

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at ASHLAND

PAUL DIAMOND; ANNE DIAMOND;)
REBEKAH DIAMOND; and)
PAUL DIAMOND as legal guardian)
of SHANNON DIAMOND, a legally)
disabled adult, individually; and on)
behalf of all those similarly situated,)

Plaintiffs)

vs.)

WAFFLE HOUSE, INC.;)
RIVERSIDE RESTAURANT GROUP, LLC;)
WH CAPITAL, LLC; and)
UNKNOWN DEFENDANT(S))

Defendants.)
_____)

Civil Action No. _____

Judge: _____

**NOTICE OF REMOVAL BY DEFENDANTS, WAFFLE HOUSE, INC.,
RIVERSIDE RESTAURANTS, LLC AND WH CAPITAL, LLC**

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF KENTUCKY:**

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453 Defendants, Waffle House, Inc., Riverside Restaurants, LLC, and WH Capital, LLC, (hereinafter collectively referred to as “Removing Defendants”), by and through counsel, hereby remove the above-captioned action from the Circuit Court of Boyd County, Kentucky to the United States District Court, Eastern

District of Kentucky, fully reserving any and all of its rights, defenses and objections. Removal jurisdiction exists here pursuant to the federal diversity statute as amended by the Class Action Fairness Act (“CAFA”), 28 U.S.C. 1332(d). As explained herein, the above-captioned action meets the requirements for federal subject-matter jurisdiction under 28 U.S.C. § 1332(d).

Pursuant to 28 U.S.C. § 1446, Removing Defendants respectfully submit the following “short and plain statement of the grounds of removal.”

I. STATEMENT OF COMMENCEMENT OF THIS ACTION

1. The state court action, Civil Action No. 18-CI-00243, was filed in Boyd Circuit Court on March 20, 2018 and was served, via personal service, on the Removing Defendants, on March 27, 2018. The Complaint alleges a class action pursuant to Rule 23 of the Kentucky Rules of Civil Procedure against the Removing Defendants and against Unknown Defendants based on the alleged exposure by the named and putative plaintiffs to a Hepatitis A infected employee at Waffle House restaurants #1808 and #1657, both located in the jurisdictional boundaries of Boyd County, Kentucky. *See* Complaint, generally.

2. The Complaint alleges that class members are defined as patrons dining at and/or consuming food prepared, served and/or sold at Waffle House restaurants #1808 and #1657 from February 12, 2018 to February 28, 2018. *See* Complaint, ¶ 11. Plaintiffs further allege their belief that the number of potential class members exceeds 1,000 and comprises patrons who: (1) exposed to the Hepatitis A infected employee at Waffle House restaurants #1808 and #1657; (2)

consumed food and drink that was manufactured, served or sold by Removing Defendants at Waffle House restaurants #1808 and #1657 from February 12, 2018 to February 28, 2018; and/or (3) who obtained an Hepatitis A vaccination, an IG shot or Hepatitis A blood test because of their Hepatitis A exposure. *See* Complaint, ¶¶ 22 and 24. Plaintiffs, named and putative, assert claims of strict liability (*see* Complaint, Count I), negligence and negligence *per se* (*see* Complaint, Count II). Each plaintiff, named and putative, is asserting damages for: (1) wage loss and loss of earning capacity; (2) past and future medical and medical -related expenses; (3) travel and travel -related expenses; (4) past, present and future physical and mental pain and suffering; (5) physical injury; (6) miscellaneous inconvenience and expense, (7) punitive damages; and (8) any and all other ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances. *See* Complaint, ¶ 57.

3. As shown below, pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), this Court now has jurisdiction over Plaintiffs’ state court class action complaint because (i) the Plaintiffs’ complaint alleges a class action under Rule 23 of the Kentucky Rules of Civil Procedure, thus meeting the definition of a class action under CAFA; 28 U.S.C. § 1332(d)(1)(B); (ii) there are over 1,000 alleged putative class members; 28 U.S.C. §§ 1332(d)(5)(B); (iii) at least one plaintiff “ is a citizen of a State different from [at least one] defendant”; 28 U.S.C. §§ 1332(d)(2) (iv) “ the matter in controversy” — the amount put at stake by all the plaintiffs’

claims— “ exceeds the sum or value of \$5,000,000, exclusive of interest and costs.”
Id.

4. By removing this action to this Court, Removing Defendants do not admit any of the facts alleged in the state court Complaint, or waive any defenses, objections, or motions available to them under state or federal law. Removing Defendants reserve the right to challenge the adequacy and viability of the state court Complaints in all respects. *See* 5 Charles Alan Wright Arthur R. Miller, *Federal Practice and Procedure* § 1395 (3d ed. 1998) (“A party who removes an action from a state to a federal court does not thereby waive any of [its] Federal Rule 12(b) defenses or objections.”).

II. THE PROCEDURAL REQUIREMENTS FOR REMOVAL ARE SATISFIED

5. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), in that this Notice of Removal is being filed within thirty (30) days after first receipt by Removing Defendants through service, of plaintiffs’ class action complaint, which was served via personal service on March 27, 2018. Thus, this Notice of Removal is filed within (30) days of service and is timely.

6. Pursuant to 28 U.S.C. § 1446(a), copies of pleadings and other relevant documents on file with the Circuit Court of Boyd County, Kentucky, are attached hereto as Exhibit A. Additionally, the Docket Sheet from the State Court Action is attached hereto as Exhibit B.

7. In accordance with 28 U.S.C. § 1446(d), contemporaneous with the filing of this Notice, Defendant has given written notice to Plaintiff and the Circuit Court of Boyd County, Kentucky of the removal.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(a), 1391(b)(1)-(2), and 1441(a) because Plaintiffs filed their complaints in the Circuit Court of Boyd County, Kentucky. The Circuit Court is located within the district of the United States District Court for the Eastern District of Kentucky. This District thus represents the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

9. Consent of all defendants is not required. 28 U.S.C. § 1453(b).

10. Removing Defendants reserve the right to amend or supplement this Notice of Removal.

III. REMOVAL IS PROPER BECAUSE THIS COURT HAS JURISDICTION OVER THE MATTER PURSUANT TO 28 U.S.C. §§ 1332, 1441 AND 1453.

11. Removal is proper under CAFA, and in particular 28 U.S.C. §§ 1332(d) and 1453, because (i) the Plaintiffs’ complaint alleges a class action under Rule 23 of the Kentucky Rules of Civil Procedure, thus meeting the definition of a class action under CAFA; 28 U.S.C. § 1332(d)(1)(B); (ii) there are over 1,000 alleged putative class members; 28 U.S.C. §§ 1332(d)(5)(B); (iii) at least one plaintiff “is a citizen of a State different from [at least one] defendant”; 28 U.S.C. §§ 1332(d)(2) (iv) “the matter in controversy” — the amount put at stake by all the plaintiffs’ claims— “exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” *Id.*

12. As the United States Supreme Court has explained, “no antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

A. Plaintiffs Allege a “Class Action” Pursuant to 28 U.S.C. § 1332(d)(1)(B)

CAFA defines a class action as, “the term “class action” means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action” 28 U.S.C.A. § 1332(d)(1)(B). Plaintiffs allege a class action pursuant to Rule 23 of the Kentucky Rules of Civil Procedure. *See* Complaint, ¶ 18.

