

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JAMAAL RUSS, ANESSA  
WALKER, and CHRISTI  
GRANT, Individually and on  
behalf of all others similarly  
situated,

Civil Action File No.

Plaintiffs,

vs.

I & I PIZZA OF ATLANTA,  
INC. d/b/a Sarpino's Pizzeria  
and IHAR DZIATKO,

Defendants.

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**COMPLAINT**

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Plaintiffs Jamaal Russ ("Russ"), Anessa Walker ("Walker") and Christi Grant ("Grant") (collectively "Plaintiffs"), individually and on behalf of all others similarly situated who consent to their inclusion in a collective action, bring this Complaint against Defendant I & I Pizza of Atlanta, Inc. d/b/a Sarpino's Pizzeria ("I & I") and Ihar Dziatko ("Dziatko") (collectively "Defendants"), and show the Court as follows:

## **A. Introduction**

1.

This is an FLSA minimum wage and overtime case. Russ, Walker and Grant are former employees who drove their own automobiles to deliver pizza and other food items to Defendants' customers. Defendants misclassified Plaintiffs as independent contractors and failed to reimburse Plaintiffs for any costs of operating their vehicles during these deliveries. Because Plaintiffs' automobile and mileage costs were substantial, they brought Plaintiffs' actual regular rate below the minimum wage and violated the FLSA's requirement that an employee earn the required minimum wage "free and clear" of any benefits the employee—here the mileage costs—reimburses their employer. In addition, Plaintiffs regularly worked more than forty hours in a given work week and were never paid the required premium for those overtime hours as required by the FLSA.

2.

Plaintiffs ask this Court to certify a class of similarly situated employees, to wit: Employees of I & I who—in the three years prior to the date this action was filed ("the Relevant Time Period") and who consent in writing to their inclusion in a collective action—were not paid the FLSA required overtime premium or whose compensation fell below the required minimum wage because of the automobile or mileage costs incurred by the employees for the benefit of the Defendants.

3.

Russ' Consent to Serve as a Plaintiff Representative in this FLSA Action is filed herewith as Exhibit "A".

4.

Walker's Consent to Serve as a Plaintiff Representative in this FLSA Action is filed herewith as Exhibit "B".

5.

Grant's Consent to Serve as a Plaintiff Representative in this FLSA Action is filed herewith as Exhibit "C".

## **B. Jurisdiction and Venue**

6.

This Court has subject matter jurisdiction over the present action under Article III, § 2 of the United States Constitution, FLSA § 16(b), 29 U.S.C. § 216(b), 28 U.S.C § 1331, because this case arises under the FLSA, a federal statute that affects interstate commerce.

7.

Venue properly lies in the Northern District of Georgia under 28 U.S.C. § 1391 because I & I's principal place of business is located in this judicial district.

## **C. The Parties**

8.

Russ resides in Fulton County, Georgia.

9.

Defendants employed Russ as a delivery driver in and around Atlanta, Georgia from approximately April 2015 until approximately early-May 2016.

10.

During the Relevant Time Period, Defendants compensated Russ for such work through the payment of an hourly wage.

11.

Walker resides in Pulaski County, Georgia.

12.

Defendants employed Walker as a delivery driver in and around Atlanta, Georgia from approximately mid-September 2015 through May 2016.

13.

Walker also performed additional duties for Defendants as directed from approximately September 2015 through May 2016 including, but not limited to, folding pizza boxes, washing dishes, taking orders from customers, stocking coolers, and prep work.

14.

During the Relevant Time Period, Defendants compensated Walker for such work through the payment of an hourly wage.

15.

Grant resides in DeKalb County, Georgia.

16.

Defendants employed Grant as a delivery driver in and around Atlanta, Georgia from approximately November 26, 2014 through March 18, 2015.

17.

Defendants employed Grant as a delivery driver in and around Atlanta, Georgia from approximately September 10, 2015 through May 2016.

18.

At all times material hereto, Defendants compensated Grant for her work as a delivery driver through the payment of an hourly wage.

19.

I & I is a corporation organized under the laws of the State of Georgia

20.

