

**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT ARKANSAS

OCT 09 2018

JAMES W. MCGORMACK, CLERK  
By:  DEP CLERK

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

**BYRON BUTLER, Individually and on  
Behalf of All Others Similarly Situated**

**PLAINTIFF**

vs.

No. 4:18-cv- 746 - JM

**OZARK WAFFLES, L.L.C.; WH CAPITAL,  
L.L.C.; and WAFFLE HOUSE, INC., each  
d/b/a WAFFLE HOUSE**

This case assigned to District Judge Moody  
and to Magistrate Judge Volpe

**DEFENDANTS**

**ORIGINAL COMPLAINT—CLASS AND COLLECTIVE ACTION**

COMES NOW Plaintiff Byron Butler (“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 his Original Complaint—Class and Collective Action against Defendants Ozark Waffles, L.L.C., WH Capital, L.L.C., and Waffle House, Inc., each d/b/a Waffle House (collectively “Defendants”), he does hereby state and allege as follows:

**I.**  
**INTRODUCTION**

1. This is a class and collective action for unpaid minimum wages and unpaid overtime wages owed to Plaintiff and all other persons employed as servers. Defendants own and/or operate Waffle House in Faulkner County, located at 816 East Oak Street, Conway, Arkansas 72032.

2. Plaintiff and other servers spent more than twenty percent (20%)—and usually substantially more—of their time performing non-tipped duties for Defendants

such as rolling silverware, performing side work, cleaning the restaurant, cooking, dishwashing, and other non-tipped duties. Because Plaintiff and other servers spent more than 20% of their time performing non-tipped duties for Defendants, Defendants were not allowed to take advantage of the tip credit established by 29 U.S.C. § 203(m), Defendants were required to pay Plaintiff and other servers at a rate equal to at least the applicable minimum wage per hour for their non-tipped work.

3. Plaintiff, individually and on behalf of all other servers employed by Defendants, brings this action under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the “FLSA”), and the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201 *et seq.* (the “AMWA”), for declaratory judgment, monetary damages, liquidated damages, prejudgment interest, and costs, including a reasonable attorney’s fee, within the applicable statutory limitations period, as a result of Defendants’ failure to pay Plaintiff and all others similarly situated minimum wages and overtime wages as required by the FLSA and AMWA.

4. Defendants’ policies violate the FLSA because Plaintiff and others similarly situated are not compensated at a minimum of \$7.25 per hour.

5. Defendants’ policies violate the AMWA because Plaintiff and others similarly situated are not compensated at a minimum of \$8.50 per hour.

6. Defendants’ policies violate both the FLSA and the AMWA because Plaintiff and others similarly situated were not paid a lawful overtime rate of one and one-half (1.5) times minimum wage, reduced by the standard tip credit, for all hours worked in excess of forty (40) hours per week.

7. Upon information and belief, for at least three (3) years prior to the filing of

this Complaint, Defendants have willfully and intentionally committed violations of the FLSA and the AMWA as described, *infra*.

**II.**  
**JURISDICTION AND VENUE**

8. 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.

9. 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. This Court has supplemental jurisdiction over Plaintiff's AMWA claims pursuant to 28 U.S.C. § 1367(a).

10. The acts complained of herein were committed and had their principal effect against Plaintiff within the Western Division of the Eastern District of Arkansas. Therefore, venue is proper within this District pursuant to 28 U.S.C. § 1391.

**III.**  
**THE PARTIES**

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

12. Plaintiff is a citizen and resident of Faulkner County.

13. Plaintiff worked for Defendants during the three (3) years preceding the filing of this Complaint.

14. At all times material hereto, Plaintiff and all others similarly situated have been entitled to the rights, protection and benefits provided under the FLSA and AMWA.

15. Defendant Ozark Waffles, L.L.C., is a foreign limited liability company that owns and operates restaurants in the United States under the “Waffle House” trademarks.

16. Defendant Ozark Waffles, L.L.C.’s, registered agent for service of process in Arkansas is Corporation Service Company, and the agent’s address is 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

17. Defendant WH Capital, L.L.C., is a foreign limited liability company that owns and operates restaurants in the United States under the “Waffle House” trademarks.

18. Defendant WH Capital, L.L.C.’s, registered agent for service of process in Arkansas is Corporation Service Company, and the agent’s address is 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

19. Defendant WH Capital, L.L.C., is a foreign limited liability company that owns and operates restaurants in the United States under the “Waffle House” trademarks.