B. Plaintiffs Allege a Putative Class Size of Over 1,000 Individuals

13. CAFA provides for original jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) when the putative class size reaches one-hundred (100) or above. 28 U.S.C. § 1332(d)(5)(B). Plaintiffs allege in Paragraph 24 that the potential number of class members may exceed 1,000. *See* Complaint, ¶24. Assuming Plaintiffs allegations are asserted in good faith and based upon evidentiary support or likely to have evidentiary support after opportunity for investigation or discovery, Plaintiffs allege a sufficient putative class size to fall within CAFA. *See Kendrick v. Standard Fire Ins. Co.*, No. CIV.A.06 141 DLB, 2007 WL 1035018, at *2 (E.D. Ky. Mar. 31, 2007); *See, also Sabrina Roppo v. Travelers Commercial Ins. Co.*, 869 F.3d 568, 581 (7th Cir. 2017).

C. Waffle House, Inc. and WH Capital, LLC Are Diverse from Named Plaintiffs.

14. Minimal diversity exists under 28 U.S.C. § 1332 between named Plaintiffs and Defendants, Waffle House, Inc., and WH Capital, LLC. For CAFA jurisdiction to apply, at least one “member of a class of plaintiffs [must be] a citizen of a State different from [at least one] defendant.” 28 U.S.C. § 1332(d)(2)(A). “For purposes of [CAFA], an unincorporated association,” such as a limited liability company, “shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10).

15. Under these criteria, Waffle House, Inc., and WH Capital, LLC, are not citizens of the same state as named Plaintiffs. Paul Diamond, Anne Diamond, Rebekah Diamond and Shannon Diamond are all alleged to be citizens of the Commonwealth of Kentucky and specifically residing in Jessamine County, Kentucky. *See* Complaint, ¶¶ 2-5. By contrast, Waffle House, Inc., and WH Capital, LLC, are citizens of the States other than Kentucky, specifically, Georgia.

16. Waffle House, Inc., is a corporation organized under the laws of Georgia and Georgia is also where its “principal place of business” is located. As the Supreme Court explained in *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010), the term “principal place of business,” for purposes of federal diversity jurisdiction, refers to the corporation’s “nerve center” that is, “where the corporation’s high level officers direct, control, and coordinate the corporation’s activities.” The Court noted that, “in practice[,]” this nerve center will “normally be the place where the

corporation maintains its headquarters.” *Id.* at 1192. Under the *Hertz* analysis Waffle House, Inc. has its principal place of business state of Georgia, not Kentucky. It is thus a citizen of Georgia pursuant to 28 U.S.C. 1332(c)(1).

17. WH Capital, LLC, is a limited liability company organized under the laws of Georgia. Georgia is also where its “principal place of business” is located. Under the *Hertz* analysis WH Capital, LLC, has its principal place of business state of Georgia, not Kentucky. It is thus a citizen of Georgia pursuant to 28 U.S.C. 1332(c)(1).

18. The CAFA requirement of at least “minimal diversity” is thus satisfied here.

D. The Amount in Controversy Exceeds \$5,000,000.

19. Under CAFA, “[i]n any class action, the claims of the individual [plaintiffs] shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6). Although the Complaint does not demand monetary relief of a sum certain, the information available to Removing Defendants indicates that the amount put at stake by the Plaintiffs’ claims for monetary relief in the complaint far exceeds \$5,000,000.

20. Under CAFA, Removing Defendants need only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554, 190 L. Ed. 2d 495 (2014). When plaintiffs seek to recover some unspecified amount that is not self-

evidently greater or less than the federal amount-in-controversy requirement, defendant seeking to remove case to federal court satisfies its burden of establishing diversity jurisdiction when it proves that the amount in controversy more likely than not exceeds the jurisdictional minimum. *See Everett v. Verizon Wireless, Inc.*, 460 F.3d 818 (6th Cir. 2006) (overruled on other grounds).

21. Here, the Complaint requests, (1) wage loss and loss of earning capacity; (2) past and future medical and medical -related expenses; (3) travel and travel -related expenses; (4) past, present and future physical and mental pain and suffering; (5) physical injury; (6) miscellaneous inconvenience and expense, (7) punitive damages; and (8) any and all other ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances. *See* Complaint, ¶ 57.

22. Plaintiffs have asserted a class size that may exceed 1,000 individuals. Thus each class member need only assert a plausible claim for \$5,000.00 in damages in order to achieve an aggregated amount in controversy that exceeds the jurisdictional minimum imposed by 28 U.S.C. § 1332(d)(2). It is not only possible, but probable, that the amount each individual class member will seek to recover in economic and non-economic damages will exceed \$5,000. The Court need look no further than the Plaintiffs' Complaint to ascertain a basis for the probability that each class member seeks to recover more than \$5,000 each. Named Plaintiffs have alleged the amount in controversy exceeds \$5,000 minimum necessary to invoke the

jurisdiction of the Boyd Circuit Court.¹ See Complaint, Prayer for Relief, (b). The Kentucky Court of Appeals held in *Lamar v. Office of Sheriff of Daviess Cty.*, 669 S.W.2d 27 (Ky. Ct. App. 1984), that in a class action lawsuit brought pursuant to Rule 23 of the Kentucky Rules of Civil Procedure, that claims may not be aggregated to meet the jurisdictional minimum necessary to satisfy the amount requirements of the Circuit Court.

We specifically hold, therefore, with respect to CR 23, that the sums of the individual claims of the respective parties may not be aggregated in order to meet the jurisdictional amount requirements for an action to be brought in the circuit court and be maintained as a class action where none of the individual claims is equal to or exceeds the statutory jurisdictional amount.

Id. at 31. Thus, at least one of the named Plaintiffs tacitly admits that they seek damages in excess of \$5,000.00. Named Plaintiffs allege that their damages are typical of to the class and its members “because of the essential identicality of the nature and process of treatment; its costs, and physical and emotional consequences amongst the class representatives and the class members.” See Complaint, ¶31. Thus, it is fair for the Court and the Removing Defendants to assume that the amount in controversy per claimant seeks damages in excess of \$5,000.00. Aggregation of such claims among 1,000 claimants as proposed by Plaintiffs, easily exceeds the CAFA’s jurisdictional minimum set forth in 28 U.S.C. § 1332(d)(2).

24. In addition to the putative class member’s economic and non-economic damages aggregating in excess of \$5,000,000.00, plaintiffs have also asserted a claim for punitive damages. “When determining the jurisdictional amount in

¹ Pursuant to KRS 24A.120, Kentucky District Courts have exclusive jurisdiction in civil cases when the amount in controversy does not exceed five thousand dollars (\$5,000).

controversy in diversity cases, punitive damages must be considered ... unless it is apparent to a legal certainty that such cannot be recovered.” *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 572 (6th Cir. 2001) (quotations omitted).

A defendant seeking to remove because of a claim for punitive damages “must affirmatively establish jurisdiction by proving jurisdictional facts that ma[ke] it possible ” that punitive damages are in play. *McPhail*, 529 F.3d at 955. The defendant does not have to prove that the plaintiff is more likely than not to ultimately recover punitive damages, but merely that: (1) state law permits a punitive damages award for the claims in question; and (2) the total award, including compensatory and punitive damages, could exceed \$5,000,000. See *Back Doctors*, 637 F.3d at 830 (explaining that “the question ... is not whether the class is more likely than not to recover punitive damages, but whether [state] law disallows such a recovery”).

Frederick v. Hartford Underwriters Ins. Co., 683 F.3d 1242, 1248 (10th Cir. 2012).

While Removing Defendants deny that Plaintiffs are entitled to punitive damages, the Removing Defendants are unaware of any state or federal statutory law or common law that would preclude Plaintiffs’ from pursuing claims for punitive damages. Accordingly, Plaintiffs’ claims for punitive damages must be factored into determining whether the Plaintiffs’ Complaint satisfies the amount in controversy requirement imposed by CAFA. 28 U.S.C. § 1332(d)(2). Therefore, the Court must consider the Plaintiffs’ claims for compensatory damages and punitive damages. Upon information and believe, aggregation of the named and putative class members compensatory and punitive damages claims satisfies the amount in controversy requirement imposed by CAFA of \$5,000,000.00. 28 U.S.C. § 1332(d)(2).

