

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

**CYNTHIA GREEN, Individually and on
Behalf of all Others Similarly Situated**

PLAINTIFF

vs.

No. 2:18-cv- 2170

WEST FOODS, INC.

DEFENDANT

ORIGINAL COMPLAINT—CLASS AND COLLECTIVE ACTION

COMES NOW Plaintiff Cynthia Green, individually and on behalf of all others similarly situated, by and through her attorneys Sean Short, Chris Burks and Josh Sanford of Sanford Law Firm, PLLC, and for her Original Complaint—Class and Collective Action against Defendant West Foods, Inc. (“Defendant”), does hereby state and allege as follows:

I. INTRODUCTION

1. Plaintiff, individually and on behalf of all others similarly situated, 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 others similarly situated overtime compensation for all hours that Plaintiff and all others similarly situated worked in excess of forty (40) per workweek.

2. 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 AMWA as described *infra*.

II. JURISDICTION AND VENUE

3. The United States District Court for the Western 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.

4. This Complaint also alleges violations of the AMWA, 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.

5. This Court has supplemental jurisdiction over Plaintiff's state law claim pursuant to 28 U.S.C. § 1367(a).

6. Defendant conducts business within the State of Arkansas, operating several pizza delivery establishments under the name Subway.

7. Defendant's principal place of business is within the Fort Smith Division of the Western District of Arkansas.

8. Venue lies properly within this Court under 28 U.S.C. § 1391(b)(1) and (c)(2), because the State of Arkansas has personal jurisdiction over Defendant, and Defendant therefore "resides" in Arkansas.

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 Sebastian County.

11. From approximately January of 2018 until September of 2018, Plaintiff was an hourly-paid employee at a Subway located in Fort Smith.

12. 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.

13. Defendant is a domestic corporation, which operates various Subway franchises in Arkansas.

14. Defendant's annual gross volume of sales made or business done was not less than \$500,000.00 (exclusive of exercise taxes at the retail level that are separately stated) during each of the three calendar years preceding the filing of this complaint.

15. 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.

16. Defendant has more than four employees.

17. 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.

18. Defendant’s registered agent for service of process in the State of Arkansas is Randy P. West, 810 Spring Creek Road, Lowell, Arkansas 72745.

IV. FACTUAL ALLEGATIONS

19. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

20. Defendant owns and operates a Subway franchise located in Fort Smith.

21. Upon information and belief, Defendant owns and operates more than three Subway franchises within the State of Arkansas.

22. During the period relevant to this lawsuit, Defendant classified Plaintiff and those similarly situated as hourly employees non-exempt from the overtime requirements of the FLSA and the AMWA.

23. Plaintiff and other hourly employees worked more than forty (40) hours per week on a regular basis within the three years prior to the filing of Plaintiff’s Complaint.

24. As an hourly-paid employee, Plaintiff was required to start work at 7 a.m., but was not allowed to clock in until 10 a.m.

25. Likewise, Plaintiff was required to clock out at the end of her shift, but was regularly required to remain on site to finish tasks for an extra hour after she had clocked out.

26. These off-the-clock duties included completing paperwork, inventory, cleaning and general restaurant responsibilities.

27. As a direct result of Defendant's policies, even though Plaintiff and other hourly-paid employees worked more than forty (40) hours in many weeks that they worked for Defendant during time period relevant to this Complaint, they were not compensated for all of their overtime hours worked.

V. REPRESENTATIVE ACTION ALLEGATIONS

A. FLSA § 216(b) Class

28. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

29. Plaintiff brings her 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), on behalf of all persons who were, are or will be employed by Defendant as similarly situated employees at any time within the applicable statute of limitations period, who are entitled to payment of the following types of damages:

- A. Minimum wages for the first forty (40) hours worked each week;
- B. Overtime premiums for all hours worked for Defendant in excess of forty (40) hours in any week; and
- C. Liquidated damages and attorney's fees.

30. Plaintiff proposes the following class under the FLSA:

**All hourly employees at any time within
the three years preceding the filing of this lawsuit.**

31. In conformity with the requirements of FLSA Section 16(b), Plaintiff will file her written Consent to Join this lawsuit.

32. 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), except as set forth herein below.

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

A. They were classified by Defendant as non-exempt from the minimum wage and overtime requirements of the FLSA;

B. They were subject to Defendant's common policy requiring hourly workers to reduce their recorded hours of work by working off the clock, such as by clocking out and continuing to work at the end of the workday; and

C. They were subject to Defendant's common policy of reducing the recorded hours of work for hourly employees by modifying existing time clock records.

