

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

LYNDSEY MICHELLE LOYD, On)
Behalf of HERSELF and All Others)
Similarly Situated,)
)
 Plaintiff,)
)
 v.)
)
 JACKS ENTERPRISE, LLC d/b/a)
 JOHNNY’S PIZZA,)
)
 Defendant.)
)
)

COLLECTIVE ACTION

CASE NO. _____

JUDGE _____

JURY DEMAND

COLLECTIVE ACTION COMPLAINT

1. Plaintiff Lyndsey Michelle Loyd (“Named Plaintiff”) brings this collective action on behalf of herself and all others similarly situated against Defendant JACKS Enterprise, LLC d/b/a Johnny’s Pizza (“JACKS”), her employer, to recover unpaid minimum and overtime wages under the Fair Labor Standards Act (“FLSA”).

2. JACKS operates a pizza restaurant chain in the state of Georgia. Named Plaintiff and those similarly situated are servers who worked for JACKS during the applicable statutory period in at least one of its restaurants in Georgia.

3. Named Plaintiff brings her FLSA claims on her own behalf and on behalf of all similarly situated employees of JACKS as a collective action pursuant to 29 U.S.C. § 216(b).

JURISDICTION

4. This Court has jurisdiction over Named Plaintiff’s claims because they are brought pursuant to 29 U.S.C. § 216(b) and because they raise a federal question pursuant to 28 U.S.C. § 1331.

5. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1391 because Defendant resides in this judicial district and because the claims arose in this judicial district.

PARTIES

6. Named Plaintiff Lyndsey Michelle Loyd is a resident of East Dublin, Laurens County, Georgia and was employed by JACKS as a server at its Johnny's Pizza restaurant located in Dublin, Laurens County, Georgia from or around March 2016 until September 2016.

7. Defendant JACKS is a Georgia domestic limited liability company with its principal office located at 1909 Springdale Road, Dublin, Georgia 31021. Defendant's registered agent is John C. Hall, Jr., CPA, 307 W. Gaines Street, Dublin, Georgia 31021.

8. Throughout the statutory period covered by this action, JACKS employed individuals who are engaged in interstate commerce and/or in the production of goods for interstate commerce or are engaged in handling, receiving, selling, or otherwise working on goods or materials that were moved in or produced for interstate commerce. As such, JACKS is and was covered by the FLSA.

FACTS

9. Named Plaintiff and those she seeks to represent in this action were employed as servers for JACKS in Georgia.

10. During the three-year period relevant to this lawsuit, JACKS has employed dozens of servers at its restaurants.

11. From approximately March 2016 until September 2016, Named Plaintiff was employed by JACKS as a server at its location in Dublin, Georgia.

12. Throughout the applicable statutory period, JACKS paid Named Plaintiff and its other servers an hourly wage below \$7.25. For example, JACKS paid Named Plaintiff an hourly

wage between \$2.15 and \$2.30.

13. In seeking to comply with the FLSA mandate that employees receive a minimum wage of \$7.25 per hour, JACKS purported to utilize a “tip credit” for each hour worked by Named Plaintiff and other servers at JACKS’ Georgia restaurants. *See* 29 U.S.C. § 203(m).

14. JACKS required Named Plaintiff and other servers to contribute a portion of their tips to its employees who worked in the position of Dishwasher.

15. JACKS’ Dishwashers do not receive tips directly from customers because Dishwashers generally work in or near the kitchen area and do not interact with restaurant customers. A Dishwasher’s job primarily consists of cleaning and washing cooking utensils as well as cleaning and washing silverware and dishes used by restaurant patrons.

16. JACKS also had a policy and practice of requiring Named Plaintiff and its other servers to spend more than 20% of their shift performing non-tip-producing work, including, but not limited to, rolling silverware, dusting and cleaning the restaurant, sweeping, mopping, stocking the refrigerator, chopping vegetables, stocking and maintaining the salad bar, preparing salad, stocking the soft drink machine, and changing out beer kegs.

17. When the tips received by Plaintiff and similarly situated servers did not cover the difference between the lower tipped hourly rate they received and the \$7.25 per hour statutory minimum wage, JACKS did not make any payments to Plaintiff and similarly situated servers to ensure that they were paid the FLSA-mandated minimum wage.

