

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**APRIL D. HILL, individually and on behalf
of all others similarly situated,**

Plaintiff,

v.

**EMPLOYEE RESOURCE GROUP, LLC,
and WV NEIGHBORHOOD
HOSPITALITY, LLC,**

Defendants.

Civil Action No. 5:16-cv-11507

COMPLAINT

Introduction

1. Plaintiff brings this collective action against Employee Resource Group, LLC and WV Neighborhood Hospitality, Inc. for violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.* (“FLSA”).

2. Defendants operate Applebee’s restaurants in multiple states including West Virginia, Virginia, Ohio, and Kentucky.

3. Defendants have a policy of paying servers, bartenders, and hosts at its Applebee’s restaurants sub-minimum wage under the tip credit provisions of the FLSA.

4. Under the FLSA tip credit provisions, an employer of tipped employees may pay the employees less than the minimum hour wage and take a “tip credit” against its minimum wage obligations, provided certain requirements are met. The amount of an employer’s tip credit may never exceed the amount of tips actually received by a tipped employee. In other words, where an employee does not receive enough in tips to make up the difference between her wages

and the minimum wage, the employer must make up the difference.

5. And an employer is also not permitted to take a tip credit against its minimum wage obligation when (a) it requires its tipped employees to perform non-tipped work that is unrelated to the employees' tipped occupation, *i.e.*, dual jobs; and (b) when it requires tipped employees to perform non-tipped work that although related to the employees' tipped occupation, exceeds 20 percent of the employees' time worked during a workweek.

6. Defendants violated the minimum wage provisions of the FLSA by not paying Plaintiff at the minimum wage rate, from time to time, when Plaintiff's wages plus tips did not amount to minimum wage, and by taking the tip credit on those occasions.

7. Defendants further violated the minimum wage provisions of the FLSA by not paying at the minimum wage rate when Plaintiff performed either non-tipped work unrelated to her tipped job duties (dual jobs) or non-tipped work that although related to Plaintiff's tipped occupation, exceeded 20 percent of her time worked during a workweek.

8. Plaintiff seeks the actual wages owed to her and liquidated damages under the FLSA.

9. Defendants are jointly and severally liable as a single enterprise under the FLSA.

10. Plaintiff also brings a supplemental state law class action claim under the West Virginia Wage Payment and Collection Act, W. Va. Code § 21-5-1 *et seq.* ("WPCA"). Defendants violated the WPCA by failing to pay their former employees all wages owed within the time periods required by the WPCA. Plaintiff brings this action on her own behalf and on behalf of other employees of Defendants who resigned their employment and were not paid all wages owed within the period of time required by law. Plaintiff seeks liquidated damages under the WPCA.

Jurisdiction and Venue

11. Jurisdiction is conferred upon this Court by 29 U.S.C. § 216(b) of the FLSA and by 28 U.S.C. § 1331, as this action arises under the laws of the United States. Jurisdiction over Plaintiff's claims for declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202.

12. Supplemental jurisdiction over Plaintiff's WPCA claim is conferred upon this Court by 28 U.S.C. § 1367(a) as these claims form part of the same case or controversy as Plaintiff's claims under the FLSA.

13. This Court has personal jurisdiction because Defendants conduct business in the Southern District of West Virginia.

14. Venue is proper in this District under 28 U.S.C. § 1391(b) because the claim arose in this judicial district.

Parties

15. Plaintiff April D. Hill is a resident of Raleigh County, West Virginia.

16. Under 29 U.S.C. § 216(b), Plaintiff has given her written consent to become a plaintiff in this collective action, and that consent is attached hereto and marked as Exhibit A.

17. Defendant Employee Resource Group, LLC ("ERG") is a foreign limited liability company organized under the laws of Florida.

18. ERG has a principal place of business in Santa Rosa Beach, Florida.

19. At all times relevant to the Complaint, ERG conducted business in Raleigh County, West Virginia.

20. Defendant WV Neighborhood Hospitality, LLC ("Neighborhood Hospitality") is a foreign limited liability company organized under the laws of West Virginia.

21. Neighborhood Hospitality has a principal place of business in Hazard, Kentucky.

22. At all times relevant to the Complaint, Neighborhood Hospitality conducted business in Raleigh County, West Virginia.

23. Defendants ERG and Neighborhood Hospitality (and potential unknown entities) are and, at all times material hereto, have been a single “enterprise,” within the meaning of the FLSA, 29 U.S.C. § 203(r), and a single “enterprise engaged in commerce or in production of goods for commerce,” within the meaning of 29 U.S.C. § 203(s).