I & I can be served via its registered agent Ihar Dziatko at 1156 Ponce De Leon, Atlanta, Georgia 30366.

21.

I & I is subject to the personal jurisdiction of this Court.

22.

Dziatko is a resident of Fulton County, Georgia.

23.

Dziatko is subject to the personal jurisdiction of this Court.

24.

Dziatko is the CFO, CEO, Secretary and Registered Agent for Service of Process for I & I.

25.

Dziatko can be served with process at his residence located at 1156 Ponce De Leon, Atlanta, Georgia 30366 or wherever he can be found.

**D. Enterprise Coverage**

26.

At all times material hereto, I & I was an “enterprise engaged in commerce or in the production of goods for commerce” as defined in FLSA, § 6(a), 29 U.S.C. § 206 (a) and FLSA, § 7(a)(1), 29 U.S.C. § 207(a)(1).

27.

During 2014, I & I had two or more “employees engaged in commerce” as defined by 29 U.S.C. § 203(s)(1)(A).

28.

During 2015, I & I had two or more “employees engaged in commerce” as defined by 29 U.S.C. § 203(s)(1)(A).

29.

During 2016, I & I had two or more “employees engaged in commerce” as defined by 29 U.S.C. § 203(s)(1)(A).

30.

During 2017, I & I had two or more “employees engaged in commerce” as defined by 29 U.S.C. § 203(s)(1)(A).

31.

At all times material hereto, Plaintiffs and other employees of I & I utilized and handled goods which moved in interstate commerce in the furtherance of the commercial purpose of I & I including food, food packaging materials, vehicles, gasoline, engine oil and cell phones.

32.

During 2014, I & I had two or more “employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person” as defined in 29 U.S.C. § 203(s)(1)(A).

33.

During 2015, I & I had two or more “employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person” as defined in 29 U.S.C. § 203(s)(1)(A).

34.

During 2016, I & I had two or more “employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person” as defined in 29 U.S.C. § 203(s)(1)(A).

35.

During 2017, I & I had two or more “employees handling, selling or otherwise working on goods or materials that have been moved in or produced for commerce by any person” as defined in 29 U.S.C. § 203(s)(1)(A).

36.

During 2014, I & I had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) within the meaning of 29 U.S.C. § 203(s)(1)(A).

37.

During 2015, I & I had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) within the meaning of 29 U.S.C. § 203(s)(1)(A).

38.

During 2016, I & I had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) within the meaning of 29 U.S.C. § 203(s)(1)(A).

39.

During 2017, I & I had an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) within the meaning of 29 U.S.C. § 203(s)(1)(A).



40.

At all times material hereto, I & I has been an “enterprise engaged in commerce or in the production of goods for commerce” as defined in FLSA § 3(s)(1), 29 U.S.C. § 203(s)(1).

**E. Employer / Employee Relationship**

41.

At all times material hereto, I & I was an “employer” of Plaintiffs as defined in FLSA § 3(d), 29 U.S.C. § 203(d).

42.

At all times material hereto, Plaintiffs were “employees” of I & I as defined in the FLSA § 3(e)(1), 29 U.S.C. § 203(e)(1).

43.

At all times material hereto, Dziatko exercised operational control over the work activities of Plaintiffs.

44.

At all times material hereto, Dziatko was involved in the day to day operation of I & I.

45.

At all times material hereto, I & I vested Dziatko with supervisory authority over Plaintiffs.

46.

At all times material hereto, Dziatko exercised supervisory authority over Plaintiffs.

47.

At all times material hereto, Dziatko scheduled Plaintiffs' working hours or supervised the scheduling of Plaintiffs' working hours.

48.

At all times material hereto, Dziatko exercised authority and supervision over Plaintiffs' compensation.

49.

At all times material hereto, Dziatko was an "employer" of Plaintiffs as defined in FLSA § 3(d), 29 U.S.C. §203(d).

50.

At all times during the Relevant Time Period, Defendants' managers exercised supervisory authority over Plaintiffs.

51.

