

twenty-six Papa John's Pizza restaurants in the Columbus, Ohio area owned and operated by Defendants JohnCol, Inc. ("JohnCol") and Allen Hertzman ("Mr. Hertzman")(collectively, "Defendants").

2. JohnCol was founded by Mr. Hertzman in 1991 and has grown to own and operate twenty-six Papa John's Pizza franchise locations in central Ohio. JohnCol was honored by the corporation as the Papa John's Franchise of the Year in 2010.

3. Defendants' restaurants are centrally operated from JohnCol headquarters at 8377 Green Meadows Drive, Lewis Center, Ohio 43035.

4. Employees at Defendants' restaurants regularly transferred between locations and covered shifts at multiple locations. Employees were governed by the same employment policies and practices no matter which of Defendants' restaurants they worked in, including policies and practices with respect to wages.

5. Defendants maintain a policy and practice of underpaying their delivery drivers in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, the Ohio Minimum Fair Wage Standards Act (the "OMFWSA"), O.R.C. § 4111.01, *et seq.*, and the Ohio Constitution, Art. II, § 34a ("Section 34a").

6. Defendants maintained a policy and practice of failing to reimburse delivery drivers for automobile costs, uniform purchase and maintenance, and other job-related expenses, causing Plaintiffs' and similarly situated delivery drivers' wages to fall below minimum wage.

7. At all relevant times, Defendants failed to take reasonable steps to ensure delivery drivers received adequate reimbursement for their automobile expenses and other job-related expenses.

8. Plaintiffs worked for Defendants as delivery drivers, and helped out inside the restaurant while they were not making deliveries. Defendants' stated policy was that Plaintiffs and similarly situated drivers would be paid minimum wage during the hours they spent working in the restaurant, and \$4.25 per hour during the hours they were out making deliveries.

9. Defendants maintain a policy and practice whereby management employees regularly manipulate Plaintiffs and similarly situated drivers' time cards to reflect that drivers were out on deliveries when they were actually completing work in the restaurant.

10. Plaintiffs bring this action on behalf of themselves and similarly situated current and former delivery drivers who elect to opt in pursuant to FLSA 29 U.S.C. § 216(b) to remedy violations of the FLSA wage and hour provisions by Defendants.

11. Plaintiffs also bring this action on behalf of themselves and similarly situated current and former delivery workers in Ohio pursuant to Federal Rule of Civil Procedure 23 to remedy violations of OMFWSA, O.R.C. § 4111.01, *et seq.*, and the Ohio Constitution, Art. II, § 34a.

12. Plaintiff Hassan brings this action on behalf of himself, individually, as a result of his retaliatory termination in violation of the FLSA, OMFWSA, and Section 34a.

JURISDICTION AND VENUE

13. This action is brought pursuant to the FLSA, 29 U.S.C. §201, *et seq.*, the OMFWSA, O.R.C. § 4111, *et seq.*, the Ohio Constitution Art. 2 §34a, and 28 U.S.C. §1331 and §1343(a)(4).

14. Jurisdiction is conferred upon this Court by 28 U.S.C. §1331 which provide for original jurisdiction of Plaintiffs' claims arising under the laws of the United States and over actions to secure equitable and other relief.

15. This Court's jurisdiction is also predicated upon 28 U.S.C. §1367 as this Complaint raises claims pursuant to the laws of Ohio, over which this Court maintains supplemental subject matter jurisdiction.

16. Venue is proper in this forum pursuant to 28 U.S.C. §1391, because Plaintiffs entered into an employment relationship with Defendants in the Southern District of Ohio and performed their job duties there. Furthermore, Defendants are doing and have done substantial business in the Southern District of Ohio.

PARTIES

Jennafer Schnaudt

17. Plaintiff Schnaudt is a citizen of the United States and resides in the Southern District of Ohio. Further, at all times material herein Ms. Schnaudt worked within the boundaries of Southern District of Ohio.

18. At all times relevant herein, the Ms. Schnaudt was an "employee" of Defendants as defined in the FLSA and the OMFWSA.

19. Ms. Schnaudt has given written consent to join this action, a copy of which is attached to this Class Action Complaint.

Hamdi Hassan

20. Plaintiff Hassan is a citizen of the United States and resides in the Southern District of Ohio. Further, at all times material herein Mr. Hassan worked within the boundaries of Southern District of Ohio.

21. At all times relevant herein, Mr. Hassan was an “employee” of Defendants as defined in the FLSA and the OMFWSA.

22. Mr. Hassan has given written consent to join this action, a copy of which is attached to this Class Action Complaint.

JohnCol, Inc.

23. Defendant Johncol is a foreign for-profit corporation incorporated in the Commonwealth of Kentucky doing business as Papa John’s Pizza in the Southern District of Ohio.

24. Johncol is an “employer” of Plaintiffs and similarly situated delivery drivers as that term is defined by the FLSA and the OMFWSA.