24. Defendants ERG and Neighborhood Hospitality are and, at all times material hereto, have been Plaintiff’s employer for purposes of the FLSA and the WPCA.

Facts

25. Defendant Neighborhood Hospitality is a corporate entity doing business as Applebee’s Neighborhood Bar & Grill in Beckley, West Virginia (Beckley Applebee’s). It holds the license for the consumption of alcohol at Beckley Applebee’s, and it serves food and beverages to patrons.

26. Upon information and belief, Defendant Neighborhood Hospitality is run by Manager Theresa A. Johnson. Ms. Johnson runs or otherwise exerts influence over at least one other corporate entity, Defendant ERG, as a member and its organizer.

27. At all times relevant, Defendant ERG has issued paychecks to Beckley Applebee’s employees.

28. On information and belief, the business operations of both Defendant Neighborhood Hospitality and Defendant ERG involve common management, share at least one or more employees serving both business operations, and share office space.

29. Neighborhood Hospitality's designated office address with the West Virginia Secretary of State is Employee Resource Group, LLC, 601 Main Street, Suite 102, Hazard, Kentucky.

30. On information and belief, Defendant ERG employs workers at other Applebee's restaurants in at least four states, Kentucky, Ohio, Virginia and West Virginia.

31. Plaintiff worked as a host at Beckley Applebee's from September 2014 until she resigned on December 27, 2014.

32. Plaintiff was not exempt from the FLSA's minimum wage requirements.

33. As a host, Plaintiff was treated by Defendants as a tipped employee.

34. Defendants paid Plaintiff wages at the rate of \$4.25 per hour, and took a tip credit of \$3.00 per hour.

35. Before using the tip credit, Defendants failed to inform Plaintiff and other similarly situated tipped employees of the tip credit provisions of the FLSA.

36. During Plaintiff's tenure, both the federal and state statutory minimum wage rates were \$7.25 per hour. Plaintiff was paid less than the minimum wage rate in at least one or more statutory workweeks.

37. On information and belief, Defendants employed a system of paying tipped employees less than minimum wage, that included but was not limited to, overstating tips and inflating reported tips.

38. As a result, Defendants claimed tip credits in excess of the amount of tips Plaintiff and similarly situated tipped employees actually received.

39. Defendants also scheduled Plaintiff to report to work before the restaurant was open for service. Plaintiff reported to work one and a half to two hours before opening and

performed non-tipped duties such as cleaning restrooms and picking up trash from the parking lot. Plaintiff worked a substantial amount of time each week performing non-tipped duties.

40. Defendants failed to pay Plaintiff at the minimum wage rate of \$7.25 per hour for the substantial amount of time she worked each week performing non-tipped duties. Instead, Defendants paid Plaintiff \$4.25 per hour for the non-tipped duties she performed and took a \$3.00 per hour tip credit.

41. Alternatively, Defendants failed to pay Plaintiff at the minimum wage rate of \$7.25 per hour for the time she spent performing non-tipped job duties unrelated to her tipped occupation. Defendants paid Plaintiff \$4.25 per hour for the non-tipped duties she performed and took a \$3.00 per hour tip credit.

42. Defendants violated Plaintiff's right to be paid the full minimum wage of \$7.25 per hour.

43. When Plaintiff resigned her employment with Defendants, Defendants owed her additional wages for (a) the weeks when her hourly wages plus tips did not average out to the statutory minimum wage of \$7.25 per hour; (b) the substantial amount of time she worked each week performing non-tipped duties, but was paid a wage of \$4.25 per hour; and/or (c) the time she spent performing non-tipped job duties unrelated to her tipped occupation, but was paid a wage of \$4.25 per hour.

44. Defendant did not timely pay Plaintiff all wages owed to her after she resigned her employment.

FLSA Collective Action Allegations

45. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

46. Plaintiff brings this FLSA collective action on her own behalf and on behalf of all other similarly situated individuals pursuant to 29 U.S.C. §§ 207 and 216(b). The classes are presently defined as:

- (a) All persons employed by Defendants within the three years preceding the filing of this Complaint who worked as tipped employees and whose wages plus actual tips received did not add up to minimum wage in at least one or more statutory workweeks (the “Insufficient Tip Credit Class”).
- (b) All persons employed by Defendants within the three years preceding the filing of this Complaint who worked as tipped employees and (a) were required to perform non-tipped duties that were unrelated to their tipped occupation and were paid less than minimum wage for such work; or (b) worked a substantial amount of time (in excess of 20 percent) each week performing non-tipped duties related to their tipped occupation and were paid less than minimum wage for time spent performing such work (the “Dual Jobs Class”).