At all times during the Relevant Time Period, Defendants exercised the authority to impose discipline upon its employees, including warnings, suspensions, and terminations.

52.

At all times during the Relevant Time Period, Defendants paid all costs associated with advertising, marketing, and promoting Defendants' business.

53.

At all times material hereto, the work performed by Plaintiffs was integral to I & I's business purpose (*i.e.*, a restaurant).

54.

At all times material hereto, Plaintiffs did not invest in I & I's business such that they shared any significant risk of loss.

55.

At all times material hereto, Plaintiffs did not utilize any special skills in the course of their work for I & I.

56.

At all times material hereto, Plaintiffs did not exercise independent business judgment in the course of their work for I & I.

57.

At all times material hereto, I & I exercised significant, if not total control over the amount of Plaintiffs' pay.

58.

At all times material hereto, I & I exercised significant, if not total control over Plaintiffs' work hours.

59.

At all times material hereto, I & I exercised significant control over how each Plaintiffs' work was performed.

60.

Plaintiffs did not solicit customers themselves, and all Plaintiffs' efforts were directed at serving the customers of Defendants.

61.

At all times during the Relevant Time Period, as a matter of economic reality Plaintiffs were "employees" as that term is used in the FLSA, rather than independent contractors.

62.

At all times during the Relevant Time Period, Defendants were Plaintiffs' "employers" as defined in FLSA § 3(d), 29 U.S.C. § 203(d).

**F. Lack of Exemption**

63.

At all times material hereto, Plaintiffs were paid on an hourly basis.

64.

I & I did not employ Plaintiffs in a bona fide professional capacity within the meaning of 29 USC § 213 (a).

65.

At all times material hereto, I & I did not employ Plaintiffs in a bona fide administrative capacity within the meaning of 29 USC § 213 (a).

66.

At all times material hereto, I & I did not employ Plaintiffs in a bona fide executive capacity within the meaning of 29 USC § 213 (a).

67.

At all times material hereto, I & I did not employ Plaintiffs in the capacity of an “outside salesman” so as to be exempt from the minimum and maximum hour requirements of 29 USC § 213 (a).

68.

At all times material hereto, Plaintiffs were not exempt from the minimum wage requirements of the FLSA by reason of any exemption.

69.

At all times material hereto, Plaintiffs were not exempt from the maximum hours requirements of the FLSA by reason of any exemption.

**G. Plaintiffs’ Pay and Work Hours**

70.

From approximately April 2015 through August 2015, Defendants compensated Russ at an hourly rate of \$7.25 per hour.

71.

From approximately September 2015 until May 2016, Defendants compensated Russ at an hourly rate of \$8.50 per hour.

72.

At all times material hereto, Russ regularly worked for Defendants approximately 8-10 hours each work day.

73.

At all times material hereto, Russ regularly worked for Defendants 6 days during each work week.

74.

At all times material hereto, Defendants compensated Walker at an hourly rate of \$7.25 per hour.

75.

At all times material hereto, Walker regularly worked for Defendants approximately 8-10 hours each work day.

76.

At all times material hereto, Walker regularly worked for Defendants 6 days during each work week.

77.

From November 26, 2014 through September 2015, Defendants compensated Grant at an hourly rate of \$6.50 per hour for her work as a delivery driver.

78.

From October 2015 through January 2016, Defendants compensated Grant at an hourly rate of \$7.50 per hour for her work as a delivery driver.

79.

From February 2016 through May 2016, Defendants compensated Grant at an hourly rate of \$8.00 for her work as a delivery driver.

80.

At all times material hereto, Grant regularly worked approximately 7-10 hours each work day.

81.

At all times material hereto, Grant regularly worked 6 days each work week when she was scheduled to work as a delivery driver.

82.

From approximately April 18, 2015 through early-May, 2015, Grant regularly worked 2 days each work week when she was scheduled to work as a cashier.

#### **H. Additional Minimum Wage Factual Allegations**

83.

Section 6 of the FLSA (29 U.S.C. § 206) requires that Defendants compensate Plaintiffs and each member of the collective they seek to represent at a minimum rate of \$7.25 per hour.

