of forty (40) hours in a week, despite their entitlement thereto.

61. Because these employees are similarly situated to Plaintiff, and are owed overtime for the same reasons, the opt-in collective may be properly defined as:

All hourly-paid employees who received varying rates of pay for at least one week in which they worked more than forty (40) hours within the past three (3) years.

62. Defendant's conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

63. By reason of the unlawful acts alleged in this Complaint, Defendant is liable to Plaintiff and all those similarly situated for, and Plaintiff and all those similarly situated seek, unpaid overtime wages, liquidated damages, and costs, including reasonable attorney's fees as provided by the FLSA.

64. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff and all those similarly situated as provided by the FLSA, Plaintiff and all those similarly situated are entitled to an award of prejudgment interest at the applicable legal rate.

**VIII. THIRD CLAIM FOR RELIEF
(Individual Claim for Violation of the AMWA)**

65. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as if fully set forth in this section.

66. Plaintiff asserts this claim for damages and declaratory relief pursuant to the AMWA.

67. At all times relevant herein, Defendant was Plaintiff's "employer" within the meaning of the AMWA, Ark. Code Ann. § 11-4-203(4).

68. Arkansas Code Annotated § 11-4-211 requires employers to pay all employees one and one-half (1.5) times regular wages for all hours worked over forty (40) hours in a week, unless an employee meets the exemption requirements of 29 U.S.C. § 213 and accompanying Department of Labor regulations.

69. Defendant failed to pay Plaintiff a lawful overtime premium for all hours worked in excess of forty (40) hours in a week as required under the AMWA.

70. Despite the entitlement of Plaintiff to payment of lawful overtime payments under the AMWA, Defendant failed to pay Plaintiff a lawful overtime premium.

71. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

72. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for, and Plaintiff seeks, monetary damages, liquidated damages, prejudgment interest, civil penalties and costs, including reasonable attorney's fees as provided by the AMWA.

73. Alternatively, should the Court find the Defendant acted in good faith in failing to pay Plaintiff as provided by the AMWA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

IX. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Jennifer Berry, individually and on behalf of all others similarly situated, respectfully prays as follows:

- A. That Defendant be summoned to appear and answer this Complaint;
- B. That Defendant be required to account to Plaintiff, the collective action members and the Court for all of the hours worked by them and all monies paid to them;
- C. A declaratory judgment that Defendant's practices alleged herein violate the FLSA and attendant regulations at 29 C.F.R. §516 *et seq.*;
- D. A declaratory judgment that Defendant's practices alleged herein violate the AMWA and the related regulations;
- E. Certification of, and proper notice to, together with an opportunity to participate in the litigation, all qualifying current and former employees;
- F. Judgment for damages for all unpaid overtime compensation under the FLSA and attendant regulations at 29 C.F.R. §516 *et seq.*;
- G. Judgment for damages for all unpaid overtime compensation under the AMWA and the related regulations;
- H. Judgment for liquidated damages pursuant to the FLSA and attendant regulations at 29 C.F.R. §516 *et seq.*, in an amount equal to all unpaid overtime compensation;

- I. Judgment for liquidated damages pursuant to the AMWA and the related regulations;
- J. For a reasonable attorney's fee, costs and pre-judgment interest; and
- K. Such other and further relief as this Court may deem necessary, just and proper.

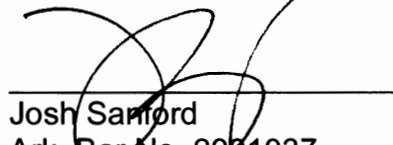
Respectfully submitted,

**JENNIFER BERRY, Individually
and on Behalf of All Others
Similarly Situated, PLAINTIFF**

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JENNIFER BERRY, Individually and on Behalf of all Others Similarly Situated

(b) County of Residence of First Listed Plaintiff Saline
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Josh Sanford, SANFORD LAW FIRM, PLLC, One Financial Center, 650 South Shackleford, Suite 411, Little Rock, Arkansas 72211; 501-221-0088; josh@sanfordlawfirm.com

DEFENDANTS

RAZORS EDGE PIZZA, INC.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 U.S.C. 201 et seq.

Brief description of cause:
Unpaid Wages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____

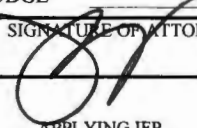
CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE 1/3/2019 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arkansas Domino's Pizza Franchisee Sued by Employee Over Allegedly Improper Overtime Pay](#)