IV. CONCLUSION

WHEREFORE, Defendants, Waffle House, Inc., WH Capital, LLC, and Riverside Restaurant Group, LLC, respectfully give notice that the above-captioned action, formerly pending in the Circuit Court of Boyd County, Kentucky, is hereby immediately removed to the United States District Court for the Eastern District of Kentucky.

Dated: April 16, 2018

Respectfully submitted,

/s/ Matthew Mains

D.C. Offutt, Jr., Esq. (KY Bar No. 82829)

I. Matthew Mains, Esq. (KY Bar No. 94353)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION at ASHLAND

PAUL DIAMOND; ANNE DIAMOND;)
REBEKAH DIAMOND; and)
PAUL DIAMOND as legal guardian)
of SHANNON DIAMOND, a legally)
disabled adult, individually; and on)
behalf of all those similarly situated,)

Plaintiffs)

vs.)

WAFFLE HOUSE, INC.;)
RIVERSIDE RESTAURANT GROUP, LLC;)
WH CAPITAL, LLC; and)
UNKNOWN DEFENDANT(S))

Defendants.)
_____)

Civil Action No. _____

Judge: _____

CERTIFICATE OF SERVICE

I, D.C. Offutt, Jr., counsel for Defendants, Waffle House, Inc., WH Capital, LLC, and Riverside Restaurant Group, LLC, do hereby certify that I have caused to be served the forgoing, **“Notice of Removal”** on counsel of record, by mailing a true copy thereof via United States Mail, postage pre-paid on this, the 16th day of April, 2018, duly address as follows:

Maria Goff, Esq.
Richard W. Hartsock, Esq.
HUGHES & COLEMAN
1256 Campbell Lane, Suite 201
P. O. Box 10120
Bowling Green, KY 42102

/s/ Matthew Mains
Matthew Mains, Esq. (KY Bar No. 94353)

CIVIL ACTION NO. 18-CI-_____

BOYD CIRCUIT COURT

Electronically Filed

PAUL DIAMOND, ANNE DIAMOND,
REBEKAH DIAMOND, and PAUL DIAMOND,
as legal guardian of SHANNON DIAMOND,
a legally disabled adult, individually and on behalf
of all those similarly situated

PLAINTIFFS

vs.

CLASS ACTION COMPLAINT

WAFFLE HOUSE, INC.

DEFENDANTS

SERVE: Corporation Service Company
421 West Main Street
Frankfort, KY 40601

RIVERSIDE RESTAURANT GROUP, LLC

SERVE: Business Filings Incorporated
306 West Main Street, Suite 512
Frankfort, KY 40601

WH CAPITAL, LLC

SERVE: Corporation Service Company
421 West Main Street
Frankfort, KY 40601

UNKNOWN DEFENDANT(S)

SERVE: Warning Order Attorney

Come now the Plaintiffs, Paul Diamond, Rebekah Diamond, Anne Diamond, and Paul Diamond, as legal guardian for Shannon Diamond, a legally disabled adult, individually and on behalf of all persons similarly situated (referred to collectively as "Plaintiffs"), by counsel, and for their cause of action against the Defendants herein, state as follows:

INTRODUCTION

(1) This is a foodborne pathogen/illness class action case predicated upon patrons exposed to Hepatitis A while dining at either of the Waffle House restaurant locations in Boyd County, Kentucky, (Waffle House #1808 located at 12679 US Route 60, Ashland, Kentucky, 41102 and Waffle House #1657 located at 10606 US Route 23, Catlettsburg, Kentucky, 41129) between the dates of February 12, 2018, and February 28, 2018. A Waffle House food worker infected with Hepatitis A (hereinafter "HAV") worked at each of these Boyd County, Kentucky, locations between February 12 and February 28, 2018. All patrons dining at the Boyd County, Kentucky, Waffle Houses, between February 21 and February 28, 2018 were exposed to HAV. All named Plaintiffs dined at one of the affected Boyd County Waffle Houses between February 12, 2018, and February 28, 2018, and were exposed to HAV. Plaintiffs bring this cause of action on behalf of themselves and all other similarly situated individuals dining at and/or consuming food prepared, served and/or sold by Waffle House #1657 and/or Waffle House #1808 between February 12, 2018, and February 28, 2018.

PARTIES

(2) Plaintiff, Paul Diamond, at all times material to this action, was a resident of Jessamine County, Kentucky. Plaintiff dined at one of the affected Boyd County Waffle Houses between February 12, 2018, and February 28, 2018, and was exposed to HAV.

(3) Plaintiff, Rebekah Diamond, at all times material to this action, was a resident of Jessamine County, Kentucky. Plaintiff dined at one of the affected Boyd County Waffle Houses between February 12, 2018, and February 28, 2018, and was exposed to HAV.

(4) Plaintiff, Anne Diamond, at all times material to this action, was a resident of Jessamine County, Kentucky. Plaintiff dined at one of the affected Boyd County Waffle Houses between February 12, 2018, and February 28, 2018, and was exposed to HAV.

(5) Plaintiff, Paul Diamond, is the legal guardian of Shannon Diamond, a legally disabled adult. Paul Diamond was appointed as full guardian and conservator of Shannon Diamond by the Lawrence District Court on April 22, 2016. An Affidavit compliant with KRS 387.300 and CR 17.03 is attached hereto and incorporated herewith. At all times material to this action, Shannon was a resident of Jessamine County, Kentucky. Plaintiff dined at one of the affected Boyd County Waffle Houses between February 12, 2018, and February 28, 2018, and was exposed to HAV.

(6) Defendant, Waffle House, Inc., is a Georgia corporation registered as a Kentucky foreign corporation with the Kentucky Secretary of State, and may be served with process by serving a summons and true and accurate copy of the Class Action Complaint to its registered agent for service of process, Corporation Service Company, 421 W. Main Street, Frankfort, KY 40601. Based on information and belief, this Defendant was and is doing business as Waffle House #1657 and Waffle House #1808 in Boyd County, Kentucky and at all times material to this action, was carrying on in the

ordinary course of business of the corporation the manufacture, preparation, service, and sale of food to its stores' customers.

(7) Defendant, Riverside Restaurant Group, LLC, is a Kentucky limited liability company and may be served with process by serving a summons and true and accurate copy of the Class Action Complaint to its registered agent for service of process, Business Filings Incorporated, 306 W. Main Street, Suite 512, Frankfort, KY 40601. Based on information and belief, this Defendant was and is doing business as Waffle House #1657 and Waffle House #1808 in Boyd County, Kentucky and at all times material to this action, was carrying on in the ordinary course of business of the company the manufacture, preparation, service, and sale of food to its stores' customers.

(8) Defendant, WH Capital, LLC, is a Georgia limited liability company registered as a Kentucky foreign limited liability company with the Kentucky Secretary of State, and may be served with process by serving a summons and true and accurate copy of the Class Action Complaint to its registered agent for service of process, Corporation Service Company, 421 W. Main Street, Frankfort, KY 40601. Based on information and belief, this Defendant was and is doing business as Waffle House #1657 and Waffle House #1808 in Boyd County, Kentucky and at all times material to this action, was carrying on in the ordinary course of business of the company the manufacture, preparation, service, and sale of food to its stores' customers.