20. Defendant Waffle House, Inc., is a foreign for-profit corporation that owns and operates restaurants in the United States under the “Waffle House” trademark.

21. Defendant Waffle House, Inc.’s, registered agent for service of process is Corporation Service Company, and the agent’s address is 300 Spring Building, Suite 900, 300 South Spring Street, Little Rock, Arkansas 72201.

22. Defendant Waffle House, Inc., is the parent company of Defendants Ozark Waffles, L.L.C., and WH Capital, L.L.C.; together, Defendants jointly did business in Arkansas as Waffle House.

23. Defendants, together d/b/a Waffle House, acted jointly as the employer of Plaintiff and the proposed collective and class members and are and have been

engaged in interstate commerce as that term is defined under the FLSA and AMWA.

24. Defendants have unified operational control and management, as well as control over employees, including shared power to supervise, hire and fire, establish wages and wage policies, and set schedules for their employees through unified management.

25. As a result of this unified operation, control and management, through shared employees and ownership with the authority to establish wages and wage policy, Defendants operated as a single enterprise.

26. Defendants were at all times relevant to this lawsuit Plaintiff's employer within the meaning of the FLSA, 29 U.S.C. § 203(d), and the Arkansas Minimum Wage Act, A.C.A. § 11-4-203.

#### **IV. FACTUAL ALLEGATIONS**

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

28. Plaintiff was employed by Defendants as a server at Waffle House during the time period relevant to this lawsuit.

29. Defendants directly hired Plaintiff and other servers, controlled their work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding their employment.

30. Plaintiff and other servers work(ed) as hourly, non-exempt employees at Waffle House.

31. Plaintiff and other servers regularly work(ed) in excess of forty (40) hours each week.

32. It was Defendants' commonly applied policy to not pay Plaintiff and other servers a lawful overtime premium for all hours worked over forty (40) in a given week.

33. Defendants did not pay Plaintiff and other servers a lawful overtime premium of one and one half (1.5) times the applicable minimum wage, less the applicable tip credit, for all time worked in excess of forty (40) hours in one or more weeks during the period of time relevant to this lawsuit.

34. Plaintiff and other servers were and are entitled to lawful overtime compensation in the amount of one and one half (1.5) times the applicable minimum wage for all time worked in excess of forty (40) hours per week, as Defendants can not claim a tip credit due to Plaintiff and other servers spending more than twenty percent (20%) of their time performing non-tipped work.

35. Defendants paid, and continue to pay, their Plaintiff and other servers less than the federal minimum wage of \$7.25 per hour and the Arkansas minimum wage rates of \$7.50 per hour in 2015, \$8.00 per hour in 2016, and \$8.50 per hour in 2017 and 2018. Instead of paying the required minimum wage, Defendants purport to take advantage of the tip credit allowed by 29 U.S.C. § 203(m).

36. Defendants do not inform their employees of the provisions of 29 U.S.C. § 203(m).

37. Plaintiff and other servers performed both duties that generated tips, such as delivering food to customers ("tipped work"), and duties that did not generate tips, such as cleaning the restaurant, cooking and rolling silverware ("non-tipped work").

38. Plaintiff and other servers were required to work at \$2.63 per hour when they were doing kitchen and dishwashing work, when they were doing side work not in

the dining room, and also when they were doing cut work.

39. Upon reasonable information and belief, Defendants do not distinguish between time spent by servers on tipped work and time spent by servers on non-tipped work.

40. Non-tipped duties occupy more than twenty percent (20%) of Plaintiff's time and the time of other servers.

41. Defendants paid Plaintiff and other servers the same rate—below the applicable minimum wages—for both tipped work and non-tipped work.

42. As a result of the policies put in place by Defendants, Plaintiff and other tipped servers were often required to perform non-tipped work for less than minimum wage.

43. Plaintiff and other tipped servers are entitled to wages and compensation based on the standard minimum wage for all hours worked.

44. At all relevant times, Defendants knew or should have known that Plaintiff and other servers were working hours for which they were not receiving proper compensation and that Plaintiff and other servers were spending more than twenty percent (20%) of their working time performing non-tipped work.

45. At all relevant times, Defendants knew, or showed reckless disregard for whether, the way they paid Plaintiff and other tipped servers violated the FLSA and the AMWA.

