

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ALVIN GOODMAN, on behalf of himself	:	CIVIL ACTION No.:
and similarly situated employees,	:	
Plaintiff,	:	JURY TRIAL DEMANDED
	:	
v.	:	
	:	
MID SOUTH WAFFLES, INC.,	:	
Defendant.	:	

COLLECTIVE ACTION COMPLAINT

Plaintiff Alvin Goodman (“Plaintiff”), on behalf of himself and similarly situated employees, brings this collective action lawsuit against Defendant Mid South Waffles, Inc. (“Defendant”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiff asserts his FLSA claim as a collective action claim under 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims raise a federal question under 29 U.S.C. § 201, *et seq.*
2. This Court has jurisdiction over this FLSA collective action pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA “may be maintained against any employer . . . in any Federal or State court of competent jurisdiction.”
3. Defendant’s annual sales exceed \$500,000, and Defendant employs more than two persons, so the FLSA applies in this case on an enterprise basis. Defendant’s employees engage in interstate commerce; therefore, it is also covered by the FLSA on an individual basis.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the actions and omissions giving rise to the claims pled in this Complaint substantially occurred in this District.

PARTIES

5. Plaintiff is an individual residing in Antioch, Tennessee.

6. Defendant is a corporate entity registered to do business in Tennessee and maintaining a principal place of business at 5986 Financial Dr., Norcross, GA 30071. Its registered agent is Corporation Service Company located at 2908 Poston Ave., Nashville, TN 37203.

7. Defendant is a Waffle House restaurant franchise that operates, upon information and belief, at least 125 Waffle House locations in Mississippi, Alabama, Tennessee, and Georgia.

8. Defendant is an employer covered by the record-keeping, minimum wage, and overtime pay mandates of the FLSA.

FACTUAL ALLEGATIONS

9. Defendant employs Servers at all of its Waffle House restaurants.

10. Plaintiff was employed by Defendant as a Server at several of its Waffle House restaurant locations including in Hermitage, Antioch, Lebanon, and Goodlettsville, Tennessee.

11. Plaintiff was employed by Defendant as a Server from approximately February of 1999 to May 31, 2018.

12. Defendant paid Plaintiff and other Servers a sub-minimum hourly wage of \$1.20, plus any tips earned and paid by restaurant patrons.

13. However, Defendant maintains a company-wide policy and practice which required Plaintiff and other Servers to spend more than 20% of their work time performing non-tip producing work. Such non-tip producing work includes, but is not limited to, cleaning under tables, sweeping and mopping the floors, washing the walls and windows, cleaning the vents,

wiping down the lamps, spraying insect repellent, disassembling, cleaning and reassembling the dish tank, soda, and orange juice machines, bringing ice from the back of house to the front, taking out the trash, and doing dishes.

14. Defendant has paid Plaintiff and other Servers a sub-minimum hourly wage of \$1.20 for time spent performing the non-tip producing work described in paragraph 13.

15. The non-tip producing work has not helped Plaintiff and Servers earn tips from restaurant patrons.

16. Defendant routinely required Plaintiff and other Servers to perform non-tip producing work while they are not serving patrons in the restaurant.

17. Defendant required Plaintiff to perform non-tip producing work while paying him a sub-minimum hourly wage of \$1.20 during each shift that he worked. In the absence of discovery, Plaintiff estimates that he spent an average of approximately 70%-80% of each shift performing non-tip producing work.

18. Upon information and belief, Defendant required its Servers at all of its Waffle House restaurants to spend more than 20% of their time performing non-tip producing work while earning a sub-minimum wage.

19. Defendant also had a company-wide practice of telling Plaintiff and Servers not to claim any cash tips at the end of each shift. Instead, Managers would input an arbitrary amount of cash tips into the timekeeping computer system after every shift for Plaintiff and other Servers, which did not accurately reflect the amount of tips Plaintiff and other Servers actually received.