25. According to their website, papajohnscolumbus.com, JohnCol owns and operates the following 26 Papa John’s Pizza franchise restaurants in the Columbus, Ohio area (the “JohnCol Restaurants”):

- a. 1314 Bethel Road, Columbus, OH 43235
- b. 2906 East Main Street, Columbus, OH 43209
- c. One Black and Gold Boulevard, Columbus, OH 43211
- d. 108 South Sandusky Street, Delaware, OH 43015
- e. 860 Parsons Avenue, Columbus, OH 43206
- f. 7172 Muirfield Drive, Dublin, OH 43017
- g. 2804 South Hamilton Road, Columbus, OH 43232
- h. 4683 Morse Road, Gahanna, OH 43230
- i. 4960 West Broad Street, Columbus, OH 43228
- j. 2354 Stringtown Road, Grove City, OH 43123
- k. 3644 Main Street, Hilliard, OH 43026
- l. 2108 North High Street, Columbus, OH 43210
- m. 201 South Main Street, Mansfield, OH 44902
- n. 254 East Center Street, Marion, OH 43302
- o. 200 West Nationwide Boulevard, Columbus, OH 43215
- p. 566 Hebron Road, Heath, OH 43056
- q. 1692 Morse Road, Columbus, OH 43229
- r. 1201 Hill Road North, Pickerington, OH 43147
- s. 8730 Moreland Street, Powell, OH 43065
- t. 7061 East Main Street, Reynoldsburg, OH 43068

- u. 7430 Sawmill Road, Columbus, OH 43235
- v. 3691 Sullivant Avenue, Columbus, OH 43228
- w. 998 West 5th Avenue, Columbus, OH 43212
- x. 503 South State Street, Westerville, OH 43081
- y. 5179 North High Street, Columbus, OH 43214

26. JohnCol applies the same employment policies, practices, and procedures to all delivery drivers at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, overtime wages, automobile expenses, uniform expenses, and clock out procedures.

27. At all relevant times, JohnCol has maintained control, oversight, and direction over Plaintiffs and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other practices.

28. At all relevant times, JohnCol has been and continues to be an enterprise engaged in “the production of goods for commerce” within the meaning of the phrase as used by the FLSA.

29. JohnCol’s gross revenue exceeds \$500,000 per year.

Allen Hertzman

30. Defendant Allen Hertzman is the Founder and President of JohnCol, Inc.

31. Upon information and belief, Mr. Hertzman resides in the Southern District of Ohio.

32. At all relevant times, Mr. Hertzman is an “employer” of Plaintiffs and similarly situated delivery drivers as that term is defined by the FLSA and the OMFWSA.

33. At all relevant times, Mr. Hertzman has been actively involved in managing the operations of JohnCol.

34. At all relevant times, Mr. Hertzman has had control over Defendants’ pay policies

and the unlawful policies and practices alleged herein.

35. At all relevant times, Mr. Hertzman has had power over personnel decisions and payroll decisions at JohnCol.

36. At all relevant times, Mr. Hertzman has had the power to stop any illegal pay practices that harmed Plaintiffs and similarly situated employees.

37. At all times relevant, Mr. Hertzman has had the power to transfer the assets and liabilities of the JohnCol Restaurants.

38. At all relevant times, Mr. Hertzman has had the power to declare bankruptcy on behalf of JohnCol.

39. At all relevant times, Mr. Hertzman has had the power to enter into contracts on behalf of the JohnCol Restaurants.

40. At all relevant times, Mr. Hertzman has had the power to close, shut down, and/or sell the JohnCol Restaurants.

FACTS

CLASSWIDE FACTUAL ALLEGATIONS

41. During all relevant times, Defendants have operated a chain of approximately 26 Papa John's restaurants in central Ohio.

42. The primary function of these Papa John's restaurants is to sell pizza and other food items to customers, whether they dine in, carry out, or have their food delivered.

43. Each of Defendants' stores employs delivery drivers who are primarily responsible for delivering pizzas and other food items to customers' homes and workplaces.

44. Plaintiffs and the similarly situated persons they seek to represent are current and former delivery drivers employed by Defendants.

45. All delivery drivers employed by Defendants over the last three years had essentially the same job duties – to deliver pizza and other food items to customers.

46. When there were no deliveries to make, Defendants' delivery drivers were required to work inside the Papa John's restaurant, building pizza boxes, cleaning, preparing pizza and other food items, taking orders, and completing other duties inside the restaurant as necessary.

47. Defendants require delivery drivers to maintain and pay for operable, safe, and legally compliant automobiles to use in delivering Defendants' pizza and other food items.

48. Defendants also require delivery drivers to incur other job-related expenses in delivery Defendants' pizza and other food items including, but not limited to, the cost of uniform shirts and hats, laundering, cellular telephone charges, and other equipment necessary for delivery drivers to complete their job duties for Defendants.

49. Pursuant to such requirements, Plaintiffs and other similarly situated employees purchased gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and suffered automobile depreciation (collectively, "automobile expenses"), all for the primary benefit of Defendants.

50. Additionally, Plaintiffs and other similarly situated employees purchased other items including but not limited to, cellular telephone service, uniform and special apparel, laundering services, maps, and other expenses (collectively "job-related expenses"), all for the primary benefit of Defendants.

