

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

LIMECCA CORBIN, on behalf of herself and similarly situated employees,	:	CIVIL ACTION No.: 1:15-cv-00405
	:	
Plaintiff,	:	
	:	
v.	:	JURY TRIAL DEMANDED
	:	
CFRA, LLC,	:	
	:	
Defendant.	:	
	:	

COMPLAINT-COLLECTIVE ACTION

Plaintiff Limecca Corbin (“Plaintiff”), on behalf of herself and similarly situated employees, brings this collective action lawsuit against Defendant CFRA, LLC (“Defendant”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et seq.* Plaintiff asserts her FLSA claim as a collective action claim under 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 29 U.S.C. §216(b) and 28 U.S.C. § 1331.

2. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff is an individual residing in Bessemer, North Carolina.

4. Defendant CFRA, LLC is a corporate entity registered to do business in North Carolina and maintaining a principal place in Concord, North Carolina.

5. Defendant is an IHOP franchise that operates, upon information and belief, over a dozen IHOP restaurants in the states of, *inter alia*, Alabama, North Carolina, South Carolina, and Tennessee.

6. Defendant employs individuals, including Plaintiff, engaged in commerce or in the production of goods for commerce and/or handling, selling, or otherwise working on goods or materials that have been moved in or produced in commerce by any person.

7. Defendant is an employer covered by the record-keeping, minimum wage, and overtime pay mandates of the FLSA.

FACTS

8. Defendant employs Servers at its IHOP restaurants.

9. Plaintiff was employed by Defendant as a Server at its IHOP restaurant located in Gastonia, North Carolina from approximately February 2012 until August 2012, and as a Server at Defendant's IHOP location in Shelby, North Carolina from October 2014 until January 2015. In regard to Plaintiff's job duties and pay, her experience at both locations was similar.

10. Defendant pays Plaintiff and other Servers a sub-minimum hourly wage of \$1.59, plus any tips earned and paid by restaurant patrons.

11. Defendant utilizes a "tip credit" in the amount of \$5.66 for each hour worked by Plaintiffs and other Servers in an effort to satisfy the FLSA's mandate that employees receive a minimum wage of at least \$7.25/hour.

12. Defendant maintains a company-wide policy which requires Plaintiff and other Servers to spend more than 20% of their time performing non-tip producing work. Such non-tip producing work includes, but is not limited to, washing dishes, stocking condiments, preparing salads, cleaning the walls, wiping the tables, rolling silverware, and cleaning the restaurant.

13. Defendant pays Plaintiff and other Servers a sub-minimum hourly wage of \$1.59 for time spent performing non-tip producing work.

14. The non-tip producing work does not help Plaintiff and Servers earn tips from restaurant patrons.

15. Defendant routinely requires Plaintiff and other Servers to perform non-tip producing work while they are not serving patrons in the restaurant.

16. Defendant required Plaintiff to perform non-tip producing work while paying her a sub-minimum hourly wage of \$1.59 during each shift that she worked. In the absence of discovery, Plaintiff estimates that she spent an average of approximately 2 hours or more each shift performing non-tip producing work. Because Plaintiff generally worked shifts that lasted between approximately 6 to 9 hours, Plaintiff routinely spent more than 20% of her time performing non-tip producing work.

17. Upon information and belief, Defendant requires its Servers at all of its IHOP restaurants to spend more than 20% of their time performing non-tip producing work while earning a sub-minimum wage.

COLLECTIVE ALLEGATIONS

18. Plaintiff brings this action on behalf of herself and all Servers employed by Defendant at its IHOP restaurants who spent more than 20% of their time performed non-tip producing work as a Server while earning a sub-minimum hourly wage during any workweek since May 20, 2012. These individuals are referred to herein as “Collective Action Members.”

19. Plaintiff pursues her FLSA claim on behalf of any Collective Action Members who opt-in to this action pursuant to 29 U.S.C. § 216(b).

20. Plaintiff and the Class Members are “similarly situated,” as that term is defined in 29 U.S.C. § 216(b), because, *inter alia*, they have been subjected to Defendant’s company-wide policies, as discussed in paragraphs 10-17 above.

COUNT I
(Alleging Violations of the FLSA)

21. All previous paragraphs are incorporated as though fully set forth herein.
22. Plaintiff and the Collective Action Members are employees entitled to the FLSA's protections.
23. Defendant is an employer covered by the FLSA.
24. The FLSA entitles employees to minimum hourly compensation of \$7.25 for hours worked under 40 in a week, *see* 29 U.S.C. § 206(b), and \$10.875 for hours worked over 40 in a week, *see id.* at § 207(a)(1).
25. The FLSA prohibits an employer from utilizing a tip credit to satisfy its minimum wage obligations to an employee where such employee is spending more than 20% of the time performing non-tip producing work. *See* § 29 C.F.R. § 531.56(e); *Fast v. Applebee's Intl., Inc.*, 638 F.3d 872, *879-82 (8th Cir. 2011); U.S. Dep. of Labor, Field Operations Handbook Ch. 30d00(e) (Dec. 9, 1988) (available at <http://www.dol.gov/whd/foh/FOH-Ch30.pdf>).
26. Defendant's company-wide policy of requiring Plaintiff and other Servers to spend more than 20% of the time performing non-tip producing work prohibits Defendant from utilizing a tip credit to satisfy its minimum wage obligations to Plaintiff and the Collective Action Members. As such, Defendant violated the FLSA's minimum wage and overtime pay mandates by failing to pay Plaintiff and other Servers the full minimum wage.
27. In violating the FLSA, Defendant acted willfully and with reckless disregard of clearly applicable FLSA provisions.
28. Plaintiff consents in writing to join this action, and her consent is attached hereto as Exhibit A.

JURY TRIAL DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and other Collective Action Members, seeks the following relief:

- A. All unpaid minimum wages and overtime wages;
- B. Prejudgment interest;
- C. Liquidated damages;
- D. Litigation costs, expenses, and attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

Date: May 21, 2015

/s/ Scott C. Harris
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**pro hac vice* admission anticipated

EXHIBIT A

NOTICE OF CONSENT

By my signature below, I consent to become a party plaintiff in a lawsuit seeking damages for unpaid wages under the Fair Labor Standards Act against CFRA, LLC, and any other entities or individuals who are determined to be employers under the Fair Labor Standards Act. I hereby appoint Nicholas Migliaccio, Jason Rathod and Scott Harris of Whitfield Bryson & Mason LLP, 1625 Massachusetts Ave. N.W., Suite 605, Washington, D.C. 20036, and Peter Winebrake, R. Andrew Santillo, and Mark Gottesfeld of Winebrake & Santillo, LLC, 715 Twining Road, Suite 211, Dresher, PA 19025, to represent me in this case.

Limecca Corbin
Limecca Corbin (May 18, 2015)

Signature

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

Limecca Corbin, on behalf of herself and similarly situated employees,

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

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

Whitfield Bryson & Mason LLP
1625 Massachusetts Ave. NW, Ste. 605, Washington, DC 20036
Tel: 202-429-2290

DEFENDANTS

CFRA, LLC

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

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

Attorneys (If Known)

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

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

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. §§ 201, et seq

Brief description of cause:

Action to enforce 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 05/20/2015 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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