

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

TABATHA WILSON, On Behalf of)	
HERSELF and All Others Similarly)	
Situated,)	
)	COLLECTIVE ACTION
<i>Plaintiff,</i>)	
)	CASE NO. _____
v.)	
)	JUDGE _____
NY PIZZA COMPANY, LLC d/b/a)	
JOHNNY’S PIZZA,)	JURY DEMAND
)	
<i>Defendant.</i>)	
)	

COLLECTIVE ACTION COMPLAINT

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

2. NY Pizza Co. is a franchisee of Johnny’s Pizza Franchise Systems, Inc. Named Plaintiff and those similarly situated are servers who worked for NY Pizza Co. during the applicable statutory period in at least one of its restaurants.

3. Named Plaintiff brings her FLSA claims on her own behalf and on behalf of all similarly situated employees of NY Pizza Co. 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 NY Pizza Co. resides in this judicial district and because the claims arose in this judicial district.

PARTIES

6. Named Plaintiff Tabatha Wilson is a resident of Winder, Barrow County, Georgia and was employed by NY Pizza Co. as a server at its Johnny's Pizza restaurant located in Bethlehem, Barrow County, Georgia from or around December 2017 until April 2018.

7. Defendant NY Pizza Co. is a Georgia corporation with its principal office located at 2999 Shenandoah Valley Road, NE, Atlanta, GA 30345. Defendant's registered agent in Georgia can be served at the same address.

8. Throughout the statutory period covered by this action, NY Pizza Co. 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, NY Pizza Co. 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 NY Pizza Co.

10. During the three-year period relevant to this lawsuit, NY Pizza Co. has employed dozens, if not hundreds, of servers.

11. From approximately December 2017 until April 2018, Named Plaintiff was employed by NY Pizza Co. as a server at its location in Bethlehem, Georgia.

12. NY Pizza Co. paid Named Plaintiff and other servers at its Georgia restaurants an hourly wage below \$7.25. For example, NY Pizza Co. paid Named Plaintiff an hourly wage of \$2.13 for regular hours worked, including overtime hours worked.

13. Named Plaintiff routinely worked between 30 and 50 hours per week, and occasionally worked overtime.

14. In seeking to comply with the FLSA mandate that employees receive a minimum wage of \$7.25 per hour for regular hours worked and \$10.88 for overtime hours worked, NY Pizza Co. purported to utilize a “tip credit” for each hour worked by Named Plaintiff and other servers at NY Pizza Co.’s Georgia restaurants. *See* 29 U.S.C. § 203(m). For example, the “tip credit” for Named Plaintiff was \$5.12 for each hour worked.

15. NY Pizza Co. 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, washing dishes, rolling garlic knots, rolling silverware, stocking the refrigerator, prepping salads, cleaning the restaurant, cleaning the bathrooms, vacuuming, mopping, stocking plates, and folding/constructing pizza boxes. This non-tip-producing work took approximately 50% of the time Named Plaintiff and those similarly situated spent working in the store.

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

COLLECTIVE ALLEGATIONS

17. 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 NY Pizza Co. restaurant.

18. 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 and Overtime Wage Requirements of the FLSA

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

20. The FLSA entitles employees to a minimum hourly wage of \$7.25 and an overtime hourly wage of \$10.88.

21. While restaurants may utilize a "tip credit" to satisfy their minimum wage obligations to servers, they forfeit the right to do so when their tipped employees—such as NY Pizza Co.'s servers—spend more than 20% of their shift performing non-tip-producing work.

22. By requiring Named Plaintiff and other servers to spend more than 20% of their shift performing non-tip-producing work, NY Pizza Co. has forfeited its right to utilize the "tip credit" in satisfying its minimum wage obligations to Named Plaintiff and other servers. As such, NY Pizza Co. has violated the FLSA's minimum and overtime wage mandates by paying Plaintiff and other servers an hourly wage below \$7.25 for regular hours worked and below \$10.88 for overtime hours worked.