51. At all times relevant, Defendants paid Plaintiffs and other similarly situated delivery drivers the applicable minimum wage during the hours they worked inside the restaurant.

52. Upon information and belief, Defendants have attempted to rely on a “tip credit” under state and federal law for the hours that Plaintiffs and similarly situated delivery drivers were making deliveries, which allows employers to pay employees who receive tips below minimum wage as long as they meet various requirements.

53. Defendants did not provide Plaintiffs and similarly situated delivery drivers with proper notification of their intention to take a tip credit from their wages, and, in any event, failed to provide sufficient wages to qualify for a tip credit.

54. Defendants failed to pay Plaintiffs and similarly situated delivery drivers sufficient wages to adequately reimburse them for their automobile expenses or job-related expenses incurred in delivering Defendants’ pizza and other food items.

55. Defendants failed to take reasonable steps to ensure Plaintiffs and other similarly situated delivery drivers were sufficiently reimbursed for automobile expenses and other job-related expenses.

56. Defendants did not even attempt to reasonably approximate the automobile expenses incurred by Plaintiffs and similarly situated delivery drivers.

57. At all times relevant, Defendants paid Plaintiffs and other similarly situated delivery drivers an hourly wage of \$4.25 per hour during the hours they worked making deliveries.

58. This pay rate was applied uniformly to all delivery drivers at all of the JohnCol Restaurants.

59. In 2012, tip credit minimum wage was \$3.85 per hour in Ohio.

60. In 2013, tip credit minimum wage was \$3.93 per hour in Ohio.

61. In 2014, tip credit minimum wage was \$3.98 per hour in Ohio.

62. In 2015, tip credit minimum wage is \$4.05 per hour in Ohio.

63. Despite an increasing tip credit minimum wage, the wage rate paid to Defendants' delivery drivers has been stagnant throughout the relevant time period.

64. As such, Defendants effectively provided Plaintiffs and similarly situated delivery drivers with \$ 0.40 per hour to cover automobile and other job-related expenses in 2012, \$ 0.32 per hour to cover automobile and other job-related expenses in 2013, and \$0.27 per hour to cover automobile and other job-related expenses in 2014. In 2015, Defendants are providing delivery drivers with just \$0.20 per hour to cover automobile and other job-related expenses.

65. As such, Defendants have steadily decreased the reimbursement payments provided to delivery drivers for automobile and other job-related expenses throughout the relevant time period.

66. Defendants have not determined Plaintiffs and similarly situated delivery drivers' pay based on an attempt to calculate the actual out of pocket expenses of Plaintiffs and similarly situated delivery drivers.

67. According to the Internal Revenue Service, the standard mileage rate for the use of a car during the relevant time periods were:

- a. 2012: 55.5 cents/mile
- b. 2013: 56.5 cents/mile
- c. 2014: 56 cents/mile
- d. 2015: 57.5 cents/mile

68. According to the American Automobile Association ("AAA"), driving costs per mile during the relevant time periods were:

- a. 2012: 59.6 cents/mile
- b. 2013: 60.8 cents/mile
- c. 2014: 59.2 cents/mile
- d. 2015: 58 cents/mile

69. Plaintiffs and similarly situated delivery drivers regularly had to travel up to five miles away from the restaurant to make deliveries.

70. As a result of the automobile and other job-related expenses incurred by Plaintiffs and other similarly situated delivery drivers, they were deprived of minimum wage guaranteed to them by the FLSA and Ohio law.

71. Plaintiffs and other similarly situated delivery drivers were not required to record their automobile and other job-related expenses and Defendants have failed to maintain accurate records of automobile and job-related expenses and deductions from wages.

72. Defendants did not monitor the mileage Plaintiffs and similarly situated delivery drivers drove while making deliveries for Defendants, nor did they monitor the gasoline purchases made by Plaintiffs and similarly situated delivery drivers.

73. Defendants have also implemented a policy and practice whereby management employees manipulate the hour records in order to over-count the hours delivery drivers worked as a delivery driver (which were paid at a lower rate) and under-count the hours delivery drivers worked within the store (which were paid at a higher rate).

74. Defendants utilized a punch clock system to allow delivery drivers to clock onto their lower, tipped hourly rate when they were leaving the store with a completed order in order to make a delivery to Defendants' customers.

75. Managers, including high-level managers like Area Coach Jeff Van Cleef, regularly clocked delivery drivers onto their tipped hourly rate when an order for delivery was received, but before the pizza was made and ready for delivery. As a result, delivery drivers regularly spend time working in the store while being paid at their tipped hourly rate.

76. Upon information and belief, Defendants apply the same pay policies, practices,

and procedures to all delivery drivers at all JohnCol Restaurants.

77. Defendants have willfully failed to pay federal and Ohio state minimum wage and overtime to Plaintiffs and similarly situated delivery drivers at JohnCol Restaurants.

PLAINTIFFS' INDIVIDUAL FACTUAL ALLEGATIONS

78. Consistent with their policies, patterns, and practices as described herein, Defendants harmed Plaintiffs, individually, as follows:

Jennafer Schnaudt

79. Ms. Schnaudt was an employee of Defendants from November 2012 until June 2014 at the JohnCol Restaurant located at 7430 Sawmill Road, Columbus, Ohio 43235, and also at the JohnCol Restaurant located at 7172 Muirfield Drive, Dublin, Ohio 43017.