47. Plaintiff reserves the right to refine the class definitions in light of discovery and additional investigation.

48. Defendants have engaged in a continuing violation of the FLSA and have violated Plaintiff’s right, and the rights of the individuals she seeks to represent, to minimum wage.

49. This violation was intended by Defendants and was willfully done.

50. Defendants’ actions in violating Plaintiff’s rights, and the rights of the individuals she seeks to represent, to be paid minimum wage, have been intentional and constitute a willful violation of the FLSA.

Class Action Allegations
West Virginia Class

51. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

52. Plaintiff brings this action on her own behalf and on behalf of all other similarly situated individuals pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class is presently defined as:

All persons formerly employed by Defendants in West Virginia at any time five years prior to the filing of this Complaint through class certification who resigned their employment with Defendants and were not paid all wages owed within the time(s) mandated by the Wage Payment and Collection Act (the "WPCA Class").

53. Plaintiff reserves the right to refine the class definition in light of discovery and additional investigation.

54. The putative class is so numerous that joinder of all members is impractical.

55. There are questions of law and fact common to the putative class, which predominate over any questions affecting only individual class members, including, but not limited to:

- a. whether Defendants violated the FLSA by taking a tip credit during weeks when Plaintiff's and the class members' hourly wages plus tips did not add up to minimum wage;
- b. whether Defendants violated the FLSA by taking a tip credit for the substantial number of hours Plaintiff and the class members worked performing non-tipped job duties;
- c. whether Defendants violated the FLSA by taking a tip credit for the hours Plaintiff worked performing non-tipped job duties unrelated to her tipped occupation;
- d. whether Defendants violated FLSA by failing to give notice of the tip credit provisions of FLSA;

- e. whether Defendants failed to pay Plaintiff and the class members all wages owed to them;
- f. whether Plaintiff and class members are entitled to liquidated damages under the WPCA; and
- g. whether Defendants should be enjoined from engaging in such conduct in the future.

56. Plaintiff's claim is typical of those of the putative class and her claim is based on the same legal and factual theories.

57. Plaintiff will fairly and adequately protect the interests of the class.

58. A class action is a superior method for the fair and efficient adjudication of this particular claim and controversy.

59. The interest of putative class members in individually controlling and maintaining the prosecution of separate claims against Defendants is small given the fact that they are unlikely to be aware of their legal rights and the amount of actual damages they are entitled to receive.

60. The management of this class claim is likely to present no particular difficulties.

Count I
FLSA Minimum Wage Violation
(Collective Action Claim – On Behalf Of The Insufficient Tip Credit Class)

61. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

62. At all relevant times, Defendants have been an employer engaged in interstate commerce consistent with 29 U.S.C. §§ 206(a) and 207(a).

63. At all relevant times, Defendants employed the Plaintiff and each member of the collective action class consistent with the terms of the FLSA.

64. At all relevant times, each Defendant has had annual gross revenues in excess of \$500,000.

65. As a result of Defendants' employment practices including, but not limited to, overstating tips or inflating the reported tips of its tipped employees and such employees' hourly wages plus actual tips did not equal the statutory minimum wage rate for at least one or more statutory workweeks, Plaintiff's right, and the rights of the individuals she seeks to represent, to minimum wage have been violated.

66. Defendants are not entitled to take a tip credit on the hourly wages of employees during any statutory workweek in which those employees' hourly wages plus tips do not add up to minimum wage.

67. Defendants are not entitled to take a tip credit if they have not first informed Plaintiff and other similarly situated employees of the FLSA tip credit provisions.

68. Plaintiff and other tipped employees were employees of Defendants within the meaning of the FLSA and as such, were entitled to the minimum wage.

69. Plaintiff and other tipped employees were not exempt from the minimum wage provisions of the FLSA.

70. Defendants failed to pay Plaintiff and other tipped employees minimum wage under the FLSA from time to time when their wages plus tips did not add up to minimum wage.

71. Defendants' violations of the FLSA were willful because they knew, or had reason to know, that the policies or practices challenged in this lawsuit violated the FLSA.

Count II
FLSA Minimum Wage Violation
(Collective Action Claim – On Behalf Of The Dual Jobs Class)

72. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

73. At all relevant times, Defendants have been an employer engaged in interstate commerce consistent with 29 U.S.C. §§ 206(a) and 207(a).

74. At all relevant times, Defendants employed the Plaintiff and each member of the collective action class consistent with the terms of the FLSA.