(9) The Unknown Defendant(s) is the HAV infected employee(s) who worked at either or both Waffle House #1657 and Waffle House #1808 between February 12, 2018 and February 28, 2018, serving food, preparing food or otherwise coming into

contact with food, silverware, and other items used by the patrons of the two restaurants. The Unknown Defendant(s) is being served in this case via warning order attorney pursuant to motion and certificate filed coextensive with this Complaint.

(10) Upon information and belief, at all times pertinent hereto, the Unknown Defendant(s) was the agent, servant and/or employee of the Defendants, Waffle House, Inc., Riverside Restaurant Group, LLC, and/or WH Capital, LLC, and was acting within the course and scope of said agency, servitude and/or employment.

(11) Class members are defined as all patrons dining at and/or consuming food prepared, served and/or sold by Waffle House #1657 and/or Waffle House #1808 between February 12, 2018, and February 28, 2018.

JURISDICTION AND VENUE

(12) Jurisdiction is proper as Defendants at all times material to this action were doing business in and the events giving rise to this litigation took place in Boyd County, Kentucky.

(13) Venue is proper as Defendants transacted business in, maintained a place of business in and the events giving rise to this cause of action took place in Boyd County, Kentucky.

NATURE OF THE ACTION

(14) A food service employee working for one or more of the Defendants at Waffle House #1657 and Waffle House #1808 tested positive for HAV.

(15) The HAV infected employee worked at either or both Waffle House #1657 and Waffle House #1808 between February 12, 2018 and February 28, 2018, serving food, preparing food or otherwise coming into contact with food, silverware, and other

items used by the patrons of the two restaurants, thereby exposing patrons to HAV and creating a risk that food and drink sold at the restaurants was contaminated with HAV, making all such food and drink sold during this time period adulterated and unsafe for consumption.

(16) On March 6, 2018, the Ashland-Boyd County Department of Health issued a Public Health Alert after being notified of the HAV infected employee.

(17) Consistent with CDC recommendations and the recommendations made by the public health officials responding to the subject outbreak, persons exposed to HAV by patronizing and/or dining at Waffle House #1657 and Waffle House #1808 between February 12, 2018, and February 28, 2018, were told that post-exposure treatment is recommended for all exposed-individuals if such treatment can be administered within two (2) weeks of the date of exposure, which consists of the administration by injection of an HAV vaccine.

CLASS ACTION ALLEGATIONS

(18) This is a class action lawsuit brought pursuant to Rule 23 of the Kentucky Rules of Civil Procedure on behalf of all patrons dining at and/or consuming food prepared by Waffle House #1657 and Waffle House #1808 between February 12, 2018, and February 28, 2018.

(19) Putative class members were exposed to HAV at Defendants' restaurants by virtue of Defendants' employee working at Defendants' restaurants while infected with HAV between February 12, 2018, and February 28, 2018.

(20) The individual named Plaintiffs' and putative class-members were encouraged by a Public Health Advisory notice on March 6, 2018, to obtain HAV

vaccine within "14 days" after exposure for public health and personal safety reasons because of their HAV-exposure at the Defendants' restaurants.

(21) The March 6, 2018, Public Health Advisory notice stated that "[t]he last date for post-exposure vaccine related to this announcement is March 13, 2018."

(22) This class includes all patrons who were exposed to HAV as a direct and proximate result of: (1) exposure to an HAV infected employee of Defendants at the Defendants' restaurant; (2) consumption of food or drink that was manufactured, served and/or sold by Defendants at Defendants' restaurants between February 12, 2018, and February 28, 2018; and/or (3) who obtained an HAV vaccination, an IG shot, or HAV blood test because of their HAV-exposure.

(23) Defendants' HAV infected food worker employee prepared and/or served food on numerous days and occasions at the two (2) restaurant locations between February 12, 2018, and February 28, 2018.

(24) Although information regarding the precise class size is currently unknown and within the exclusive control of Defendants and/or the applicable state and regional health departments and districts, Plaintiffs believe that the number of potential class members may exceed 1,000.

(25) Defendants' food, prepared and/or served by an employee infected with HAV and that was adulterated, unsafe, and defective as a result, was distributed and sold in high volume between February 12, 2018, and February 28, 2018, to an uncertain number of guests and patrons, making this class so numerous that joinder of all members in this case is impracticable.

(26) There are questions of law and fact common to the Class that predominate over any questions affecting individual Class Members including, but not limited to, the following:

- (a) Whether food prepared and/or served by food service employee infected with HAV is adulterated, unsafe to eat, defective, or otherwise prohibited from sale and distribution under the laws of Kentucky;
- (b) Whether Defendants are strictly liable for the sale of food prepared by or with a food service employee infected with HAV;
- (c) Whether Defendants were negligent in allowing one or more of its employees to work while infected with HAV;
- (d) Whether Defendants were negligent in not requiring its food-service employees to obtain HAV immunizations;
- (e) Whether Defendants were negligent in failing to properly supervise, train, and monitor its employees who were engaged in the manufacture, preparation, and delivery of the food product that Defendants served and/or sold to their patrons;
- (f) Whether Defendants were negligent in failing to notify its patrons in a timely manner that one or more of its employees worked while infected with HAV;
- (g) Whether Defendants breached their duty to prevent the exposure of and/or contamination of food, drink, and the premises at their restaurants with HAV;
- (h) Whether Defendants breached their duty to Plaintiffs and putative Class members to manufacture and serve a product that was reasonably safe in construction, that did not materially deviate from applicable design specifications, and that did not deviate materially from identical units in Defendants' product line;
- (i) Whether Defendant manufactured, served, distributed, and/or sold a food product that was adulterated, not fit for human consumption, in a defective condition, unreasonably dangerous to the Plaintiffs and putative Class members, and not reasonably safe as designed, manufactured, served and/or sold;

- (j) Whether Defendants breached their duty to exercise reasonable care in the preparation and sale of food products;
 - (k) Whether Defendants breached their duty to Plaintiffs and putative Class Members to promulgate, enforce and abide by work rules, protocols and policies regarding ill employees involved in the handling, preparation, service, and sale of food to the public; and
 - (l) Whether Defendants are liable for damages to all potentially exposed persons.
- (27) The answer to each of these respective questions in ¶ 26 will generate a common answer capable of resolving class-wide liability in one stroke.
- (28) The common questions predominate over any individualized issues and/or questions affecting only individual members.
- (29) The claims of the individually named Plaintiffs are typical of the claims of the proposed or putative class, each of whom meet the class definition as set forth above.
- (30) Plaintiffs and all members of the putative class sustained injuries and damages arising out of and caused by Defendants' common course of conduct and/or same actions and/or omissions.
- (31) The damages and relief sought by the representative parties are also typical to the class and its members because of the essential identity of the nature and process of treatment, its costs, and physical and emotional consequences amongst the class representatives and the class members.
- (32) The named representatives have common interests with the members of the class, will vigorously prosecute the interests of the class through qualified counsel, and does not have identifiable conflicts with any other potential class member and,

thus, the named representative will fairly and adequately represent and protect the interests of the whole class.

(33) Plaintiffs have retained competent counsel that are experienced in class action litigation and are experienced trial attorneys.

SUPERIORITY OF CLASS ACTION

(34) Class action treatment will allow those similarly situated person to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

(35) Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

(36) Because such common questions predominate over any individualized issues and/or questions affecting only individualized members, class resolution is superior to other methods for fair and efficient adjudication.

COUNT I: STRICT PRODUCT LIABILITY

(37) Defendants are the owners and/or operators of the retail food establishment that, during the exposure periods, manufactured and sold to its customers, food and drink prepared by an employee infected with HAV, and food and drink prepared within the same premises of the infected employee using equipment, tools, and food-contact surfaces that the infected employee had used, touched, or could have otherwise touched and contaminated, all in violation of food safety regulations. See Kentucky Revised Statute § 217.290.