## **V.**

### **REPRESENTATIVE ACTION ALLEGATIONS**

#### **A. FLSA § 216(b) Collective**

46. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as

though fully set forth herein.

47. Plaintiff brings his claims 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).

48. Plaintiff brings his FLSA claims on behalf of all tip-earning servers employed by Defendants at any time within the applicable statute of limitations period, who are entitled to payment of the following types of damages:

A. A lawful minimum wage for all hours worked;

B. A lawful overtime premium for all time worked for Defendants in excess of forty (40) hours in each workweek;

C. Liquidated damages; and,

D. Attorneys' fees and costs.

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

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

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

A. They were subject to Defendants' common policy of paying less than minimum wage;

B. They were subject to Defendants' common policy of not paying a lawful overtime rate for time worked in excess of forty (40) hours per week;

C. They spent more than 20% of their time performing non-tipped duties for



Defendants; and

D. They were paid hourly.

52. Plaintiff is unable to state the exact number of the potential members of the FLSA Collective but believes that the group exceeds fifty (50) persons.

53. In the modern era, most working-class Americans have become increasingly reliant on electronic means of communication, such as email and, most particularly, text messages, and generally use them more often in their daily lives than traditional U.S. Mail.

54. Defendants can readily identify the members of the Section 16(b) Collective. The names, email addresses, cell phone numbers, and physical and mailing addresses of the FLSA collective action plaintiffs are available from Defendants, and a Court-approved Notice should be provided to the FLSA collective action plaintiffs 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.

55. At all relevant times, Defendants directly hired members of the collective to work in restaurants, paid them wages, controlled their work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding their employment.

56. At all relevant times, each member of the collective regularly engaged in interstate commerce or handled, sold, or otherwise worked with goods or materials that had been moved in or produced for interstate commerce.

**B. AMWA Rule 23 Class**

57. Plaintiff, individually and on behalf of all other tip-earning servers employed by Defendants within the State of Arkansas, brings this claim for relief for violation of the AMWA as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

58. Plaintiff proposes to represent the class of tip-earning servers who are/were employed by Defendants within the relevant time period within the State of Arkansas.

59. The class is so numerous that joinder of all members is impractical. While the exact number and identities of class members are unknown at this time, and can only be ascertained through appropriate discovery, Plaintiff believes that over fifty (50) class members have worked for Defendants without appropriate pay, as described herein, throughout the applicable statutory period within the State of Arkansas.

60. This litigation is properly brought as a class action because of the existence of questions of fact and law common to the members of the proposed class which predominate over any questions affecting only individual members, including:

A. Whether Plaintiff and others similarly situated were required to perform non-tipped duties for more than 20% of their time while employed by Defendants;

B. Whether Defendants informed Plaintiff and others similarly situated about the requirements of 29 U.S.C. § 203(m);

C. Whether Defendants satisfied their obligation to pay Plaintiff and others similarly situated the minimum wage required by the FLSA and the AMWA;

D. Whether Defendants satisfied their obligation to pay Plaintiff and others similarly situated a proper and lawful overtime rate for all hours worked in excess of forty (40) in each workweek;

61. The class members have no interest in individually controlling the prosecution of separate actions because the policy of the AMWA provides a bright-line rule for protecting all non-exempt employees as a class. To wit: “It is declared to be the public policy of the State of Arkansas to establish minimum wages for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency, and well-being.” Ark. Code Ann. § 11-4-202.

62. This litigation is properly brought as a class action because Plaintiff’s claims are typical of the claims of the members of the proposed class, in that Plaintiff and others similarly situated were denied their wages as a result of Defendants’ uniform policy of requiring Plaintiff and those similarly situated to spend more than 20% of their time on non-tipped duties, failing to track tips earned by employees and increase hourly compensation where appropriate to ensure Plaintiff and others similarly situated earned at least minimum wage for each hour worked up to forty (40) per workweek, and for not paying a lawful overtime premium to Plaintiff and others similarly situated for all time worked in excess of forty (40) per workweek. These are the predominant issues that pertain to the claims of Plaintiff and of others similarly situated.

63. At the time of the filing of this Complaint, neither Plaintiff nor Plaintiff’s counsel knows of any litigation already begun by any members of the proposed class concerning the allegations in this Complaint.

64. Concentrating the litigation in this forum is highly desirable because Defendants operate a facility in or are based in the Western District of Arkansas and because Plaintiff and all proposed class members work or worked in Arkansas.