84.

At all times material hereto, I&I requires its delivery drivers to maintain and pay for safe, legally-operable, and insured vehicles when delivering pizza and food items.

85.

I&I delivered within a fifteen mile radius of the store.

86.

At all times material hereto, Plaintiffs used their own automobiles to deliver pizza and other food items to I&I's customers.

87.

As a result of using their own automobiles for I&I's delivery service, Plaintiffs incurred expenses for gasoline, insurance, depreciation of their vehicle's value, and other expenses related to the operation of their vehicle (collectively referred to as "Mileage Expenses").

88.

At all times material hereto, the IRS business mileage reimbursement rate ranged between \$.555 and \$.575 per mile.

89.

Because of the nature of delivery, Plaintiffs likely incurred greater costs than the IRS reimbursement rate because of the nature of the delivery business including



frequent starting and stopping of the engine, frequent braking, shorter routes as opposed to highway driving, and driving under time pressures.

90.

At all times material hereto, I&I did not reimburse Plaintiffs for any Mileage Expenses.

91.

At all times material hereto, Defendants did not charge their customers service charges meant to reimburse Plaintiffs for any Mileage Expenses.

92.

Under 29 C.F.R. § 531.35, “the wage requirements of the [FLSA] will not be met where the employee ‘kicks-back’ directly or indirectly to the employer or to another person for the employer’s benefit the whole or part of the wage delivered to the employee.”

93.

A “kickback” specifically occurs when the costs of tools required for the performance of the employee’s particular work “cuts into the minimum or over time wages required to be paid under the Act.” See 29 C.F.R. § 778.217(a).

94.

The Mileage Expenses incurred by Plaintiffs are illegal kickbacks and violate the FSLA in that Plaintiffs do not earn the required minimum wage in “free and clear” compensation.

95.

At all times material hereto, Plaintiffs incurred unreimbursed Mileage Expenses sufficient to cause their effective hourly rate to fall below the statutory minimum wage of \$7.25 per hour.

**I. Additional Overtime Factual Allegations**

96.

Section 7 of the FLSA (29 U.S.C. § 207) requires that Defendants compensate Plaintiffs and each member of the collective they seek to represent a rate of one-and-one-half times their regular rate for all time worked in excess of forty (40) hours in a work week.

97.

At all times material hereto, Plaintiffs regularly worked more than forty (40) hours per work week.

98.

Plaintiffs were paid their regular hourly wage for all hours worked.

99.

At all times material hereto, Plaintiffs were not paid an overtime premium for overtime hours.

**COUNT I — FAILURE TO PAY MINIMUM WAGE**

100.

The allegations in paragraphs 1-99 are incorporated by reference as if fully set out herein.

101.

At all times material hereto, Plaintiffs and the members of the collective they seek to represent have been employees covered by the FLSA and entitled to the minimum wage protections set forth in FLSA § 6(a), 29 U.S.C. § 206(a).

102.

During the Relevant Time Period, Defendants failed to compensate Plaintiffs and the members of the collective they seek to represent at an hourly rate above or equal to the minimum wage as established in accordance with Section 6 of the FLSA.

103.

During the Relevant Time Period, Defendants willfully failed to compensate Plaintiffs and the members of the collective they seek to represent at an hourly rate above or equal to the minimum wage as established in accordance with Section 6 of the FLSA.

104.

As a result of the underpayment of minimum wages as alleged above, Plaintiffs and the members of the collective they seek to represent are entitled to payment of

minimum wages in an amount to be determined at trial, in accordance with FLSA § 16(b), 29 U.S.C. § 216(b).

105.

As a result of the underpayment of minimum wages as alleged above, Plaintiffs and the members of the collective they seek to represent are entitled to liquidated damages in accordance with FLSA § 16(b), 29 U.S.C. § 216(b), declaratory and injunctive relief, and reimbursement of Plaintiffs' reasonable attorneys' fees and expenses of litigation, pursuant to 29 U.S.C. § 216(b).

## **COUNT II — FAILURE TO PAY OVERTIME**

106.