20. Not only would this practice result in Plaintiff and Servers often not receiving the \$6.05 tip credit as required by the FLSA, Plaintiff and Servers would have to pay taxes on tips they did not actually earn.

21. Furthermore, Defendant required Plaintiff and Servers to complete non-tip producing work off the clock after their shift ended. If Plaintiff and Servers did not complete the non-tip producing work within their scheduled work shift, the Manager would clock out Plaintiff and Servers and require them to complete the non-tip producing work without pay.

22. Not only were Plaintiff and other Servers clocked out at the end of their shifts to perform non-tip producing work, Defendant implemented a policy in which Managers clocked out Plaintiff and other Servers once they had worked 40 hours in a week.

23. As a result, even though Plaintiff and other Servers would routinely work over 40 hours per week, they did not receive overtime wages for any hours worked over 40 in a work week.

24. Defendant also had a policy of withholding wages from Plaintiff and Servers for a meal deduction. Approximately \$3.25 per day was deducted from Plaintiff's paycheck to cover the cost of a meal. However, this amount would be taken out of Plaintiff's paychecks on days when he did not receive a meal and even on days when he did not work.

FLSA COLLECTIVE ALLEGATIONS

25. Plaintiff brings this action on behalf of himself and all similarly situated employees, defined as:

All current and former Servers who worked for Defendant at its Waffle House restaurants at any time during the past three years.

(hereinafter referred to herein as "Collective Action Members"). Plaintiff reserves the right to amend this definition if necessary.

26. Plaintiff pursues his FLSA claim on behalf of any Collective Action Members who opt-in to this action pursuant to 29 U.S.C. § 216(b).

27. Plaintiff and the Collective Action Members are “similarly situated,” as that term is defined in 29 U.S.C. § 216(b), because, *inter alia*, they have been subjected to Defendant’s company-wide pay policies and practices, as discussed in paragraphs 8-27 above.

COUNT I
(29 U.S.C. § 216(b) Collective Action)
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. -- FAILURE TO PAY MINIMUM WAGE

28. Plaintiff hereby incorporates all of the preceding paragraphs.

29. At all relevant times, Plaintiff and the Collective Action Members were employees entitled to the FLSA’s protections.

30. Defendant is an employer covered by the FLSA.

31. The FLSA entitles employees to minimum hourly compensation of at least \$7.25 for hours worked under 40 in a week, *see* 29 U.S.C. § 206(b), and \$10.875 for hours worked over 40 in a week, *see id.* at § 207(a)(1).

32. Defendant’s company-wide policy and practice of requiring Plaintiff and other Servers to perform work without receiving wages, such as over-claiming tips and performing off-the-clock work, resulted in a failure to satisfy its minimum wage obligations to Plaintiff and the Collective Action Members. As such, Defendant violated the FLSA by failing to pay Plaintiff and other Servers the minimum wage.

33. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.

34. Plaintiff consents in writing to join this action, and his consent is attached hereto as ***Exhibit A.***

COUNT II
(29 U.S.C. § 216(b) Collective Action)
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. – VIOLATION OF DUAL JOBS PROVISION

35. Plaintiff hereby incorporates all preceding paragraphs.

36. Under the tip-credit provisions of the FLSA, an employer of tipped employees may, in limited circumstances, pay those employees a sub- minimum hourly wage and take a “tip credit” against its minimum wage obligations.

37. However, an employer is not permitted to take a tip credit against its minimum wage obligations when it requires its tipped employees to perform non-tip producing work that is *unrelated* to the employee’s tipped occupation. *See e.g., Driver v. AppleIllinois, LLC*, 739 F.3d 1073, 1075 (7th Cir. 2014) (Posner, J.) (explaining that when tipped employees perform “non-tipped duties” that “are *unrelated* to their tipped duties . . . such as, in the case of restaurant servers, washing dishes, preparing food, mopping the floor, or cleaning bathrooms, they are entitled to the full minimum wage for the time they spend at that work”) (emphasis added).