65. No difficulties are likely to be encountered in the management of this class action.

66. The claims of Plaintiff are typical of the claims of the proposed class in that Plaintiff worked as an hourly-paid employee for Defendants and experienced the same violations of the AMWA that all other class members suffered.

67. Plaintiff and his counsel will fairly and adequately protect the interests of the class.

68. Plaintiff's counsel is competent to litigate Rule 23 class actions and other complex litigation matters, including wage and hour cases like this one, and to the extent, if any, that they find that they are not, they are able and willing to associate additional counsel.

69. Prosecution of separate actions by individual members of the proposed class would create the risk of inconsistent or varying adjudications with respect to individual members of the proposed class that would establish incompatible standards of conduct for Defendants.

70. Plaintiff and the members of the putative class have suffered, and will continue to suffer, irreparable damage from Defendants' illegal policy, practice, and custom regarding pay for tipped servers.

**VI.**  
**FIRST CLAIM FOR RELIEF**  
**(Collective Action Claim for Violation of the FLSA)**

71. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully set forth herein.

72. This is a collective action filed on behalf of all tipped servers employed by

Defendants within the three (3) years preceding the filing of this Complaint to recover monetary damages owed by Defendants to Plaintiff and members of the putative collective for unpaid minimum wages because they were required to spend more than 20% of their time on non-tipped duties and for unpaid overtime compensation for all the hours they worked in excess of forty (40) each week.

73. Plaintiff brings this action on behalf of himself and all other similarly situated employees, former and present, who were and/or are affected by Defendants' willful and intentional violations of the FLSA.

74. At all relevant times, Plaintiff and all similarly situated employees have been entitled to the rights, protection and benefits provided by the FLSA.

75. At all relevant times, Plaintiff and all similarly situated employees have been "employees" of Defendants, as defined by 29 U.S.C. § 203(e).

76. Defendants failed to pay Plaintiff and all similarly situated servers the minimum wages required under the FLSA for tipped work and for non-tipped work.

77. Defendant failed to pay Plaintiff and all similarly situated servers a proper overtime rate for all time worked in excess of forty (40) hours per week, despite their entitlement thereto.

78. Because these employees are similarly situated to Plaintiff, and are owed minimum wage and overtime compensation for the same reasons, the proposed collective is properly defined as follows:

**All servers within the past three years.**

79. Defendants' conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

80. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff and all those similarly situated for, and Plaintiff and all those similarly situated seek, unpaid minimum wages, unpaid overtime wages, liquidated damages, pre-judgment interest, civil penalties and costs, including a reasonable attorney's fee, as provided by the FLSA.

81. Alternatively, should the Court find that Defendants 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.

**VII.**  
**SECOND CLAIM FOR RELIEF**  
**(Class Action Claim for Violations of AMWA)**

77. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully set forth herein.

78. Plaintiff, individually and on behalf of the proposed class, asserts this claim for damages and declaratory relief pursuant to the AMWA, Arkansas Code Annotated §§ 11-4-201 *et seq.*

79. At all relevant times, Plaintiff and all similarly situated employees have been entitled to the rights, protection, and benefits provided by the AMWA.

80. At all relevant times, Plaintiff and all similarly situated employees have been "employees" of Defendants, as defined by Ark. Code Ann. § 11-4-203(3).

81. At all relevant times, Defendants were an "employer" of Plaintiff and all other similarly situated employees, as defined by Ark. Code Ann. § 11-4-203(4).

82. Defendants failed to pay Plaintiff and other similarly situated employees the

minimum wages required under the AMWA for tipped work and for non-tipped work.

83. Plaintiff proposes to represent the AMWA liability class of individuals defined as follows:

**All servers in Arkansas within the past three years.**

84. Defendants' conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

85. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff and the class members for monetary damages, liquidated damages and costs, including reasonable attorney's fees as provided by the AMWA for all violations that occurred beginning at least three (3) years preceding the filing of this Complaint, plus periods of equitable tolling.

86. Defendants have not acted in good faith nor with reasonable grounds to believe their actions and omissions were not a violation of the AMWA, and, as a result thereof, Plaintiff and the class members are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid minimum wages described above pursuant to Ark. Code Ann. § 11-4-218.

87. Alternatively, should the Court find that Defendants acted in good faith in failing to pay Plaintiff and the class members as provided by the AMWA, they are entitled to an award of prejudgment interest at the applicable legal rate.