34. Plaintiff is unable to state the exact number of potential members of the FLSA Class but believe that the class exceeds forty (40) persons.

35. Defendant can readily identify the members of the class, which encompasses all hourly employees of Defendant's restaurants within the three-year period preceding the filing of Plaintiff's Original Complaint.

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

B. AMWA Rule 23 Classes

37. Plaintiff, individually and on behalf of all others similarly situated who were employed by Defendant within the State of Arkansas, brings this claim for relief for violation of the AMWA as a class action.

38. Plaintiff proposes to represent the class defined as follows:

All hourly employees in Arkansas at any time within the three years preceding the filing of this lawsuit.

39. Upon information and belief, Defendant has employed more than forty (40) hourly employees within Arkansas within the last three (3) years. Therefore, the proposed AMWA Class is so numerous that joinder of all members is impracticable.

40. Common questions of law and fact relate to all of the proposed AMWA Class members, such as:

A. Whether Defendant had an unlawful policy requiring members of the proposed class to perform work before they clocked in or after they clocked out;

B. Whether Defendant had an unlawful policy of adjusting time clock records so as to reduce class members' hours worked;

C. Whether Defendant maintained accurate records of hours worked by members of the proposed class as required by the AMWA; and

D. Whether Defendant paid the members of the proposed class one and one-half times their regular wages for hours worked over forty (40) in each week in accordance with the AMWA.

41. The above common questions of law and fact predominate over any questions affecting only the individual named Plaintiff, and a class action is superior to other available methods for fairly and efficiently adjudicating the claims of the members of both AMWA Classes.

42. 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. To that end, all non-exempt employees must be paid for time worked over forty (40) hours per week at a rate of one and one-half times their regular rate. Ark. Code Ann. § 11-4-211.

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

44. Concentrating the litigation in this forum is highly desirable because Defendant has a significant presence in the Western District of Arkansas and because Plaintiff and all proposed Rule 23 class members work or worked within Arkansas.

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

46. Plaintiff's claim is typical of the claims of the proposed AMWA class in that Plaintiff worked as an hourly employee for Defendant and experienced the same violations of the AMWA that all other class members suffered.

47. Plaintiff and her counsel will fairly and adequately protect the interests of the classes.

48. 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.

49. Plaintiff has consented in writing to the association of additional counsel.

50. Prosecution of separate actions by individual members of the proposed classes 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 Defendant.

VI. FIRST CAUSE OF ACTION

(Individual Claim for Violation of the FLSA)

51. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

52. Plaintiff asserts this claim for damages and declaratory relief pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*

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

54. 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.

55. 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay all employees a minimum wage for all hours worked up to forty (40) in one week and to pay time and a half of 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.

56. During the period relevant to this lawsuit, Defendant classified Plaintiff as non-exempt from the overtime requirements of the FLSA.

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

58. Defendant's failure to properly pay overtime wages to Plaintiff stems from Defendant's acts of requiring off-the-clock work by Plaintiff in excess of forty (40) hours per week.

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

60. 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.

VII. SECOND CAUSE OF ACTION

(Individual Claim for Violation of the AMWA)

61. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

62. Plaintiff asserts this claim for damages and declaratory relief pursuant to the AMWA, Arkansas Code Annotated §§ 11-4-201 *et seq.*

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

64. Arkansas Code Annotated §§ 11-4-210 and 211 require employers to pay all employees a minimum wage for all hours worked up to forty in one week and to pay one and one-half times regular wages for all hours worked over forty hours in a week, unless an employee meets the exemption requirements of 29 U.S.C. § 213 and accompanying Department of Labor regulations.

65. During the period relevant to this lawsuit, Defendant classified Plaintiff as non-exempt from the overtime requirements of the AMWA.

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

67. Defendant's failure to properly pay overtime wages to Plaintiff stems from Defendant's acts of requiring off-the-clock work by Plaintiff in excess of forty (40) hours per week.

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

69. 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 pursuant to Arkansas Code Annotated § 11-4-218.

VIII. THIRD CAUSE OF ACTION

(Collective Action Claim for Violation of the FLSA)

70. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

71. Plaintiff, individually and on behalf of all others similarly situated, asserts this claim for damages and declaratory relief pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*

72. At all relevant times, Defendant has been, and continues to be, an “employer” of Plaintiff and all those similarly situated within the meaning of the FLSA, 29 U.S.C. § 203.