38. Defendant violated the FLSA by requiring Plaintiffs and other Servers to perform non-tip producing work that is *unrelated* to their tipped occupation, such as, *inter alia*, cleaning under tables, sweeping and mopping the floors, washing the walls and windows, cleaning the vents, wiping down the lamps, spraying insect repellent, disassembling, cleaning and reassembling the dish tank, soda, and orange juice machines, bringing ice from the back of house to the front, taking out the trash, and doing dishes.

39. Defendant failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook §30d00(f)¹ by

¹ (Dec. 9, 1988, revised Nov. 17, 2016) (*see* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf)

requiring Plaintiff and other Servers in a given workweek, and during each and every workweek they were employed by Defendant, to perform non-tip producing work constituting a “dual job” that was *unrelated* to their tipped occupation, over the course of their regular workweek, as identified in the preceding paragraph.

40. At all times during Plaintiff and other Servers’ employment, Defendant paid them at the sub-minimum hourly wage rate.

41. As a result, Defendant failed and/or refused to pay Plaintiff and other Servers the full applicable minimum wage as required by the FLSA for each and every workweek they were employed by Defendant, in violation of 29 U.S.C. § 206(a).

42. Defendant knew that – or acted with reckless disregard as to whether – its failure to pay Plaintiff and other Servers the full applicable minimum wage, without applying the tip credit, for time spent performing labor in such an unrelated non-tipped occupation, would violate federal law and Defendant was aware of the FLSA minimum wage requirements at all relevant times. As such, Defendant’s conduct constitutes a willful violation of the FLSA.

43. Plaintiff and other Servers are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorneys’ fees, and costs.

COUNT III
(29 U.S.C. § 216(b) Collective Action)
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. – VIOLATION OF THE TWENTY PERCENT RULE

44. Plaintiff hereby incorporates all preceding paragraphs.

45. Under the tip-credit provisions of the FLSA, an employer of tipped employees may, in limited circumstances, pay those employees less than the minimum hourly wage and take a “tip credit” against its minimum wage obligations.

46. However, an employer is not permitted to take a tip credit against its minimum wage obligations when it requires its tipped employees to perform non-tip producing side work that, although *related* to the employee's tipped occupation, exceeds 20% of the employees' time worked during a shift. *See e.g., Fast v. Applebee's Int'l, Inc.*, 638 F.3d 872, 880 (8th Cir. 2011) ("employees who spend 'substantial time' (defined as more than 20 percent) performing *related* but nontipped duties should be paid at the full minimum wage for that time").

47. To the extent Plaintiff's and other Servers' non-tip producing work of, for example, cleaning under tables, sweeping and mopping the floors, washing the walls and windows, cleaning the vents, wiping down the lamps, spraying insect repellent, disassembling, cleaning and reassembling the dish tank, soda, and orange juice machines, bringing ice from the back of house to the front, taking out the trash, and doing dishes is found to be *related* to their tipped occupation, Defendant violated the FLSA by requiring Plaintiff and other Servers to perform this non-tip producing work for more than 20% of their weekly work hours.

48. Defendant failed and/or refused to comply with the FLSA, 29 U.S.C. § 201, *et seq.*, 29 C.F.R. § 531.56(e), and the Department of Labor Field Operations Handbook §30d00(f) by requiring Plaintiff and other Servers in a given workweek, and during each and every workweek they were employed by Defendant, to spend more than 20% of their work time performing related, but non-tip producing work.

49. At all times during Plaintiff and other Servers' employment, Defendant paid them at the sub-minimum hourly wage rate.

50. As a result, Defendant failed and/or refused to pay Plaintiff and other Servers the full applicable minimum wage as required by the FLSA for each and every workweek they were employed by Defendant, in violation of 29 U.S.C. § 206(a).