COLLECTIVE ALLEGATIONS

18. Named Plaintiff brings her FLSA claim pursuant to 29 U.S.C. § 216(b) on behalf of all individuals who, during any time within the past three years, were employed as servers at any JACKS restaurant in Georgia.

19. Named Plaintiff's FLSA claims should proceed as a collective action because Named Plaintiff and other similarly situated servers, having worked pursuant to the common policies described herein, are "similarly situated" as that term is defined in 29 U.S.C. § 216(b) and the associated decisional law.

CAUSES OF ACTION

COUNT I

Violation of the Minimum Wage Requirements of the FLSA

20. All previous paragraphs are incorporated as though fully set forth herein.

21. The FLSA entitles employees to a minimum hourly wage of \$7.25.

22. While restaurants may utilize a "tip credit" to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not "customarily and regularly receive tips." *See* 29 U.S.C. § 203(m). Federal courts interpreting this statutory language hold that restaurants lose their right to utilize a "tip credit" when tips are shared with employees—such as JACKS' Dishwashers—whose direct customer interaction is minimal. Federal courts interpreting this statutory language also hold that restaurants lose their right to utilize a "tip credit" when their tipped employees—such as JACKS' servers—spend more than 20% of their shift performing non-tip-producing work.

23. By requiring Named Plaintiff and other servers to share tips with Dishwashers, JACKS has forfeited its right to utilize the "tip credit" in satisfying its minimum wage obligations to Named Plaintiff and other servers. As such, JACKS has violated the FLSA's minimum wage mandate by paying Plaintiff and other servers an hourly wage below \$7.25.

24. By requiring Named Plaintiff and other servers to spend more than 20% of their shift performing non-tip-producing work, JACKS has forfeited its right to utilize the "tip credit"

in satisfying its minimum wage obligations to Named Plaintiff and other servers. As such, JACKS has violated the FLSA's minimum wage mandate by paying Plaintiff and other servers an hourly wage below \$7.25.

25. In violating the FLSA, JACKS has acted willfully and with reckless disregard of clearly applicable FLSA provisions.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff prays for the following relief, on behalf of herself and all others similarly situated:

A. An order permitting this litigation to proceed as a collective action pursuant to 29 U.S.C. § 216(b);

B. Prompt notice of this litigation, pursuant to 29 U.S.C. § 216(b), to all similarly situated workers;

C. A finding that JACKS violated the FLSA;

D. A finding that JACKS' FLSA violations are willful;

E. A judgment against JACKS and in favor of Named Plaintiff and similarly situated workers for compensation for all unpaid and underpaid wages that JACKS failed and refused to pay in violation of the FLSA;

F. Prejudgment interest to the fullest extent permitted under the law;

G. Liquidated damages to the fullest extent permitted under the FLSA;

H. Litigation costs, expenses, and Plaintiff's attorneys' fees to the fullest extent permitted under the FLSA and Federal Rules of Civil Procedure; and

I. Such other and further relief as this Court deems just and proper in equity and under the law.

JURY DEMAND

Named Plaintiff demands a jury as to all claims so triable.

Dated: August 30, 2018

Respectfully submitted,

/s/ Michael J. Moore

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* *Pro Hac Vice* Motion anticipated

Attorneys for Plaintiff

JS 44 (Rev. 08/18)

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

LYNDSEY MICHELLE LOYD, On Behalf of HERSELF and All Others
Similarly Situated

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

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

Michael J. Moore, Pope McGlamry, P.C., 3391 Peachtree Road, NE, Suite 300, Atlanta, GA 30326, (404) 523-7706; and David W. Garrison, Barrett Johnston Martin & Garrison, LLC, 414 Union Street, Suite 900, Nashville, TN 37219, (615) 244-2202

DEFENDANTS

JACKS ENTERPRISE, LLC d/b/a JOHNNY'S PIZZA

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

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

Attorneys (If Known)

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

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

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

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

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

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

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

VI. CAUSE OF ACTION

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

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

VII. REQUESTED IN COMPLAINT:

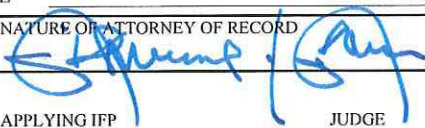
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
08/30/2018

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

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

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Johnny's Pizza Server Sues Over Alleged Wage Violations](#)