73. During the period relevant to this lawsuit, Defendant classified Plaintiff and all similarly situated members of the FLSA collective as non-exempt from the overtime requirements of the FLSA.

74. Despite the entitlement of Plaintiff and those similarly situated to minimum wage and overtime payments under the FLSA, Defendant failed to pay Plaintiff and all those similarly situated an overtime rate of one and one-half times their regular rates of pay for all hours worked over forty (40) in each one-week period.

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

76. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff and all those similarly situated 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.

77. 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.

IX. FOURTH CAUSE OF ACTION

(Class Action Claim for Violation of the AMWA)

78. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

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

80. At all relevant times, Defendant has been, and continues to be, an “employer” of Plaintiff and the members of the proposed class within the meaning of the AMWA, Ark. Code Ann. § 11-4-203(4).

81. Arkansas Code Annotated §§ 11-4-210 and 211 require employers to pay all employees a minimum wage for all hours worked up to forty (40) in one week and to pay one and one-half 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.

82. During the period relevant to this lawsuit, Defendant classified Plaintiff and all similarly situated members of the AMWA class as non-exempt from the overtime requirements of the AMWA.

83. Despite the entitlement of Plaintiff and those similarly situated to minimum wage and overtime payments under the AMWA, Defendant failed to pay Plaintiff and all those similarly situated an overtime rate of one and one-half

times their regular rates of pay for all hours worked over forty (40) in each one-week period.

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

85. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff and the proposed class for monetary damages, liquidated damages, costs, and a reasonable attorney's fee provided by the AMWA for all violations which occurred within the three (3) years prior to the filing of this Complaint, plus periods of equitable tolling.

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

X. FIFTH CAUSE OF ACTION

(Individual Claim for Violation of the Arkansas Last Paycheck Law)

87. Plaintiff repeats and re-alleges all previous paragraphs of this Complaint as though fully incorporated in this section.

88. Plaintiff asserts this claim for damages and declaratory relief pursuant to the Arkansas Last Paycheck Law, Arkansas Code Annotated § 11-4-405.

89. Defendant terminated Plaintiff's employment on or around September 2018, but to date has not paid her for her final two weeks of employment.

90. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages provided by Arkansas Code Annotated § 11-4-405 for refusing to pay Plaintiff her final paycheck.

XI. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Cynthia Green, 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 class members, and the Court for all of the hours worked by Plaintiff and the class members and all monies paid to them;

C. For orders regarding certification of and notice to the proposed collective action members;

D. A declaratory judgment that Defendant's 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.*;

E. A declaratory judgment that Defendant's practices alleged herein violate the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* and the related regulations;

F. Judgment for damages for all unpaid overtime compensation owed to Plaintiff and the proposed class members 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 overtime compensation under the Arkansas Minimum Wage Act, Ark. Code Ann. § 11-4-201, *et seq.* and the related regulations;

H. 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 overtime compensation owed to Plaintiff and the proposed class members during the applicable statutory period;

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

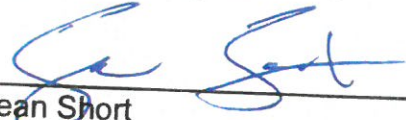
J. For a reasonable attorneys' fee, costs, and pre-judgment interest;
and

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

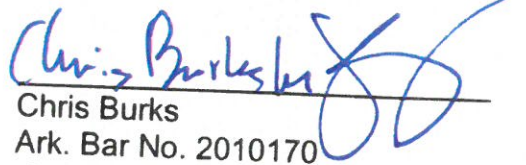
Respectfully submitted,

**CYNTHIA GREEN, Individually and
on Behalf of All Others Similarly
Similarly Situated, PLAINTIFF**

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FORT SMITH DIVISION

**CYNTHIA GREEN, Individually and on
Behalf of all Others Similarly Situated**

PLAINTIFF

vs.

No. 2:18-cv-_____

WEST FOODS, INC.

DEFENDANT

CONSENT TO JOIN COLLECTIVE ACTION

I was employed as an hourly employee for Defendant West Foods, Inc. ("Defendant"), within the three years preceding the signing of this document. I understand this lawsuit is being brought under the Fair Labor Standards Act for unpaid minimum wages. 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.



CYNTHIA GREEN

Date: September 26, 2018

/s/ Josh Sanford
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arkansas Subway Franchisee Hit with Wage and Hour Lawsuit](#)