(38) Defendants are the owners and/or operators of the retail food establishment that manufactured, served and sold its customers food that was prepared

Presiding Judge: HON. JOHN F. VINCENT (632379)

COM : 000010 of 000015

and/or served by an HAV-infected employee, and which was adulterated, unsafe, and in a defective condition unreasonably dangerous to the user or consumer as a result.

(39) Defendants are the servers and sellers of the food product that injured Plaintiffs and the putative class members under the Kentucky Revised Statutes Chapter 217, and similar applicable statutes.

(40) The contaminated food product that Defendants prepared, served and/or sold and that Plaintiffs and putative class members consumed, was a product within the meaning of Kentucky Revised Statutes Chapter 217 and similar statutes.

(41) Defendants, at all times material to this action, have been engaged in the business of selling food products to persons such as Plaintiffs and putative class members.

(42) The food product that Defendants manufactured, served and/or sold to the Plaintiffs and putative class members as consumers, was in a defective condition and unreasonably dangerous to Plaintiffs and putative class members at the time that it left Defendants' hands because it was prepared and/or served by an HAV-infected employee and, therefore, was adulterated, unsafe, and defective.

(43) The food that Defendants manufactured, served and/or sold and that was later consumed by the Plaintiffs and putative class members was adulterated, not reasonably safe in construction, not fit for human consumption, and lacked adequate warnings.

(44) Defendants are liable to Plaintiffs and its putative class members for the harm proximately caused to the Plaintiffs by their manufacture, service and sale of HAV-contaminated food that was adulterated, unsafe, and defective as a result.

COUNT II: NEGLIGENCE AND NEGLIGENCE PER SE

(45) Defendants manufactured, served, distributed and sold a food product that was potentially adulterated, that was not fit for human consumption, and that was not reasonably safe as designed, manufactured, or sold.

(46) Defendants were negligent in manufacturing, distributing, and selling a food product that was adulterated with HAV, not fit for human consumption, and not unreasonably dangerous because it was contaminated with HAV.

(47) Defendants have a duty to properly supervise, train, and monitor its employees, or the employees of its agents or subcontractors engaged in the preparation of its food products, to ensure compliance with Defendants' operating standards and to ensure compliance with all applicable health regulations mandated by the Kentucky Department for Public Health and the Kentucky Food, Drug and Cosmetic Act.

(48) Defendants failed to properly supervise, train and monitor its employees engaged in the manufacture, preparation, and delivery of the food product that Defendants sold to its patrons as required by the Kentucky Department for Public Health and the Kentucky Food, Drug and Cosmetic Act.

(49) Defendants owed a duty to Plaintiffs and putative class members to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of its food products.

(50) Defendants breached that duty by their manufacture, distribution, service, storage, labeling, and sale of adulterated, unsafe, and unhealthy food products to Plaintiffs and putative class members.

(51) Defendants owed Plaintiffs and putative class members the duty to exercise reasonable care in the preparation and sale of its food products, as it was reasonably foreseeable that Defendants' manufacture and sale of food products contaminated with HAV would cause injury to and harm all persons potentially exposed to HAV.

(52) Defendants breached that duty and caused Plaintiffs and putative class members injuries by preparing and selling food that was exposed to and/or contaminated with HAV.

(53) Plaintiffs and putative class members, as customers and patrons of Defendants, were Defendants' business invitees and, therefore, are among that class of individualized designed to be protected by the statutory and regulatory provisions pertaining to the manufacture, distribution, service, storage, labeling and sale of food by Defendants.

(54) Defendants were negligent in producing, serving and/or selling a food product exposed to and/or contaminated with HAV and in allowing one or more of their employees infected with HAV to have direct and/or indirect contact with customers and the food to be served to their customers.

(55) Defendants' negligent acts and omissions include, but are not limited to, the following:

- (a) Failure to require that their employees be vaccinated against HAV;
- (b) Failure to prevent one or more employees from working while infected with HAV;
- (c) Failure to notify their patrons and the public in a timely manner that one or more of their employees worked while infected with HAV;

- (d) Failure to prevent the contamination of food, drink, and the premises at their restaurant with HAV; and
- (e) Failure to promulgate, enforce and abide by work rules, protocols and policies regarding ill employees involved in the handling, preparation, service and sale of food to the public.

(56) Defendants breached the aforementioned duties as alleged in the Complaint and the Plaintiffs and putative class members were injured as a direct and proximate result of those breaches.

DAMAGES

(57) The named Plaintiffs and those similarly situated (i.e. those persons who fit the class definition) have suffered general and special damages as the direct and proximate result of the acts and omissions of the Defendants, which damages shall be fully proven at the time of trial. These damages are common among the representative parties and putative class members and include: (a) wage loss and loss of earning capacity, (b) past and future medical and medical-related expenses, (c) travel and travel-related expenses, (d) past, present and future physical and mental pain and suffering, (e) physical injury, (f) miscellaneous inconvenience and expense, (g) punitive damages and (h) any and all other ordinary, incidental, and consequential damages as would be anticipated to arise under the circumstances.

WHEREFORE, Plaintiffs and all those similarly situated respectfully pray the Court for relief as follows:

- (a) That the Court determine that this action may be maintained as a Class action;

- (b) For judgment against Defendants in an amount exceeding the minimum jurisdictional limits of this Court, including punitive damages, together with all available interest at the maximum legal rate;
- (c) For Plaintiffs' costs incurred in pursuit of this matter, including a reasonable attorney's fee; and
- (d) For any and all other relief to which it may appear the Plaintiffs are entitled, including trial by jury.

This 20th day of March, 2018.

HUGHES & COLEMAN
1256 Campbell Lane, Suite 201
P. O. Box 10120
Bowling Green, KY 42102
(270) 782-6003 Exts. 209 and 136
FAX (270) 843-0446
mgoff@hughesandcoleman.com
rhartsock@hughesandcoleman.com

/s/ Mariana Goff
Mariana Goff
Richard W. Hartsock

AOC-E-105 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



CIVIL SUMMONS

Case #: **18-CI-00243**

Court: **CIRCUIT**

County: **BOYD**

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

**TO: CORPORATION SERVICE COMPANY
421 WEST MAIN STREET
FRANKFORT, KY 40601**

Memo: Related party is WAFFLE HOUSE, INC.

The Commonwealth of Kentucky to Defendant:
WAFFLE HOUSE, INC.

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney (s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title

Summons ID: @00000134681,
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL



eFiled

Presiding Judge: HON. JOHN F. VINCENT (632379)

CI: 000001 of 000001

AOC-E-106 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



Case #: 18-CI-00243

Court: CIRCUIT

County: BOYD

CIVIL SUMMONS

Plaintiff, **DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL**, Defendant

**TO: BUSINESS FILINGS INCORPORATED
306 WEST MAIN STREET, SUITE 512
FRANKFORT, KY 40601**

Memo: Related party is RIVERSIDE RESTAURANT GROUP, LLC

The Commonwealth of Kentucky to Defendant:
RIVERSIDE RESTAURANT GROUP, LLC

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Presiding Judge: HON. JOHN F. VINCENT (632379)

CI: 000001 of 000001

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title

Summons ID: @00000134682,
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL



AOC-E-105 Sum Code: CI
Rev. 9-14

Commonwealth of Kentucky
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



Case #: 18-CI-00243
Court: CIRCUIT
County: BOYD

CIVIL SUMMONS

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

TO: CORPORATION SERVICE COMPANY
421 WEST MAIN STREET
FRANKFORT, KY 40601

Memo: Related party is WH CAPITAL, LLC

The Commonwealth of Kentucky to Defendant:
WH CAPITAL, LLC

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title

Summons ID: @00000134683,
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL



eFiled

Presiding Judge: HON. JOHN F. VINCENT (632379)

CI: 000001 of 000001

CIVIL ACTION NO. 18-CI-_____

BOYD CIRCUIT COURT

PAUL DIAMOND, ANNE
DIAMOND, REBEKAH DIAMOND, and
PAUL DIAMOND, as legal guardian of
SHANNON DIAMOND, a legally disabled adult,
individually and on behalf of all those similarly situated

PLAINTIFFS

vs.