The allegations in paragraphs 1-99 are incorporated by reference as if fully set out herein.

107.

At all times material hereto, Plaintiffs and the members of the collective they seek to represent were employees covered by the FLSA and entitled to the overtime protections set forth in FLSA § 7(a), 29 U.S.C. § 207(a).

108.

Plaintiffs and the members of the collective they seek to represent regularly worked for Defendants in excess of forty (40) hours during each week.

109.

At all times material hereto, Defendants failed to compensate Plaintiffs and the members of the collective they seek to represent at one-and-one-half times their regular hourly rate for time worked in excess of 40 hours in any week.

110.

At all times material hereto, Defendants willfully failed to Plaintiffs and the members of the collective they seek to represent at one and one half times their regular hourly rate for work in excess of forty (40) hours in any week.

111.

Plaintiffs and the members of the collective they seek to represent are entitled to payment of overtime in an amount to be determined at trial, in accordance with FLSA § 16(b), 29 U.S.C. § 216(b).

112.

As a result of the underpayment of overtime compensation as alleged above, Plaintiffs and the members of the collective they seek to represent are entitled to liquidated damages in accordance with FLSA § 16(b), 29 U.S.C. § 216(b).

113.

As a result of the underpayment of overtime compensation as alleged above, Plaintiffs and the members of the collective they seek to represent are entitled to their litigation costs, including their reasonable attorney's fees in accordance with FLSA § 16(b); 29 U.S.C. § 216(b).

### **COUNT III – COLLECTIVE ACTION ALLEGATIONS**

114.

The allegations in paragraphs 1-99 are incorporated by reference as if fully set out herein.

115.

At all times during the three years prior to the filing of this Complaint, Defendants violated 29 U.S.C. § 206 and 29 U.S.C. § 207 by failing to pay minimum wage and overtime wages to the members of the collective Plaintiffs seek to represent.

116.

At all times during the three years prior to the filing of this Complaint, Defendants have violated 29 U.S.C. § 206 and 29 U.S.C. § 207 by failing to pay minimum wage and overtime wages to the members of the collective Plaintiffs seek to represent in the same manner as alleged above with respect to Plaintiffs.

117.

All delivery drivers who have worked for Defendants within the three years prior to the filing of this action and who were not paid the statutory minimum wage after taking into account unreimbursed Mileage Expenses and who were not paid an over time premium are “similarly situated”. within the meaning of FLSA § 16 (b), 29 U.S.C. § 216(b).

118.

Defendants are liable pursuant to 29 U.S.C. § 201 *et seq.* to all individuals similarly situated to Plaintiffs for unpaid minimum wages, overtime wages, attorney's fees and costs of litigation, and other such equitable and legal relief that this Court finds proper.

119.

The proposed collective of individuals similarly situated to Plaintiffs should be defined as all Employees of I & I who—in the three years prior to the date this action was filed (“the Relevant Time Period”) and who consent in writing to their inclusion in a collective action—were not paid the FLSA required overtime premium or whose compensation fell below the required minimum wage because of the automobile or mileage costs incurred by the employees for the benefit of the Defendants.

120.

All such individuals similarly situated to Plaintiffs would benefit from the issuance of a Court supervised Notice of Present Lawsuit and opportunity to consent in writing to their inclusion as plaintiffs in this lawsuit pursuant to 29 U.S.C. § 216(b).

121.

All such individuals similarly situated to Plaintiffs are known to Defendants, are readily identifiable, and can be located through the records of Defendants.

WHEREFORE, Plaintiffs respectfully pray:

- a. That Plaintiffs and the members of the collective they seek to represent be awarded amounts to be determined at trial against Defendants, jointly and severally, in due but unpaid minimum wages under the FLSA, plus additional like amounts in liquidated damages;
- b. That Plaintiffs and the members of the collective they seek to represent be awarded an amount to be determined at trial against Defendants, jointly and severally, in due but unpaid overtime wages under the FLSA, plus additional like amounts in liquidated damages;
- c. That the Court permanently enjoin Defendants from violating the minimum wage and overtime provisions of the FLSA;
- d. That Plaintiffs be awarded their costs of litigation, including reasonable attorney's fees from Defendants;
- e. That the Court issue a Notice of Present Lawsuit to all individuals similarly situated to Plaintiffs, allowing all such similarly-situated individuals to file their written consent to join this action as Plaintiffs;
- f. That the Court award all such individuals who "opt in" to this lawsuit their unpaid minimum wages, overtime wages, liquidated damages, and costs of litigation and reasonable attorney's fees from Defendants;
- g. For such other and further relief as the Court deems just and proper.



