

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

REBEKAH RICKER, On Behalf of)
HERSELF and All Others Similarly)
Situating,)

Plaintiff,)

v.)

JOHNNY’S PIZZA, INC. and)
JOHNNY’S PIZZA FRANCHISE)
SYSTEMS, INC.,)

Defendants.)

COLLECTIVE ACTION

CASE NO. _____

JUDGE _____

JURY DEMAND

COLLECTIVE ACTION COMPLAINT

1. Plaintiff Rebekah Ricker (“Named Plaintiff”) brings this collective action on behalf of herself and all others similarly situated against Defendants Johnny’s Pizza, Inc. and Johnny’s Pizza Franchise Systems, Inc. (collectively referred to herein as “Johnny’s Pizza”), her employer, to recover unpaid minimum and overtime wages under the Fair Labor Standards Act (“FLSA”).

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

3. Named Plaintiff brings her FLSA claims on her own behalf and on behalf of all similarly situated employees of Johnny’s Pizza 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 Defendants reside in this judicial district and because the claims arose in this judicial district.

PARTIES

6. Named Plaintiff Rebekah Ricker is a resident of Newnan, Coweta County, Georgia and was employed by Johnny's Pizza as a server at its restaurant located in Newnan, Coweta County, Georgia from or around September 2017 until May 2018.

7. Defendant Johnny's Pizza, Inc. is a Georgia corporation with its principal office located at 25 Spyglass Point, Newnan, Georgia, 30263. Defendant Johnny's Pizza, Inc.'s registered agent in Georgia can be served at 3292 Bay View Drive, Jonesboro, Georgia, 30236.

8. Defendant Johnny's Pizza Franchise Systems, Inc. is a Georgia corporation with its principle office located at 25 Spyglass Point, Newnan, Georgia, 30263. Defendant Johnny's Pizza Franchise Systems, Inc.'s registered agent in Georgia can be served at 3292 Bay View Drive, Jonesboro, Georgia, 30236.

9. Throughout the statutory period covered by this action, Johnny's Pizza 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, Johnny's Pizza is and was covered by the FLSA.

FACTS

10. Named Plaintiff and those she seeks to represent in this action were employed as servers for Johnny's Pizza at its restaurants in Georgia.

11. Johnny's Pizza operates nearly fifty (50) restaurants throughout Georgia, including, but not limited to, the following Georgia cities: Acworth, Alpharetta, Athens, Atlanta, Bethlehem, Bonaire, Canton, Carrollton, Cartersville, Columbus, Conyers, Covington, Cumming, Dacula, Dallas, Dawsonville, Douglas, Douglasville, Dublin, Fayetteville, Flowery Branch, Grayson, Hapeville, Hickory Flat, Hiram, Jasper, Kennesaw, LaGrange, Lawrenceville, Lithia Springs, Loganville, Macon, Marietta, McDonough, Newnan, Peachtree City, Powder Springs, Rockmart, Rome, Roswell, Sandy Springs, Smyrna, Snellville, Stockbridge, Suwanee, Villa Rica, West Point, and Woodstock.

12. During the three-year period relevant to this lawsuit, Johnny's Pizza has employed hundreds of servers at its restaurants.

13. From approximately September 2017 until May 2018, Named Plaintiff was employed by Johnny's Pizza as a server at its location in Newnan, Georgia.

14. Johnny's Pizza paid Named Plaintiff and other servers at its Georgia restaurants an hourly wage below \$7.25. For example, Johnny's Pizza paid Named Plaintiff an hourly wage of \$2.50.

15. In seeking to comply with the FLSA mandate that employees receive a minimum wage of \$7.25 per hour, Johnny's Pizza purported to utilize a "tip credit" for each hour worked by Named Plaintiff and other servers at Johnny's Pizza's Georgia restaurants. *See* 29 U.S.C. § 203(m). For example, the "tip credit" for Named Plaintiff was \$4.75 for each hour worked.

16. Johnny's Pizza required Named Plaintiff and other servers to contribute a portion of their tips to Defendants' employees who worked in the position of Dishwashers.

17. Johnny's Pizza's Dishwashers do not receive tips directly from customers because Dishwashers generally work in or near the kitchen area and do not interact with restaurant

customers. A Dishwasher's job primarily consists of cleaning and washing cooking utensils as well as cleaning and washing silverware and dishes used by restaurant patrons.

18. Johnny's Pizza also had a policy and practice of requiring Named Plaintiff and its other servers to spend more than 20% of their shift performing non-tip-producing work, including, but not limited to, rolling silverware, stocking the refrigerator, chopping vegetables, and changing out beer kegs.

COLLECTIVE ALLEGATIONS

19. 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 Johnny's Pizza restaurant in Georgia.

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

CAUSES OF ACTION

COUNT I

Violation of the Minimum Wage Requirements of the FLSA

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

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

23. While restaurants may utilize a "tip credit" to satisfy their minimum wage obligations to servers, they forfeit the right to do so when they require servers to share tips with other restaurant employees who do not "customarily and regularly receive tips." *See* 29 U.S.C. § 203(m). Federal courts interpreting this statutory language hold that restaurants lose their right to utilize a "tip credit" when tips are shared with employees—such as Johnny's Pizza's

Dishwashers—whose direct customer interaction is minimal. Federal courts interpreting this statutory language also hold that restaurants lose their right to utilize a “tip credit” when their tipped employees—such as Johnny’s Pizza’s servers—spend more than 20% of their shift performing non-tip-producing work.

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

25. By requiring Named Plaintiff and other servers to spend more than 20% of their shift performing non-tip-producing work, Johnny’s Pizza has forfeited its right to utilize the “tip credit” in satisfying its minimum wage obligations to Named Plaintiff and other servers. As such, Johnny’s Pizza has violated the FLSA’s minimum wage mandate by paying Plaintiff and other servers an hourly wage below \$7.25.

26. In violating the FLSA, Johnny’s Pizza 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 Defendants violated the FLSA;
- D. A finding that Defendants' FLSA violations are willful;
- E. A judgment against Defendants and in favor of Named Plaintiff and similarly situated workers for compensation for all unpaid and underpaid wages that Defendants 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: June 14, 2018

Respectfully submitted,

/s/ Michael J. Moore

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* *Pro Hac Vice* Motion anticipated

Attorneys for Plaintiff

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

REBEKAH RICKER, On Behalf of Herself and All Others Similarly Situated,

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

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

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

DEFENDANTS

JOHNNY'S PIZZA, INC. and JOHNNY'S PIZZA FRANCHISE SYSTEMS, INC.,

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

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

Attorneys (If Known)

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

- 1 U.S. Government Plaintiff, 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 in US and foreign countries, and incorporation status.

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

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

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, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

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

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 06/14/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael J. Moore

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- 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: [Johnny's Pizza Facing Collective Action Over Alleged Improper Tip Credit, Unpaid Minimum Wages](#)