AFFIDAVIT OF PAUL DIAMOND

WAFFLE HOUSE, INC.,
RIVERSIDE RESTAURANT GROUP, LLC,
WH CAPITAL, LLC, and
UNKNOWN DEFENDANT(S)

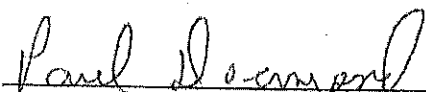
DEFENDANTS

Comes now the affiant, Paul Diamond, and after first being duly sworn, states as follows:

1. I, Paul Diamond, am the brother and legal guardian of Shannon Diamond pursuant to an order from the Lawrence District Court dated April 2016.
2. I reside in Nicholasville, Jessamine County, Kentucky.
3. I am free from any disability that would prohibit me from bringing this action as the legal guardian of Shannon Diamond.
4. This affidavit is prepared and filed for purposes of complying with KRS 387.300 and CR 17.03(1).

FURTHER THE AFFIANT SAYETH NAUGHT.

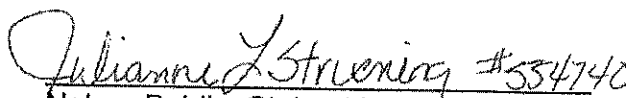
This 10 day of March, 2018.


Paul Diamond

STATE OF KENTUCKY

COUNTY OF Fayette

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 20th day of March, 2018, by Paul Diamond.

 #554740
Notary Public, State at Large
My commission expires: 3-20-18

Presiding Judge: HON. JOHN F. VINCENT (632379)

AFF : 000001 of 000001

CIVIL ACTION NO. 18-CI-_____

BOYD CIRCUIT COURT

PAUL DIAMOND, ANNE
DIAMOND, REBEKAH DIAMOND, and
PAUL DIAMOND, as legal guardian of
SHANNON DIAMOND, a legally disabled adult,
individually and on behalf of all those similarly situated

PLAINTIFFS

vs. **MOTION FOR APPOINTMENT OF WARNING ORDER ATTORNEY
AND AFFIDAVIT IN SUPPORT THEREOF**

WAFFLE HOUSE, INC.,
RIVERSIDE RESTAURANT GROUP, LLC,
WH CAPITAL, LLC, and
UNKNOWN DEFENDANT(S)

DEFENDANTS

Come the Plaintiffs, by counsel, and pursuant to CR 4.05(e), respectfully move this Court for appointment of a Warning Order Attorney to notify the Unknown Defendant(s) described in the Complaint in this action of the pendency of this matter. The Plaintiffs further include the Affidavit of counsel as follows:

AFFIDAVIT

Comes Mariana Goff, after first being duly sworn, and pursuant to CR 4.06, states as follows:

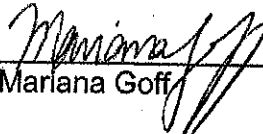
1. The Affiant is counsel for Plaintiffs.
2. The Affiant filed suit in this case to recover damages for Plaintiffs as a result of injuries they sustained on or about February 12, 2018 to February 28, 2018.
3. Affiant has, to the best of her ability, named known Defendants in this action. However, Affiant believes that there may be an additional Defendant(s) unknown to her at this time.

4. Affiant believes the Unknown Defendant(s) is the HAV infected employee(s) who worked at either or both Waffle House #1657 and Waffle House #1808 between February 12, 2018 and February 28, 2018, serving food, preparing food or otherwise coming into contact with food, silverware, and other items used by the patrons of the two restaurants.
5. Affiant believes the Unknown Defendant(s) place of business is Waffle House #1808 located at 12679 US Route 60, Ashland, Kentucky, 41102 and Waffle House #1657 located at 10606 US Route 23, Catlettsburg, Kentucky, 41129.
6. Affiant believes it is appropriate that a Warning Order Attorney be appointed in this case to notify the Unknown Defendant(s) as described in the Complaint of the pendency of this action.

WHEREFORE, Plaintiffs respectfully pray this Court for an order appointing a Warning Order Attorney for the Unknown Defendants

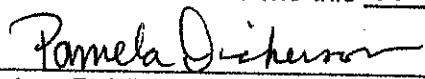
This 20th day of March, 2018.

HUGHES & COLEMAN
 1256 Campbell Lane, Suite 201
 P. O. Box 10120
 Bowling Green, KY 42102
 (270) 782-6003 Ext. 209
 FAX (270) 843-0446
mgoff@hughesandcoleman.com
 KY Bar #92192; TN Bar #31795


 Mariana Goff

COMMONWEALTH OF KENTUCKY
 COUNTY OF WARREN

SUBSCRIBED, SWORN TO, AND ACKNOWLEDGED before me this 20 day of March, 2018, by Mariana Goff.


 Notary Public, State at Large

My commission expires: 11-13-19

Filed

18-CI-00243 03/20/2018

Tracey L. Kelley, Boyd Circuit Clerk


Presiding Judge: HON. JOHN F. VINCENT (632379)

AFW : 000002 of 000002

CLARK, JEREMY L.
2706 LOUISA STREET
P. O. BOX 532
CATLETTSBURG, KY 41129



Generated: 03/21/2018

AOC-110 Doc Code: AWOA Rev. 7-14		Case Number: 18-CI-00243 Court: 1 County: BOYD Division: CIRCUIT
Commonwealth of Kentucky Court of Justice <i>Courts.Ky.gov</i>	APPOINTMENT OF WARNING ORDER ATTORNEY	
Rule CR 4.05; 4.07		

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

UNKNOWN DEFENDANTS

Warning Order Appointed For

Not later than fifty (50) days after the date of this Order, the above-named Defendant is warned to appear and answer the Complaint/Petition of the above-named Plaintiff filed against him/her.

HON. CLARK, JEREMY L.

Phone Number: (606) 739-6774

a regular practicing attorney of this Court, is appointed to correspond with the Defendant, and to inform him/her by mail concerning the pendency and nature of this action, and to file his/her report in the Clerk's office of this Court within fifty (50) days after the date of this Order.