75. At all relevant times, each Defendant has had annual gross revenues in excess of \$500,000.

76. As a result of Defendants' employment practices whereby Defendants paid tipped employees less than minimum wage for non-tipped duties unrelated to their tipped occupation, Plaintiff's right, and the rights of the individuals she seeks to represent, to minimum wage have been violated. Even if related to employees' tipped occupations, Plaintiff and similarly situated employees spent a substantial amount of time each week (in excess of 20 percent) performing non-tipped duties, and Plaintiff's right, and the rights of the individuals she seeks to represent, to minimum wage have been violated.

77. Where employees perform non-tipped duties unrelated to their tipped occupation or for a substantial amount of time each week (in excess of 20 percent), Defendants are not entitled to take a tip credit for the time such employees perform non-tipped duties.

78. Defendants are not entitled to take a tip credit if they have not first informed employees of the FLSA tip credit provisions.

79. Plaintiff and other tipped employees were employees of Defendants within the meaning of the FLSA and as such, were entitled to the minimum wage.

80. Plaintiff and other tipped employees were not exempt from the minimum wage provisions of the FLSA.

81. Defendants failed to pay Plaintiff and other tipped employees minimum wage under the FLSA when they performed non-tipped duties unrelated to their tipped occupation or if related to their tipped occupation, when they performed non-tipped duties for a substantial amount of time each week (in excess of 20 percent).

82. Defendants' violations of the FLSA were willful because they knew, or had reason to know, that the policies or practices challenged in this lawsuit violated the FLSA.

Count III
Violation of West Virginia Wage Payment and Collection Act
For Failure To Pay All Wages Owed
(On Behalf Of The Plaintiff Individually and the WPCA Class)

83. The preceding paragraphs are incorporated by reference as if the same were fully set forth herein.

84. Defendants failed to timely pay Plaintiff and other similarly-situated WPCA Class members all wages owed to them within the time periods mandated by the WPCA for employees pursuant to W. Va. Code § 21-5-4(b).

85. Defendants' actions violated the WPCA, entitling Plaintiff and other similarly-situated class members to the wages due to them, double or treble damages, and attorneys' fees and costs pursuant to W. Va. Code § 21-5-1, *et seq.*

Relief Sought

WHEREFORE, Plaintiff seeks the following relief on her own behalf and on behalf of class members:

- a. an Order designating this action as a collective action and directing the issuance of notice under 29 U.S.C. § 216(b);
- b. an Order requiring Defendants to pay Plaintiff and class members all unpaid minimum wage payments as determined by the Court to be due and owing under the FLSA as well as a sum of liquidated damages in an amount equal to the amount of any unpaid minimum wage payments;
- c. a Declaration that Defendants violated the FLSA;
- d. certification of the WPCA class proposed above under Rule 23(b)(3) of the Federal Rules of Civil Procedure;
- e. an Order requiring Defendants to pay Plaintiff and class members an amount equal to double or triple the amount of minimum wage payments owed as Plaintiff and the class members are entitled to liquidated damages under the WPCA;
- f. an award of attorneys' fees and costs;
- g. an Order enjoining Defendants from engaging in such conduct in the future;
- h. pre- and post-judgment interest; and
- i. any additional relief that the Court deems just and appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES.

Plaintiff,
By Counsel.

/s/Sandra Henson Kinney

Sandra Henson Kinney (WVSB #6329)

BAILEY & GLASSER LLP

209 Capitol Street

Charleston, WV 25301

T: (304) 345-6555

F: (304) 342-1110 facsimile

skinney@baileyglasser.com

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

April D. Hill, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Bailey & Glasser LLP
209 Capitol Street, Charleston, WV 25301
(304) 345-6555

DEFENDANTS

Employee Resource Group, LLC, and
WV Neighborhood Hospitality, LLC

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)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 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 checked="" type="checkbox"/> 1	<input checked="" 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 checked="" 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	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<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
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	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	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	LABOR <input 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	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <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"/> 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	PRIISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	PRIISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	EMPLOYEE RETIREMENT INCOME SECURITY ACT <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	STATE STATUTES <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 checked="" 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

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

- | | | | | | | |
|---|---|--|---|--|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation - Transfer | <input type="checkbox"/> 8 Multidistrict Litigation - Direct File |
|---|---|--|---|--|--|---|

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 USC 216(b)

VI. CAUSE OF ACTION

Brief description of cause:
Minimum wage claim under 29 USC 216(b) and Supplemental State Claim under WV Code 21-5-1-*et.seq.*

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

11/30/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/Sandra Henson Kinney

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).

- 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: [Applebee's Franchise Owners Hit with Class Action Over Tip Credits](#)