80. The circumstances of Ms. Schnaudt's employment as a delivery driver for Defendants were identical at both the Sawmill Road location and the Muirfield Drive location.

81. Ms. Schnaudt was employed by Defendants as a pizza delivery driver from November 2012 to approximately December 2013, and intermittently thereafter until the end of her employment. During this time, she delivered pizza and other food items to Defendants' customers' homes and businesses.

82. When she was not making deliveries, she worked inside the restaurant, completing tasks such as making pizzas, taking orders, building pizza boxes, taking out trash, sweeping up the food line and other general tasks within the store.

83. At all times during her employment, Ms. Schnaudt was qualified to perform the essential functions of her job and performed her duties competently.

84. It was the Defendants' practice to pay Ms. Schnaudt at two different hourly rates depending on whether she was making deliveries or working within the restaurant.

85. It was Defendants' practice to pay Ms. Schnaudt minimum wage - \$7.70 in 2012; \$7.85 in 2013; \$7.95 in 2014 – for the hours she performed work within the store.

86. Throughout her employment, it was the Defendant's practice to pay Ms. Schnaudt \$4.25 per hour when she was dispatched to deliver a pizza to a customer outside the store.

87. During Ms. Schnaudt's employment with Defendants, Defendants made deductions from Ms. Schnaudt's wages for work uniforms, which consisted of a Papa John's polo shirt and, occasionally, a Papa John's hat. Ms. Schnaudt wore the work uniform for the benefit of Defendants.

88. Additionally, during Ms. Schnaudt's employment with Defendants, Ms. Schnaudt was required to pay for automobile expenses out of her own pocket in order to carry out the essential functions of her job as a delivery driver. Ms. Schnaudt was never reimbursed or otherwise compensated for these automobile expenses.

89. At all times relevant and at both locations at which Ms. Schnaudt completed work for Defendants, she was required to make deliveries within a five (5) mile radius of the restaurant. As such, Ms. Schnaudt sometimes travelled ten miles round trip to make one delivery.

90. At all times relevant, Ms. Schnaudt made approximately four (4) or five (5) deliveries per hour for Defendants during the hours she worked as a delivery driver at the tipped hourly rate.

91. As a result of unreimbursed automobile expenses and other job-related expenses, Defendants have failed to pay Ms. Schnaudt minimum wage as required by law.

92. Defendants utilized a punch clock system to allow Ms. Schnaudt to clock onto the lower hourly rate when she was leaving the store with a completed order in order to make a

delivery to Defendants' customers.

93. Defendants maintained a pattern or practice of over-counting the hours Ms. Schnaudt worked as a delivery driver (which were paid at a lower rate) and under-counting the hours Ms. Schnaudt worked within the store (which were paid at a higher rate). As a result, Defendants failed to pay Ms. Schnaudt minimum wage as required by law.

94. Managers, including even Area Coach Jeff Van Cleef, regularly clocked Ms. Schnaudt onto her "tipped pay rate" when an order for delivery was received, but before the pizza was made and ready for delivery. As a result, Ms. Schnaudt would work in the store, completing her back of the house duties for approximately 20 minutes while she waited for the pizza to be ready. During this time, Ms. Schnaudt was paid the tipped hourly rate even though she was not receiving any tips from customers.

95. Ms. Schnaudt would most often be clocked in/out prematurely by her manager on Friday and Saturday nights, when the restaurant was busy.

96. Ms. Schnaudt was clocked in/out prematurely by her manager at both the Sawmill Road location and the Muirfield Drive location.

Hamdi Hassan

97. Mr. Hassan was an employee of Defendants from April 17, 2012 until October 17, 2013 at the Papa John's Restaurant located at 7430 Sawmill Road, Columbus, Ohio 43235.

98. Mr. Hassan also covered shifts at the JohnCol Restaurants located on 8730 Moreland Street, Powell, Ohio 43065, and 7172 Muirfield Drive, Dublin, Ohio 43017. At all locations, he was subject to the same employment practices described herein.

99. Mr. Hassan worked as a delivery driver for Defendants. He delivered pizza and other food items to Defendants' customers' homes and businesses.

100. When he was not making deliveries, he worked inside the restaurant, completing tasks such as making pizzas, taking orders, building pizza boxes, taking out trash, sweeping up the food line and other general tasks within the store.

101. At all times during his employment, Mr. Hassan was qualified to perform the essential functions of his job and performed his duties competently.

102. It was the Defendants' practice to pay Mr. Hassan at two different hourly rates depending on whether he was making deliveries or working within the restaurant.

103. It was Defendants' practice to pay Mr. Hassan minimum wage - \$7.70 in 2012; \$7.85 in 2013 – for the hours he performed work within the store.

104. Throughout his employment, it was the Defendant's practice to pay Mr. Hassan \$4.25 per hour when he was dispatched to deliver a pizza to a customer outside the store.