/s/ Tracey L. Kelley, Boyd Circuit Clerk

Date: 03/20/2018

FILED: CI 18-CI-00243 Tracey L. Kelley, Boyd Circuit Clerk



Filed 18-CI-00243 03/20/2018

Tracey L. Kelley, Boyd Circuit Clerk
Page 1 of 1

Presiding Judge: HON. JOHN F. VINCENT (632379)

Commonwealth of Kentucky
Court of Justice Courts.ky.gov
CR 4.02; Cr Official Form 1



Case # 18-CI-00243
Court: CIRCUIT
County: BOYD

CIVIL SUMMONS

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

TO: BUSINESS FILINGS INCORPORATED
306 WEST MAIN STREET, SUITE 512
FRANKFORT, KY 40601

RECEIVED
SHERIFF PAT MELLON
FRANKLIN CO KENTUCKY
2018 MAR 23 A 8:47

Memo: Related party is RIVERSIDE RESTAURANT GROUP, LLC

The Commonwealth of Kentucky to Defendant:
RIVERSIDE RESTAURANT GROUP, LLC

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other Initiating document)
To: CT Corp

Not Served because: _____

Date: 03/27, 20 18

Sgt. R. P. Pennington
Served By
FCSO
Title

Summons ID: @00000134682,
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL



eFiled

Presiding Judge: HON. JOHN F. VINCENT (632379)

CI: 000001 of 000001

ACS: 000001 of 000001

Package: 000002 of 000022

Rev/9-14
Commonwealth of Kentucky
Court of Justice Courts.ky.gov
CR 4.02; Cr Official Form 1



Case #: 18-CI-00243
Court: CIRCUIT
County: BOYD

CIVIL SUMMONS

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

TO: CORPORATION SERVICE COMPANY
421 WEST MAIN STREET
FRANKFORT, KY 40601

RECEIVED
SHERIFF PATRICK
FRANKLIN CO KENTUCKY
2018 MAR 23 A 8:48

package : 000002 of 000022

Memo: Related party is WH CAPITAL, LLC

The Commonwealth of Kentucky to Defendant:
WH CAPITAL, LLC

You are hereby notified that a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Presiding Judge: HON. JOHN F. VINCENT (632379)

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: LINDA SMITH

Not Served because:

Date: 03/27, 20 18

Sgt. A. Perdomo
Served/By
FCSD
Title

Summons ID: @00000134683,
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL

CI: 000001 of 000001

AOS: 000001 of 000001



Tracey L. Kelley, Boyd Circuit Clerk
eFiled

18-CI-00243
Commonwealth of Kentucky
Court of Justice Courts.ky.gov
CR 4.02 Cr Official Form 1



Case #: 18-CI-00243
Court: CIRCUIT
County: BOYD

CIVIL SUMMONS

Plaintiff, DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL, Defendant

TO: CORPORATION SERVICE COMPANY
421 WEST MAIN STREET
FRANKFORT, KY 40601

RECEIVED
SHERIFF PAT MELTON
FRANKLIN CO KENTUCKY
2018 MAR 23 A 8 52

Memo: Related party is WAFFLE HOUSE, INC.

The Commonwealth of Kentucky to Defendant:
WAFFLE HOUSE, INC.

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

/s/ Tracey L. Kelley, Boyd Circuit Clerk
Date: 03/20/2018

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)
To: LINDA Smith

Not Served because: _____

Date: 03/27 2018

Sgt. J. Pennington
Served By
ECSSO
Title

Summons ID: @00000134681
CIRCUIT: 18-CI-00243 Sheriff Service
DIAMOND, PAUL, ET AL VS. WAFFLE HOUSE, INC., ET AL



eFiled

Presiding Judge: HON. JOHN F. VINCENT (632379)

CI: 000001 of 000001

ACS: 000001 of 000001

Package: 000002 of 000022

COMMONWEALTH OF KENTUCKY
BOYD CIRCUIT COURT
DIVISION I
FILE NO. 18-CI-00243

FILED
TRACEY L. KELLEY
APR - 8 2018
BOYD CIRCUIT DISTRICT COURT
BY: [Signature] D.C.

PAUL DIAMOND, ET. AL.

VS.

REPORT OF WARNING ORDER ATTORNEY

WAFFLE HOUSE, INC., ET. AL.

PLAINTIFFS

DEFENDANTS

Comes now the undersigned, Jeremy L. Clark, and respectfully reports unto this honorable Court the following:

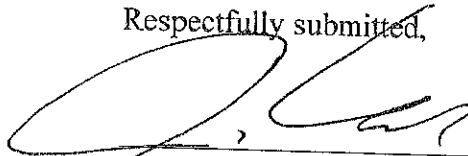
1. He was at the time of this appointment a regular practicing Attorney of the Boyd Circuit Court, and is now a practicing Attorney before the Boyd Circuit Court.
2. On or about March 20, 2018, he was duly appointed by the Court to inform the Defendant, Unknown Defendants c/o Waffle House 1808, by certified mail, concerning the nature and pendency of the above styled action.
3. A true and correct copy of the letter sent to said Defendant on or about April 2, 2018 is filed herewith and marked as "EXHIBIT A", which by this reference is made part of this Report.
4. Per receipt for Certified Mail bearing certified number 7015 3430 0000 6472 7140, said Attorney sent the letter referred to in paragraph 3 above, by Certified Registered Mail, Return Receipt Requested, to the Defendant, Unknown Defendants c/o Waffle House 1808.
5. On April 9, 2018, the certified receipt was returned to this Warning Order Attorney's office by the U. S. Post Office signed by signature illegible. A copy of said receipt is

filed herewith and marked as "EXHIBIT B", which by this reference is made a part of this report.

6. There has been no communication between the Defendant and the undersigned Warning Order Attorney and after careful examination of the record herein, this Warning Order Attorney can make no defense on behalf of this Defendant.

WHEREFORE, the undersigned Warning Order Attorney prays that this be taken as his final Report and he be discharged as Warning Order Attorney with a reasonable fee for his services rendered herein.

Respectfully submitted,

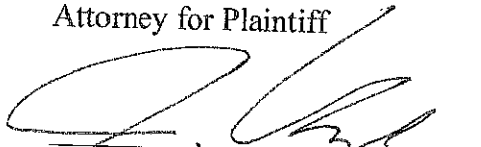


JEREMY L. CLARK
Warning Order Attorney
2706 Louisa St.
Post Office Box 532
Catlettsburg, KY 41129
Tel 606/739-6774
Fax 606/739-9125

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy was mailed, postage pre-paid, this the 10th day of April, 2018 to:

Hon. Mariana Goff
P.O. Box 10120
Bowling Green, KY 42102
Attorney for Plaintiff



JEREMY L. CLARK

JEREMY L. CLARK

ATTORNEY AT LAW

2706 LOUISA STREET • POST OFFICE BOX 532
CATLETTSBURG, KY 41129

TEL (606) 739-6774
FAX (606) 739-8311

April 2, 2018

CERTIFIED MAIL

Unknown Defendants
c/o Waffle House 1808
12679 US 60
Ashland, KY 41102

Re: Paul Diamond, et. al. vs. Waffle House, Inc., et. al.
Boyd Circuit Court
Case No. 18-CI-00243

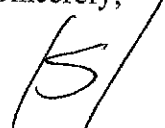
Dear Sir or Madam:

I am an attorney in Catlettsburg, Boyd County, Kentucky. Please be advised that I have been appointed by the Boyd Circuit Court as your Warning Order Attorney, to warn and inform you of the nature and pendency of a Class Action Complaint that has been filed against you by Paul Diamond, et. al. Please find enclosed a copy of the Complaint filed in the Boyd Circuit Court, being Civil Action No. 18-CI-00243.

It is my obligation to inform you that you must file an answer to the Complaint within fifty (50) days of March 16, 2018. If you do not respond within the time allowed, a judgment may be entered for the relief requested in the Complaint.

I have no further responsibility to you with regard to this matter. If you desire to have legal assistance, it is your responsibility to employ legal counsel of your choice with respect to this action.