51. Defendant knew that – or acted with reckless disregard as to whether – its failure to pay Plaintiff and other Servers the full applicable minimum wage, without applying the tip credit, for time spent performing such non-tip producing work for more than 20% of their weekly hours, would violate federal law and Defendant was aware of the FLSA minimum wage requirements at all relevant times. As such, Defendant’s conduct constitutes a willful violation of the FLSA.

52. Plaintiff and other Servers are therefore entitled to compensation for the full minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as liquidated damages, together with interest, reasonable attorneys’ fees, and costs.

COUNT IV
(29 U.S.C. § 216(b) Collective Action)
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, et seq. – FAILURE TO PAY OVERTIME

53. Plaintiff hereby incorporates all preceding paragraphs.

54. At all relevant times, Plaintiff and other Servers were employees entitled to the FLSA’s protections.

55. Defendant is an employer covered by the FLSA.

56. The FLSA entitles employees to a minimum hourly compensation of \$7.25 for hours worked under 40 in a week, *see* 29 U.S.C. § 206(b), and \$10.875 for hours worked over 40 in a week, *see id.* at § 207(a)(1).

57. At all relevant times, Defendant had a policy and practice of willfully refusing to pay Plaintiff and Collective Action Members the legally required amount of overtime compensation for all hours worked in excess of 40 hours per workweek, in violation of the FLSA.

58. As a result of Defendant willful failure to compensate Plaintiff and the Collective Action Members at a rate not less than 1.5 times the regular rate of pay for work performed in

excess of 40 hours in a workweek, Defendant has violated and continues to violate the FLSA, 29 U.S.C. § 201 *et seq.*, including 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104.

59. Defendant conduct as alleged herein constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

60. Due to Defendant violations, Plaintiff and the Collective Action Members are entitled to recover from Defendant their unpaid wages for the legally required amount of overtime compensation for all the hours worked by them in excess of 40 in a workweek, actual and liquidated damages, including the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes, reasonable attorneys' fees and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

JURY TRIAL DEMAND

Plaintiff demands a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above entitled cause.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Collective Action Members, seeks the following relief:

- A. Certifying this case as a collective action (for the Collective Action Members) in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein;
- B. All unpaid minimum wages and overtime wages owed;
- C. A finding that Defendant's conduct was willful;
- D. Prejudgment interest;
- E. Liquidated damages;

F. Litigation costs, expenses, and attorneys' fees; and

G. Such other and further relief as this Court deems just and proper.

Date: July 30, 2018

Respectfully Submitted,

/s/ Jerry E. Martin

Jerry E. Martin, Esq.

David Garrison, Esq.

Joshua A. Frank, Esq.

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**pro had vice admission anticipated*


EXHIBIT A

NOTICE OF CONSENT

By my signature below, I consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act against Mid South Waffles, Inc. and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act for the claims set forth in the Complaint. I hereby appoint attorneys at the law firms of Migliaccio & Rathod LLP in Washington D.C., Winebrake & Santillo, LLC, and Barrett Johnston Martin & Garrison LLC, and others that the above attorneys choose to associate with, to represent me in this case.

Name: Alvin Goodman

Date: 07/27/2018

Signature: 

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

ALVIN GOODMAN, on behalf of himself and similarly situated employees,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Jerry E. Martin, Barrett Johnston Martin & Garrison, LLC, 414 Union Street, Suite 900, Nashville, TN 37219, 615-244-2202.

DEFENDANTS

MID SOUTH WAFFLES, 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)

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	PERSONAL INJURY <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"/> 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))	<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	FEDERAL TAX SUITS		
<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	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	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		

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. § 216(b) of the Fair Labor Standards Act

Brief description of cause:
Recovery of unpaid wages under the Fair Labor Standards Act

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 SIGNATURE OF ATTORNEY OF RECORD

7/30/18 /s/ Jerry E. Martin

FOR OFFICE USE ONLY

RECEIPT # _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Server Accuses Waffle House of Wage Violations in Lawsuit](#)