23. In violating the FLSA, NY Pizza Co. 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 NY Pizza Co. violated the FLSA;
- D. A finding that NY Pizza Co.'s FLSA violations are willful;
- E. A judgment against NY Pizza Co. and in favor of Named Plaintiff and similarly situated workers for compensation for all unpaid and underpaid wages that NY Pizza Co. 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

MICHAEL J. MOORE (GA Bar No. 520109)

AIMEE J. HALL (GA Bar No. 318048)

POPE MCGLAMRY, KILPATRICK, MORRISON &
NORWOOD, P.C.

3391 Peachtree Road, NE, Suite 300

P.O. Box 191625 (31119-1625)

Atlanta, GA 30326
Telephone: (404) 523-7706
michaelmoore@pmkm.com
aimeehall@pmkm.com
efile@pmkm.com

DAVID W. GARRISON (No. 24968)*
JOSHUA A. FRANK (No. 33294)*
BARRETT JOHNSTON MARTIN & GARRISON, LLC
Bank of America Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Telephone: (615) 244-2202
Facsimile: (615) 252-3798
dgarrison@barrettjohnston.com
jfrank@barrettjohnston.com

** Pro Hac Vice Motion anticipated*

Attorneys for Plaintiff

JS44 (Rev. 6/2017 NDGA)

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p>I. (a) PLAINTIFF(S) TABATHA WILSON, On Behalf of HERSELF and All Others Similarly Situated</p>	<p>DEFENDANT(S) NY PIZZA COMPANY, LLC d/b/a JOHNNY'S PIZZA</p>
<p>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Barrow</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p><small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small></p>
<p>(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)</p> <p>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</p>	<p>ATTORNEYS (IF KNOWN)</p>

<p>II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)</p> <p><input type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF <input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT <input checked="" type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY) <input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)</p> <table style="width:100%; border: none;"> <tr> <td style="text-align: center;"><small>PLF</small></td> <td style="text-align: center;"><small>DEF</small></td> <td style="text-align: center;"><small>PLF</small></td> <td style="text-align: center;"><small>DEF</small></td> <td></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td>CITIZEN OF THIS STATE INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td>CITIZEN OF ANOTHER STATE INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td>CITIZEN OR SUBJECT OF A FOREIGN COUNTRY FOREIGN NATION</td> </tr> </table>	<small>PLF</small>	<small>DEF</small>	<small>PLF</small>	<small>DEF</small>		<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 4	<input type="checkbox"/> 4	CITIZEN OF THIS STATE INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 5	<input type="checkbox"/> 5	CITIZEN OF ANOTHER STATE INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 6	<input type="checkbox"/> 6	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY FOREIGN NATION
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IV. 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 District) _____
 6 MULTIDISTRICT LITIGATION - TRANSFER
 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
 8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

29 U.S.C. § 216(b)
 Recovery of unpaid wages under the Fair Labor Standards Act

(IF COMPLEX, CHECK REASON BELOW)

<input type="checkbox"/> 1. Unusually large number of parties.	<input type="checkbox"/> 6. Problems locating or preserving evidence
<input type="checkbox"/> 2. Unusually large number of claims or defenses.	<input type="checkbox"/> 7. Pending parallel investigations or actions by government.
<input type="checkbox"/> 3. Factual issues are exceptionally complex	<input type="checkbox"/> 8. Multiple use of experts.
<input type="checkbox"/> 4. Greater than normal volume of evidence.	<input type="checkbox"/> 9. Need for discovery outside United States boundaries.
<input type="checkbox"/> 5. Extended discovery period is needed.	<input type="checkbox"/> 10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY			
RECEIPT # _____	AMOUNT \$ _____	APPLYING IFP _____	MAG. JUDGE (IFP) _____
JUDGE _____	MAG. JUDGE _____ <i>(If referral)</i>	NATURE OF SUIT _____	CAUSE OF ACTION _____

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT
- 835 PATENT-ABBREVIATED NEW DRUG APPLICATIONS (ANDA) - *u/k/a* Hatch-Waxman cases

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____
 JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

SIGNATURE OF ATTORNEY OF RECORD _____

DATE August 30, 2018

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 Seeking to Recover Allegedly Unpaid Minimum, OT Wages](#)