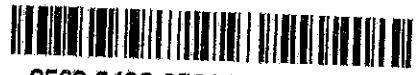
Sincerely,


JEREMY L. CLARK

JLC/cs
Enclosure

Ex. A

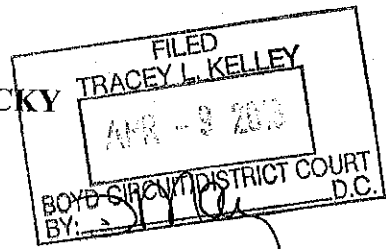
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																	
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <i>[Handwritten Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>																	
<p>1. Article Addressed to:</p> <p>Unknown Defendants c/o Waffle House 1808 12679 US60 Ashland, KY 41101</p>	<p>B. Received by (Printed Name)</p>	<p>C. Date of Delivery</p>																
<p>2. Article Number (Transfer from service label)</p> <p>7015 3430 0000 6472 7140</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																	
<p>PS Form 3811, April 2015 PSN 7530-02-000-9053</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>		<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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9590 9403 0521 5173 1655 13

Ex. B

COMMONWEALTH OF KENTUCKY
BOYD CIRCUIT COURT
DIVISION I
FILE NO. 18-CI-00243



PAUL DIAMOND, ET. AL.

PLAINTIFFS

VS.

REPORT OF WARNING ORDER ATTORNEY

WAFFLE HOUSE, INC., ET. AL.

DEFENDANTS

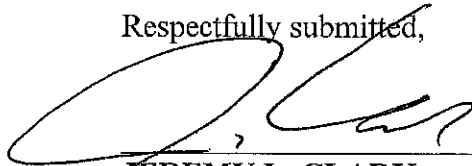
Comes now the undersigned, Jeremy L. Clark, and respectfully reports unto this honorable Court the following:

1. He was at the time of this appointment a regular practicing Attorney of the Boyd Circuit Court, and is now a practicing Attorney before the Boyd Circuit Court.
2. On or about March 20, 2018, he was duly appointed by the Court to inform the Defendant, Unknown Defendants c/o Waffle House 1657, by certified mail, concerning the nature and pendency of the above styled action.
3. A true and correct copy of the letter sent to said Defendant on or about April 2, 2018 is filed herewith and marked as "EXHIBIT A", which by this reference is made part of this Report.
4. Per receipt for Certified Mail bearing certified number 7015 3430 0000 6472 7140, said Attorney sent the letter referred to in paragraph 3 above, by Certified Registered Mail, Return Receipt Requested, to the Defendant, Unknown Defendants c/o Waffle House 1657.
5. On April 9, 2018, the certified receipt was returned to this Warning Order Attorney's office by the U. S. Post Office signed by Kyle Smith. A copy of said receipt is filed herewith and marked as "EXHIBIT B", which by this reference is made a part of this report.

6. There has been no communication between the Defendant and the undersigned Warning Order Attorney and after careful examination of the record herein, this Warning Order Attorney can make no defense on behalf of this Defendant.

WHEREFORE, the undersigned Warning Order Attorney prays that this be taken as his final Report and he be discharged as Warning Order Attorney with a reasonable fee for his services rendered herein.

Respectfully submitted,

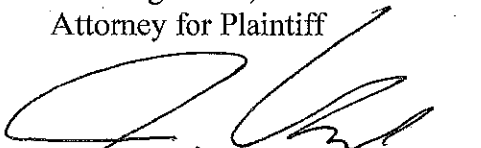


JEREMY L. CLARK
Warning Order Attorney
2706 Louisa St.
Post Office Box 532
Catlettsburg, KY 41129
Tel 606/739-6774
Fax 606/739-9125

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy was mailed, postage pre-paid, this the 10th day of April, 2018 to:

Hon. Mariana Goff
P.O. Box 10120
Bowling Green, KY 42102
Attorney for Plaintiff



JEREMY L. CLARK

JEREMY L. CLARK

ATTORNEY AT LAW

2706 LOUISA STREET • POST OFFICE BOX 532
CATLETTSBURG, KY 41129

TEL (606) 739-6774

FAX (606) 739-8314

April 2, 2018

CERTIFIED MAIL

Unknown Defendants
c/o Waffle House 1657
10606 US Rt. 23
Catlettsburg, KY 41129

Re: Paul Diamond, et. al. vs. Waffle House, Inc., et. al.
Boyd Circuit Court
Case No. 18-CI-00243

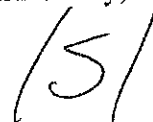
Dear Sir or Madam:

I am an attorney in Catlettsburg, Boyd County, Kentucky. Please be advised that I have been appointed by the Boyd Circuit Court as your Warning Order Attorney, to warn and inform you of the nature and pendency of a Class Action Complaint that has been filed against you by Paul Diamond, et. al. Please find enclosed a copy of the Complaint filed in the Boyd Circuit Court, being Civil Action No. 18-CI-00243.

It is my obligation to inform you that you must file an answer to the Complaint within fifty (50) days of March 16, 2018. If you do not respond within the time allowed, a judgment may be entered for the relief requested in the Complaint.

I have no further responsibility to you with regard to this matter. If you desire to have legal assistance, it is your responsibility to employ legal counsel of your choice with respect to this action.


Sincerely,



JEREMY L. CLARK

JLC/es
Enclosure

EX.A

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY																
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Waffle House</i></p> <p>C. Date of Delivery <i>4/17/18</i></p>																
<p>1. Article Addressed to:</p> <p>Unknown Defendants c/o Waffle House 1657 10606 US Rt. 23 Catlettsburg, KY 41129</p>  <p>9590 9403 0521 5173 1655 20</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>																
<p>2. Article Number (Transfer from service label) 7015 3430 0000 6472 7133</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Return Receipt for Merchandise</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Insured Mail</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</td> <td></td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Return Receipt for Merchandise	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Insured Mail		<input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)	
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PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

Ex.B

Case# 18-CI-00243

County BOYD
 Court CIRCUIT Court
 Opening Judge HON. JOHN F. VINCENT
 Current Judge
 Closing Judge

Page #

03/21/2018	Monetary Event Monetary Event Charges For Services (Jury Demand /12)	\$ 60.00	
03/21/2018	Monetary Event Monetary Event Collected For Others (Franklin Electronic Service)	\$ 120.00	
03/21/2018	Monetary Event Monetary Event Collected For Others (Franklin eService Copies)	\$ 6.30	
03/21/2018	Monetary Event Monetary Event Charges For Services (Copy-Photocopy)	\$ 2.00	
03/27/2018	Summons Served/Recalled - RIVERSIDE RESTAURANT GROUP, LLC PERSONAL SERVICE <i>Successful</i>	@00000134682	
03/27/2018	Summons Served/Recalled - WAFFLE HOUSE, INC. PERSONAL SERVICE <i>Successful</i>	@00000134681	
03/27/2018	Summons Served/Recalled - WH CAPITAL, LLC PERSONAL SERVICE <i>Successful</i>	@00000134683	
04/09/2018	Document Filed REPORT OF WARNING ORDER ATTORNEY WOA <i>JEREMY CLARK FOR UNKNOWN DEF</i>		
04/09/2018	Document Filed REPORT OF WARNING ORDER ATTORNEY WOA <i>JEREMY CLARK FOR UNKNOWN DEF</i>		



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

Paul Diamond; Anne Diamond; Rebekah Diamond; and Paul Diamond as legal guardian of Shannon Diamond, a legally disabled adult, individually; and on behalf of those similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Hughes & Coleman 1265 Campbell Lane, Suite 201 Bowling Green, KY 42102

DEFENDANTS

Waffle House, Inc.; Riverside Restaurant Group, LLC; WH Capital, LLC; and Unknown Defendant(s)

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

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

Attorneys (If Known) Offutt Nord Ashworth, PLLC 949 Third Avenue, Suite 301 Huntington, WV 25701

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

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location. Includes options for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal codes and descriptions.

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): 28 U.S.C. Sections 1332, 1441, 1446, and 1453
Brief description of cause: Meets Requirements for Federal Diversity

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: X Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/16/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew Mains

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: [Class Action Claims Kentucky Waffle House Customers May Have Been Exposed to Hepatitis A](#)