Respectfully submitted,

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/s/ Kevin D. Fitzpatrick, Jr.

Kevin D. Fitzpatrick, Jr.  
Ga. Bar No. 262375

Counsel for Plaintiffs

JS44 (Rev. 1/13 NDGA)

**CIVIL COVER SHEET**

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

<p><b>I. (a) PLAINTIFF(S)</b></p> <p>JAMAAL RUSS, ANESSA WALKER, and CHRISTI GRANT, Individually and on behalf of all others similarly situated</p> <p><b>(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> <u>Fulton County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p><b>DEFENDANT(S)</b></p> <p>I &amp; I PIZZA OF ATLANTA, INC. d/b/a Sarpino's Pizzeria and IHAR DZIATKO</p> <p><b>COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT</b> _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</p>
<p><b>(c) ATTORNEYS</b> (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)</p> <p>Charles R. Bridgers and Kevin D. Fitzpatrick, Jr. DeLong Caldwell Bridgers Fitzpatrick &amp; Benjamin, LLC 3100 Centennial Tower 101 Marietta Street, NW Atlanta, GA 30303 (404)979-3150 charlesbridgers@dcbflegal.com kevin.fitzpatrick@dcbflegal.com</p>	<p><b>ATTORNEYS</b> (IF KNOWN)</p>

**II. BASIS OF JURISDICTION**  
(PLACE AN "X" IN ONE BOX ONLY)

<input type="checkbox"/> 1 U.S. GOVERNMENT PLAINTIFF	<input checked="" type="checkbox"/> 3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
<input type="checkbox"/> 2 U.S. GOVERNMENT DEFENDANT	<input type="checkbox"/> 4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**  
(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

PLF	DEF		PLF	DEF	
<input type="checkbox"/> 1	<input type="checkbox"/> 1	CITIZEN OF THIS STATE	<input type="checkbox"/> 4	<input type="checkbox"/> 4	INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
<input type="checkbox"/> 2	<input type="checkbox"/> 2	CITIZEN OF ANOTHER STATE	<input type="checkbox"/> 5	<input type="checkbox"/> 5	INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
<input type="checkbox"/> 3	<input type="checkbox"/> 3	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	<input type="checkbox"/> 6	<input type="checkbox"/> 6	FOREIGN NATION

**IV. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

<input checked="" type="checkbox"/> 1 ORIGINAL PROCEEDING	<input type="checkbox"/> 2 REMOVED FROM STATE COURT	<input type="checkbox"/> 3 REMANDED FROM APPELLATE COURT	<input type="checkbox"/> 4 REINSTATED OR REOPENED	<input type="checkbox"/> 5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)	<input type="checkbox"/> 6 MULTIDISTRICT LITIGATION	<input type="checkbox"/> 7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
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**V. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Fair Labor Standards Act of 1938 (as amended) (29 U.S.C. § 201 et.seq.)

**(IF COMPLEX, CHECK REASON BELOW)**

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

**CONTINUED ON REVERSE**

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

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

CONTRACT - "0" MONTHS DISCOVERY TRACK

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

CONTRACT - "4" MONTHS DISCOVERY TRACK

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

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

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

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

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

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

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

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

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

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

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

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

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

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

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

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

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

LABOR - "4" MONTHS DISCOVERY TRACK

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

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

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

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

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

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

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

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

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

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

**VII. REQUESTED IN COMPLAINT:**

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ \_\_\_\_\_

JURY DEMAND  YES  NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

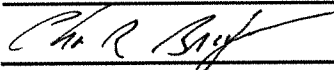
**VIII. RELATED/REFILED CASE(S) IF ANY**