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

88. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully set forth herein.

89. At all relevant times, Plaintiff has been entitled to the rights, protection, and benefits provided by the FLSA.

90. At all relevant times, Plaintiff has been an “employee” of Defendants as defined by 29 U.S.C. § 203(e).

91. At all relevant time, Defendants were jointly Plaintiff’s “employer” as defined by 29 U.S.C. § 203(d).

92. Defendants failed to pay Plaintiff the minimum wages required under the FLSA for tipped work and for non-tipped work.

93. At all relevant times, Defendants willfully failed and refused to compensate Plaintiff for all hours worked at the standard minimum wage under the FLSA because Defendants paid Plaintiff \$2.63 per hour for non-tipped work.

94. Defendants’ violations entitle Plaintiff to compensatory damages calculated as the full amount of wages owed at the applicable minimum wage, less the amount of wages actually received.

95. Additionally, 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay all employees one and one-half (1.5) times their regular wages 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.

96. Special rules apply when calculating the proper overtime rate for tipped employees, in which overtime is calculated as one and one-half (1.5) times minimum wage, and then subtract the applicable tip credit from that rate. However, employers do not receive the benefit of the tip credit if the employees wages and tips combined do not



equal at least minimum wage, where the employees spend more than twenty percent (20%) of their work time on non-tipped work, or where employers do not maintain accurate and sufficient records of tip income and time spent by employees doing tipped work versus non-tipped work.

97. Defendants failed to pay Plaintiff a proper and lawful overtime rate for all time worked in excess of forty (40) hours per week, despite his entitlement thereto.

98. Defendants' conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary and in bad faith.

99. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff for, and Plaintiff seeks, unpaid minimum wages, unpaid overtime wages, liquidated damages, prejudgment interest, civil penalties and costs, including a reasonable attorney's fee, as provided by the FLSA.

100. Alternatively, should the Court find that Defendants 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.

**IX.**  
**FOURTH CLAIM FOR RELIEF**  
**(Individual Claim for Violation of AMWA)**

101. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully set forth herein.

102. At all relevant times, Plaintiff has been entitled to the rights, protection, and benefits provided by the AMWA.

103. At all relevant times, Plaintiff has been an "employee" of Defendants, as defined by Ark. Code Ann. § 11-4-203(3).

104. At all relevant times, Defendants were an “employer” of Plaintiff as defined by Ark. Code Ann. § 11-4-203(4).

105. Defendants failed to pay Plaintiff the minimum wages and overtime wages required under the AMWA for tipped work and for non-tipped work.

106. Defendants’ conduct and practice, as described above, has been and is willful, intentional, unreasonable, arbitrary and in bad faith.

107. By reason of the unlawful acts alleged herein, Defendants are liable to Plaintiff for monetary damages, liquidated damages and costs, including reasonable attorney’s fees provided by the AMWA for all violations which occurred beginning at least three (3) years preceding the filing of this Complaint, plus periods of equitable tolling.

108. Defendants have not acted in good faith nor with reasonable grounds to believe their actions and omissions were not a violation of the AMWA, and, as a result thereof, Plaintiff is entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid minimum wages described above pursuant to Ark. Code Ann. § 11-4-218.

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

**X.**  
**PRAYER FOR RELIEF**

WHEREFORE, premises considered, Plaintiff Byron Butler, individually and on behalf of all others similarly situated, respectfully requests this Court grant the following relief:

- a) That each Defendant be summoned to appear and answer herein;

b) That Defendants be required to account to Plaintiff, the collective and class members, and the Court for all of the hours worked by Plaintiff and the collective and class members and all monies paid to them;

c) A declaratory judgment that Defendants' practices alleged herein violate the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and attendant regulations at 29 C.F.R. § 516 *et seq.*;

d) A declaratory judgment that Defendants' practices alleged herein violate the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201 *et seq.*, 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 back wages at the applicable minimum wage owed to Plaintiff and members of the class and collective from a period of three (3) years prior to this lawsuit through the date of trial under the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*;

g) Judgment for damages for all unpaid back wages at the applicable minimum wage owed to Plaintiff and members of the class and collective from a period of three (3) years prior to this lawsuit through the date of trial under the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201 *et seq.*, and the related regulations;

h) Judgment for damages for all unpaid overtime compensation under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and attendant regulations at 29 C.F.R. § 516 *et seq.*;