105. During Mr. Hassan's employment with Defendants, Defendants made deductions from Mr. Hassan's wages for work uniforms, which consisted of a Papa John's polo shirt and, occasionally, a Papa John's hat. Mr. Hassan wore the work uniform for the benefit of Defendants.

106. Additionally, during Mr. Hassan's employment with Defendants, Mr. Hassan was required to pay for automobile expenses out of his own pocket in order to carry out the essential functions of his job as a delivery driver. Mr. Hassan was never reimbursed or otherwise compensated for these automobile expenses.

107. As a result of unreimbursed automobile expenses and other job-related expenses, Defendants have failed to pay Mr. Hassan minimum wage as required by law.

108. Mr. Hassan regularly drove up to five miles away from his restaurant to make deliveries.

109. Mr. Hassan regularly made approximately four or five deliveries per hour during the hours he worked as a delivery driver.

110. Defendants utilized a punch clock system to allow Mr. Hassan to clock onto the lower hourly rate when he was leaving the store with a completed order in order to make a delivery to Defendants' customers.

111. Defendants maintained a pattern or practice of over-counting the hours Mr. Hassan worked as a delivery driver (which were paid at a lower rate) and under-counting the hours Mr. Hassan worked within the store (which were paid at a higher rate). As a result, Defendants failed to pay Mr. Hassan minimum wage as required by law.

112. Managers regularly clocked Mr. Hassan onto his tipped pay rate when an order for delivery was received, but before the pizza was made and ready for delivery. As a result, Mr. Hassan would work in the store, completing his back of the house duties for approximately 20 minutes while he waited for the pizza to be ready. During this time, Mr. Hassan was paid the tipped hourly rate even though he was not receiving any tips from customers.

113. Mr. Hassan was also regularly clocked out early at the end of his shift several nights a week when he worked the closing shift

114. Upon returning from his last delivery, Mr. Hassan clocked back in to be paid minimum wage and began helping to close the store for the night.

115. Mr. Hassan's managers regularly wanted to close out the dinner shift at the earliest possible time, so they would ask Mr. Hassan for his delivery receipts and close out the dinner shift.

116. In the process of closing out the delivery shift, management would clock Mr. Hassan out, even though he was still in the restaurant helping to close.

117. Mr. Hassan would often stay for 1-2 hours, sometimes more, cleaning the restaurant and helping to close, but he did not receive compensation for this time worked.

118. Mr. Hassan, after studying his paycheck, was sure he was not being paid for closing hours and asked an assistant manager at the Sawmill Road restaurant to look at his pay. The assistant manager confirmed to Mr. Hassan that he was not being paid for the hours he worked cleaning the store at the the end of his shift.

119. Defendants hired a new General Manager, William Gouty, for the store where Mr. Hassan was employed in October 2013.

120. During his tenure of employment and prior to the hiring of Mr. Gouty, Mr. Hassan met or exceeded his superiors' expectations.

121. Mr. Gouty began to clock Mr. Hassan onto the lower tipped hourly wage while Mr. Hassan was still working in the store and before the pizzas that were to be delivered were made, causing Mr. Hassan to be paid less than the legal minimum wage.

122. Mr. Hassan objected to Mr. Gouty's actions, but Mr. Gouty refused to clock Mr. Hassan back onto the higher hourly wage even though he was still in the store working and the pizzas were not ready to be delivered.

123. When Mr. Hassan complained, Mr. Gouty threw receipts at Mr. Hassan and told him that the Defendants put him "in charge," and he could do whatever he wanted.

124. Mr. Hassan refused to accept that as an answer and continued to complain about his wages and hours.

125. Mr. Gouty became angry and he fired Mr. Hassan on the spot.

126. When Mr. Hassan continued to complain about his wages, Mr. Gouty called the police who came and escorted Mr. Hassan from the store without incident or charges.

127. Mr. Hassan's employment with Defendants was terminated on October 17, 2013 in retaliation for his complaints about not being paid properly.

COLLECTIVE ACTION ALLEGATIONS

128. Plaintiffs bring the First and Second Counts on behalf of themselves and all similarly situated current and former delivery drivers employed at the Papa John's restaurants owned, operated and controlled by Defendants, during the three years prior to the filing of this Class Action Complaint and the date of final judgment in this matter, who elect to opt-in to this action (the "FLSA Collective").

129. At all relevant times, Plaintiffs and the FLSA Collective have been similarly situated, have had substantially similar job duties requirements and pay provisions, and have been subject to Defendants' decision, policy, plan, practices, procedures, protocols, and rules of willfully refusing to pay Plaintiffs and the FLSA Collective minimum wage for all hours worked in the restaurant, tipped minimum wage for all hours worked as a tipped employee, time-and-one-half overtime pay for hours worked in excess of 40 per workweek, and failed to reimburse delivery drivers for automobile expenses, gasoline, uniforms, and other expenses. Plaintiffs' claims are essentially the same as those of the FLSA Collective.

130. Defendants' unlawful conduct is pursuant to a corporate policy or practice of minimizing labor costs by failing to properly pay Plaintiffs and the FLSA Collective.