JUDGE \_\_\_\_\_ DOCKET NO. \_\_\_\_\_

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

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

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

  
SIGNATURE OF ATTORNEY OF RECORD

6/5/2017  
DATE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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**CONSENT TO SERVE AS A PLAINTIFF REPRESENTATIVE UNDER THE  
FAIR LABOR STANDARDS ACT**

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I, Jamaal Russ, a current or former employee of I&I Pizza of Atlanta, Inc. d/b/a Sarpino's Pizzeria, understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended. (29 U.S.C. §201, *et seq.*) I consent to serve as a Plaintiff and Class Representative in the above-referenced action<sup>1</sup> and to fairly represent the interests of the class members with respect to all cognizable claims for minimum wage and overtime compensation and any other benefits available under the Fair Labor Standards Act and other applicable laws, in accordance with the Fee Agreement executed by the undersigned for such purpose.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 17 day of May, 2017.

  
\_\_\_\_\_  
Signature

<sup>1</sup> In the event that this case is dismissed without prejudice, my claim is dismissed without prejudice or any class in this case is decertified, I consent to serve as a Plaintiff, Class Representative and/or Opt-In Plaintiff in any subsequent action brought against any and/or all Defendants and any other defendants to recover under the FLSA as part of collective action or individually. I reserve the right to revoke this Consent in part or in its entirety upon written notice to my Attorneys or the Court.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

---

CONSENT TO SERVE AS A PLAINTIFF REPRESENTATIVE UNDER THE  
FAIR LABOR STANDARDS ACT

---

I, Anessa Walker, a current or former employee of I&I Pizza of Atlanta, Inc. d/b/a Sarpino's Pizzeria, understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended. (29 U.S.C. §201, *et seq.*) I consent to serve as a Plaintiff and Class Representative in the above-referenced action<sup>1</sup> and to fairly represent the interests of the class members with respect to all cognizable claims for minimum wage and overtime compensation and any other benefits available under the Fair Labor Standards Act and other applicable laws, in accordance with the Fee Agreement executed by the undersigned for such purpose.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This \_\_\_\_\_ day of June 2, 2017.

Anessa Walker  
Signature

\_\_\_\_\_ ANESSA WALKER

<sup>1</sup> In the event that this case is dismissed without prejudice, my claim is dismissed without prejudice or any class in this case is decertified, I consent to serve as a Plaintiff, Class Representative and/or Opt-In Plaintiff in any subsequent action brought against any and/or all Defendants and any other defendants to recover under the FLSA as part of collective action or individually. I reserve the right to revoke this Consent in part or in its entirety upon written notice to my Attorneys or the Court.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

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**CONSENT TO SERVE AS A PLAINTIFF REPRESENTATIVE UNDER THE  
FAIR LABOR STANDARDS ACT**

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I, Christi Grant, a current or former employee of I&I Pizza of Atlanta, Inc. d/b/a Sarpino's Pizzeria, understand that this lawsuit is brought under the Fair Labor Standards Act of 1938, as amended. (29 U.S.C. §201, *et seq.*) I consent to serve as a Plaintiff and Class Representative in the above-referenced action<sup>1</sup> and to fairly represent the interests of the class members with respect to all cognizable claims for minimum wage and overtime compensation and any other benefits available under the Fair Labor Standards Act and other applicable laws, in accordance with the Fee Agreement executed by the undersigned for such purpose.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 23 day of May, 2017.

Christi Grant  
Signature

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<sup>1</sup> In the event that this case is dismissed without prejudice, my claim is dismissed without prejudice or any class in this case is decertified, I consent to serve as a Plaintiff, Class Representative and/or Opt-In Plaintiff in any subsequent action brought against any and/or all Defendants and any other defendants to recover under the FLSA as part of collective action or individually. I reserve the right to revoke this Consent in part or in its entirety upon written notice to my Attorneys or the Court.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sarpino's Pizza Delivery Drivers Sue Over Wage Allegations](#)

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