i) Judgment for damages for all unpaid overtime compensation under the

Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-20, *et seq.*, and attendant regulations;

j) Judgment for liquidated damages pursuant to the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, and attendant regulations at 29 C.F.R. §516 *et seq.*, in an amount equal to all unpaid back wages at the applicable minimum wage and all unpaid overtime compensation from a period of three (3) years prior to this lawsuit through the date of trial owed to Plaintiff and members of the class and collective;

i) Judgment for liquidated damages pursuant to the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201 *et seq.*, and the relating regulations

j) An order directing Defendants to pay Plaintiff and members of the collective and class pre-judgment interest, a reasonable attorney's fee and all costs connected with this action; and

k) Such other and further relief as this Court may deem necessary, just and proper.

Respectfully submitted,

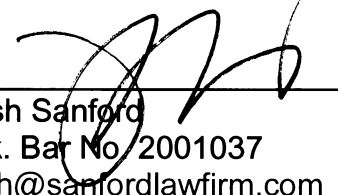
**BYRON BUTLER, Individually and on  
Behalf of All Others Similarly  
Situated, PLAINTIFF**

SANFORD LAW FIRM, PLLC  
One Financial Center  
650 South Shackleford, Suite 411  
Little Rock, Arkansas 72211  
Telephone: (501) 221-0088  
Facsimile: (888) 787-2040



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Chris Burks  
Ark Bar No. 2010207  
[chris@sanfordlawfirm.com](mailto:chris@sanfordlawfirm.com)



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Josh Sanford  
Ark. Bar No. 2001037  
[josh@sanfordlawfirm.com](mailto:josh@sanfordlawfirm.com)

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

**BYRON BUTLER, Individually and on  
Behalf of All Others Similarly Situated**

**PLAINTIFF**

vs.

No. 4:18-cv-\_\_\_\_\_

**OZARK WAFFLES, L.L.C.; WH CAPITAL,  
L.L.C.; and WAFFLE HOUSE, INC., each  
d/b/a WAFFLE HOUSE**

**DEFENDANTS**

**CONSENT TO JOIN COLLECTIVE ACTION**

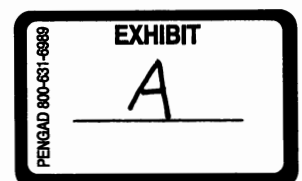
I was employed as a server for Defendants Ozark Waffles, L.L.C., WH Capital, L.L.C., and Waffle House, Inc., each d/b/a Waffle House ("Defendants"), on or after October 9, 2018. I understand this lawsuit is being brought under the Fair Labor Standards Act for unpaid minimum wages and overtime compensation. I consent to becoming a party-plaintiff in this lawsuit, to be represented by Sanford Law Firm, PLLC, and to be bound by any settlement of this action or adjudication by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Signature:   
**BYRON BUTLER**

Date: 10/09/2018

/s/ Josh Sanford  
**Josh Sanford, Esq.**  
**SANFORD LAW FIRM, PLLC**  
**One Financial Center**  
**650 South Shackleford Road, Suite 411**  
**Little Rock, Arkansas 72211**  
**Telephone: (501) 221-0088**  
**Facsimile: (888) 787-2040**  
**josh@sanfordlawfirm.com**



**CIVIL COVER SHEET** 4:18-cv-746-JM

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**

BYRON BUTLER, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff **Faulkner**  
(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**

OZARK WAFFLES, L.L.C.; WH CAPITAL, L.L.C.; and WAFFLE HOUSE, INC., each d/b/a WAFFLE HOUSE

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)

- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | <b>PTF</b>                 | <b>DEF</b>                 |   | <b>PTF</b>                 | <b>DEF</b>                 |
| 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 Tort Contract Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <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	<b>PERSONAL INJURY</b> <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 <b>PERSONAL PROPERTY</b> <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 <b>LABOR</b> <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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <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)) <b>FEDERAL TAX SUITS</b> <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	CIVIL RIGHTS	PRISONER PETITIONS	IMMIGRATION		
<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	<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	<b>Habeas Corpus:</b> <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 <b>Other:</b> <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	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

**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 Minimum Wage and Overtime Violations

**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**

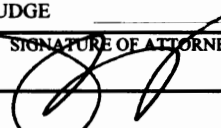
(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE  
10/09/2018

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFF \_\_\_\_\_ 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 Waffle House Server Files Wage and Hour Suit](#)

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