131. Defendants are aware or should have been aware that federal law required them to pay employees minimum wage for all hours worked.

132. Defendants are aware or should have been aware that federal law required them to reimburse delivery workers for expenses relating to "tools of the trade," such as an automobile

and gasoline for delivery workers and for required uniforms.

133. Defendants are aware or should have been aware that federal law required them to pay non-exempt employees an overtime premium for hours worked over 40 per workweek.

134. Defendants' unlawful conduct has been widespread, repeated, and consistent.

135. The First and Second Counts are properly brought under and maintained as an opt-in collective action under 29 U.S.C. § 216(b).

136. The FLSA Collective members are readily identifiable and ascertainable.

137. For the purpose of notice and other purposes related to this action, the FLSA Collective members' names and addresses are readily available from Defendants' records.

138. Notice can be provided to the FLSA Collective via first class mail to the last address known to Defendants.

139. In recognition of the services Plaintiffs have rendered and will continue to render to the FLSA Collective, Plaintiffs will request payment of a service award upon resolution of this action.

CLASS ACTION ALLEGATIONS

140. Plaintiffs bring the Second and Third Counts under Federal Rule of Civil Procedure 23, on behalf of herself and a class of persons consisting of:

All persons who work or worked as Delivery Drivers and similar employees at the JohnCol Restaurants in Ohio between July 17, 2012 and the date of final judgment in this matter ("Rule 23 Class").

141. Excluded from the Rule 23 Class are Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and

otherwise proper requests for exclusion from the Rule 23 Class.

142. The members of the Rule 23 Class are readily ascertainable. The number and identity of the Rule 23 Class members are ascertainable from Defendants' records. The hours assigned and worked, the positions held, and the rates of pay for each Rule 23 Class Member are also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants. Notice can be provided by means permissible under Federal Rule of Civil Procedure 23.

143. The Rule 23 Class member are so numerous that joinder of all members is impracticable, and the disposition of their claims as a class will benefit the parties and the Court.

144. There are more than 50 Rule 23 Class members.

145. Plaintiffs' claims are typical of those claims which could be alleged by any Rule 23 Class member, and the relief sought is typical of the relief which would be sought by each Rule 23 Class member in separate actions.

146. Plaintiffs and the Rule 23 Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wage, failing to pay overtime, and failing to reimburse for expenses.

147. Plaintiffs and the Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with OMFWSA and Section 34a.

148. Plaintiffs and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Rule 23 Class members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Rule 23 Class members.

149. Plaintiffs and the Rule 23 Class sustained similar losses, injuries, and damages arising from the same unlawful practices, policies, and procedures.

150. Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class and has not interests antagonistic to the Rule 23 Class.

151. Plaintiffs are represented by attorneys who are experienced and competent in both class action litigation and employment litigation.

152. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, particularly in the context of wage and hour litigation on behalf of minimum wage and/or tip credit minimum wage employees where individual class members lack the financial resources to vigorously prosecute a lawsuit against corporate defendants. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of efforts and expense that numerous individual actions engender. Because the losses, injuries, and damages suffered by each of the individual Rule 23 Class members are small in the sense pertinent to class action analysis, the expenses and burden of individual litigation would make it extremely difficult or impossible for the individual Rule 23 Class members to redress the wrongs done to them. On the other hand, important public interests will be served by addressing the matter as a class action. The adjudication of individual litigation claims would result in a great expenditure of Court and public resources; however, treating the claims as a class action would result in significant saving of these costs. The prosecution of separate actions by individual class members would create a risk of inconsistent and/or varying adjudications with respect to the individual Rule 23 Class members, establishing incompatible standards of conduct for Defendants and resulting in the impairment of the Rule 23 Class members' rights

and the disposition of their interests through actions to which they were not parties. The issues in this action can be decided by means of common, class-wide proof. In addition, if appropriate, the Court can, and is empowered to, fashion methods to efficiently manage this action as a class action.

153. Upon information and belief, Defendants and other employers throughout the state violate the OMFWSA and Section 34a. Current employees are often afraid to assert their rights out of fear of direct and indirect retaliation. Former employees are fearful of bringing claims because doing so can harm their employment, future employment, and future efforts to secure employment. Class actions provide class members who are not named in the complaint a degree of anonymity, which allows for the vindication of their rights while eliminating or reducing these risks.

154. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

155. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting Plaintiffs and the Rule 23 Class members individually and include, but are not limited to:

- a. Whether Defendants paid Plaintiffs and the Rule 23 Class at the proper minimum wage rate for all hours worked;
- b. Whether Defendants failed to reimburse automobile expenses, gasoline expenses, uniform expenses, and other expenses, causing Plaintiffs and the Rule 23 Class members' wages to drop below legally allowable minimum wage and overtime;
- c. Whether Defendants maintained a pattern or practice of authorizing management employees to manipulate Plaintiffs and the Rule 23 Class members' time cards to indicate they work more hours as delivery workers (during which time they receive the lower, tipped wage rate) than they in fact do;
- d. Whether Defendants properly compensated Plaintiffs and the Rule 23 Class for hours worked in excess of 40 each workweek;

- e. Whether Defendants failed to keep true and accurate time and pay records for hours worked by Plaintiffs and the Rule 23 Class;
- f. Whether Defendants' policy of failing to pay Plaintiffs and the Rule 23 Class was instituted willfully or with reckless disregard of the law; and
- g. The nature and extent of class-wide injury and the measure of damages for those injuries.

156. In recognition of the services Plaintiffs have rendered and will continue to render to the Rule 23 Class, Plaintiffs will request payment of a service award upon resolution of this action.

CAUSES OF ACTION

COUNT I

Failure to Pay Minimum Wages - Fair Labor Standards Act (On Behalf of Plaintiffs and the FLSA Collective)

157. Plaintiffs restate and incorporate the foregoing allegations as if fully rewritten herein.

158. Plaintiffs and the FLSA Collective are or were non-exempt, hourly employees entitled to receive no less than minimum wage for all hours worked within the store, and no less than the tip-credit minimum wage for all hours worked while making deliveries.

159. Defendants did not properly apply the tip credit to the wages of Plaintiffs and the FLSA Collective.

160. Defendants made deductions from the wages of Plaintiffs and the FLSA Collective and required Plaintiffs and the FLSA Collective to pay for automobile expenses and other job-related expenses out of pocket.

161. In addition to the deductions and unreimbursed expenses, Defendants underpaid Plaintiffs and the FLSA Collective by over-counting the hours they worked as delivery drivers

and under-counting the hours they worked within the store.

162. By the acts and conduct described above, Defendants willfully violated the provisions of the FLSA and disregarded the rights of Plaintiffs and the FLSA Collective.

163. Plaintiffs and the FLSA Collective have been damaged by Defendants' willful failure to pay minimum wage as required by law.

164. Plaintiff is entitled to damages, including, but not limited to, payment of unpaid minimum wages, liquidated damages, interest, and attorney's fees.

COUNT II

Failure to Pay Overtime Wages – Ohio Minimum Fair Wage Standards Act (On Behalf of Plaintiffs and the FLSA Collective)

165. All preceding paragraphs are fully re-alleged and incorporated herein.

166. Plaintiffs and the FLSA Collective worked more than forty hours in one or more workweeks.

167. Because Defendants took unlawful deductions and required Plaintiffs and the FLSA Collective to pay for automobile expenses and other job-related expenses out of pocket, Defendants did not pay Plaintiffs and the FLSA Collective at least one and a half times their normal hourly rate for time worked in excess of forty hours per workweek.

168. By not paying Plaintiffs and the FLSA Collective proper overtime wages for time worked in excess of forty hours in a workweek, Defendants have willfully violated the FLSA.

COUNT III

Failure to Pay Minimum Wages - Ohio Constitution, Article II, § 34a (On Behalf of Plaintiffs and the Rule 23 Class)

169. Plaintiffs restate and incorporate the foregoing allegations as if fully rewritten herein.

170. Defendants paid Plaintiffs and the Rule 23 Class below minimum wage for the hours they worked by taking deductions for uniforms, requiring them to cover automobile expenses and other job-related expenses, and over-counting hours worked at the lower tipped hourly rate.

171. Article II § 34a of the Ohio Constitution requires that employees be paid not less than minimum wage as determined by an inflation index (currently \$8.10/hour) for all hours worked, and not less than half of the minimum wage rate when the employee is working in a tipped capacity if the employee receives more than minimum wage after tips are included.

172. Because Defendants took unlawful deductions and required Plaintiffs and the Rule 23 Class to pay for automobile expenses and other job-related expenses out of pocket, Defendants failed pay Plaintiffs and the Rule 23 Class at least half of Ohio's minimum wage during the hours they worked making deliveries.

173. Because Defendants took unlawful deductions and required Plaintiffs and the Rule 23 Class to pay for automobile expenses and other job-related expenses out of pocket, Defendants failed to pay Plaintiffs and the Rule 23 Class minimum wage during the hours they worked in the restaurant.

174. By not paying Plaintiffs and the Rule 23 Class at least minimum wage for each hour worked, Defendants have violated the Ohio Constitution, Article II, § 34a.

175. As a result of Defendants' violations, Plaintiffs and the Rule 23 Class are entitled to damages, including, but not limited to, unpaid wages, damages, compensatory damages, costs, and attorneys' fees.

COUNT IV

**Failure to Pay Overtime Wages – Ohio Minimum Fair Wage Standards Act
(On Behalf of Plaintiffs and the Rule 23 Class)**

176. All preceding paragraphs are fully re-alleged and incorporated herein.

177. Plaintiffs and the Rule 23 Class worked more than forty hours in one or more workweeks.

178. Because they took unlawful deductions and required Plaintiffs and the Rule 23 Class to pay for automobile expenses and other job-related expenses out of pocket, Defendants did not pay Plaintiffs and the Rule 23 Class at least one and a half times their normal hourly rate for time worked in excess of forty hours per workweek.

179. By not paying Plaintiffs and the Rule 23 Class proper overtime wages for time worked in excess of forty hours in a workweek, Defendants have willfully violated the OMFWSA.

COUNT V

**Retaliatory Termination under the FLSA
(On Behalf of Plaintiff Hamdi Hassan, individually)**

180. Plaintiffs restate and incorporate the foregoing allegations as if fully rewritten herein.

181. Section 215(a)(3) of the FLSA prohibits employers from discharging or retaliating against an employee for exercising their rights in complaint or protest of failing to receive minimum wage for hours worked.

182. By underpaying Plaintiffs, then discharging him in retaliation for his complaints about his wages, Defendants violated the FLSA.

183. Because of Defendants' retaliatory termination and discharge of Mr. Hassan in violation of this section, Mr. Hassan is entitled to back wages, damages, costs and reasonable

attorney's fees.

COUNT VI

**Retaliatory Termination under the Ohio Constitution, Art. II, § 34a
(On Behalf of Plaintiff Hamdi Hassan, individually)**

184. Plaintiff restates and incorporates the foregoing allegations as if fully rewritten herein.

185. Article II, Section 34a of the Ohio Constitution prohibits employers from discharging or retaliating against an employee for exercising their rights in complaint or protest of failing to receive minimum wage for hours worked.

186. By underpaying Plaintiff, then discharging him in retaliation for complaining his complaints about his wages, Defendants violated Section 34a.

187. Because of Defendants' retaliatory termination and discharge of Plaintiff in violation of this section, Plaintiff is entitled to back wages, damages, costs and reasonable attorney's fees.

WHEREFORE, Plaintiffs Jennafer Schnaudt and Hamdi Hassan pray for all of the following relief:

A. Designation of this action as a collective action on behalf of the collective action members and prompt issuance of notice to all similarly-situated members of an opt-in class, apprising them of this action, permitting them to assert timely wage and hour claims in this action, and appointment of Plaintiffs and their counsel to represent the collective action members.

B. Unpaid minimum wages, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and supporting regulations;

C. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

D. Designation of Plaintiffs as representatives of the Rule 23 Class and counsel of record as Class Counsel;

E. A declaratory judgment that the practices complained of herein are unlawful under Section 34a and the OMFWSA.

F. An award of unpaid minimum wages, overtime wages, unlawful deductions and unreimbursed expenses due under Section 34a and the OMFWSA.

G. An award of damages under §34a, based on Defendants' failure to pay minimum wages pursuant to §34a, calculated as an additional two times of back wages.

H. Liquidated damages under O.R.C. § 4113.15.

I. For Plaintiff Hamdi Hassan individually, back pay and benefits, front pay and benefits, in an amount to be determined at trial, compensatory damages, liquidated damages, and punitive damages for Defendants' violation of 29 U.S.C. § 215(a)(3) and Article II, Section 34a of the Ohio Constitution.

J. An award of prejudgment and post-judgment interest.

K. An award of costs and expenses of this action, together with reasonable attorneys' fees and expert fees.

L. Such other legal and equitable relief as the Court deems appropriate.

Respectfully submitted,

/s/ Robert J. Beggs

Robert J. Beggs, Esq. (0002966)

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*Counsel for the Plaintiffs and the putative FLSA
Collective and Rule 23 Class*

JURY DEMAND

Plaintiffs hereby demand a jury trial by the maximum persons permitted by law on all issues herein triable to a jury.

/s/ Robert J. Beggs

ROBERT J. BEGGS, ESQ. (0002966)

CONSENT TO JOIN 29 U.S.C. § 216(B) ACTION

I hereby consent to joining the civil action in the United States District Court for the Southern District of Ohio, Eastern Division, against JohnCol, Inc. and related entities and individuals, to recover unpaid minimum wages, overtime wages, unlawful deductions, unreimbursed expenses, additional damages, attorneys' fees, and costs under 29 U.S.C. § 216(b), and to be represented by Beggs Law Offices Co., LPA and Kimble Law Office for the purposes of this action. I hereby represent that I was/am a delivery driver who did not receive proper pay for the hours I worked for JohnCol, Inc. and related entities and individuals. In the event the action gets conditionally certified and then decertified, I authorize plaintiff's counsel to reuse this Consent Form to re-file my claims in a separate or related action against Defendants.

7/15/15
Date

Tennaler Schmauch
Signature

Tennaler Schmauch
Name (Printed)

CONSENT TO JOIN 29 U.S.C. § 216(B) ACTION

I hereby consent to joining the civil action in the United States District Court for the Southern District of Ohio, Eastern Division, against JohnCol, Inc. and related entities and individuals, to recover unpaid minimum wages, overtime wages, unlawful deductions, unreimbursed expenses, additional damages, attorneys' fees, and costs under 29 U.S.C. § 216(b), and to be represented by Beggs Law Offices Co., LPA and Kimble Law Office for the purposes of this action. I hereby represent that I was/am a delivery driver who did not receive proper pay for the hours I worked for JohnCol, Inc. and related entities and individuals. In the event the action gets conditionally certified and then decertified, I authorize plaintiff's counsel to reuse this Consent Form to re-file my claims in a separate or related action against Defendants.

7-14-15
Date


Signature

Hamdi Hassan
Name (Printed)