

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**HAMDI HASSAN and AHMADOU
ALPHA, on behalf of themselves and those
similarly situated,**

Plaintiffs,

-against-

**AMERICA’S PIZZA COMPANY, LLC and
MICHAEL BRENT STOLZENTHALER,**

Defendants.

Case No. 2:16-cv-00418

Judge James L. Graham

**Magistrate Judge
Terence P. Kemp**

Jury demand endorsed hereon.

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Hamdi Hassan and Ahmadou Alpha (“Plaintiffs”), on behalf of themselves and all others similarly situated, as class representatives, hereby allege as follows:

PRELIMINARY STATEMENT

1. This action seeks to recover unpaid minimum wages, unpaid overtime, unlawful deductions and chargebacks, and unreimbursed expenses, in an amount to be determined at trial, on behalf of Plaintiffs and similarly situated delivery drivers who worked at one of the 129 Pizza Hut restaurants owned and operated by Defendants America’s Pizza Company, LLC (“America’s Pizza”) and Michael Brent Stolzenhaler (“Mr. Stolzenhaler”) (collectively, “Defendants”).

2. America’s Pizza was founded by Mr. Stolzenhaler in 1998 with the acquisition of 23 Pizza Hut restaurants, and has since grown to operate 129 Pizza Hut restaurants in Ohio, Louisiana, Texas, North Carolina, and South Carolina.

3. Mr. Stolzenhaller is the Chief Executive Officer at America's Pizza. Mr. Stolzenhaller is also on the Board of Directors of Yum! Capital, an affiliate of the corporate Pizza Hut, Inc.

4. Defendants' restaurants are centrally operated from America's Pizza's headquarters at 201 Rue De Jean, Lafayette, Louisiana 70508.

5. Employees at Defendants' restaurants, including Plaintiff Hassan, have 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.

6. 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").

7. Defendants maintained a policy and practice of failing to reimburse delivery drivers for automobile costs, including but not limited to gasoline, insurance, and automobile maintenance expenses, and other job-related expenses, causing Plaintiffs' and similarly situated delivery drivers' wages to fall below minimum wage.

8. 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.

9. Plaintiffs work for Defendants as delivery drivers, and help out inside the restaurant while they are not making deliveries. Defendants' stated policy is that Plaintiffs and similarly situated drivers are paid minimum wage during the hours they spend working inside the

restaurant, and minimum wage, minus a tip credit, during the hours they were outside the restaurant making deliveries.

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.

JURISDICTION AND VENUE

12. 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).

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

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

15. 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

Hamdi Hassan

16. 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.

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

18. Mr. Hassan has given written consent to join this action, a copy of which was filed with the original Complaint in this action (Doc # 1).

Ahmadou Alpha

19. Plaintiff Alpha resides in the Southern District of Ohio. Further, at all times material herein Mr. Alpha worked within the boundaries of Southern District of Ohio.

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

21. Mr. Alpha has given written consent to join this action, a copy of which was filed with the Court on May 14, 2016 (Doc #3).

America’s Pizza Company, LLC

22. Defendant America’s Pizza is a foreign limited liability company organized under the laws of the state of Louisiana and doing business as Pizza Hut in the Southern District of Ohio.

23. America’s Pizza is an “employer” of Plaintiffs and similarly situated delivery drivers as that term is defined by the FLSA and the OMFWSA.

24. “America’s Pizza Company, LLC” is the corporate entity that appears on

Plaintiffs' paystubs for work they completed for Defendants.

25. America's Pizza currently operates 129 locations in Louisiana, Ohio, North Carolina, South Carolina, and Texas.

26. Upon information and belief, America's Pizza 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, and automobile expenses.

27. At all relevant times, America's Pizza 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, America's Pizza 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. America's Pizza's gross revenue exceeds \$500,000 per year.

Michael Brent Stolzenhaller

30. Defendant Michael Brent Stolzenhaller is the Founder and CEO of America's Pizza Company, LLC.

31. Upon information and belief, Mr. Stolzenhaller resides in Lafayette, Louisiana.

32. At all relevant times, Mr. Stolzenhaller has been 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. Stolzenhaller has been actively involved in managing the operations of America's Pizza.

34. At all relevant times, Mr. Stolzenhaller has had control over Defendants' pay

policies and the unlawful policies and practices alleged herein.

35. At all relevant times, Mr. Stolzenhaller has had power over personnel and payroll decisions at America's Pizza.

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

37. At all times relevant, Mr. Stolzenhaller has had the power to transfer the assets and liabilities of America's Pizza.

38. At all relevant times, Mr. Stolzenhaller has had the power to declare bankruptcy on behalf of America's Pizza.

39. At all relevant times, Mr. Stolzenhaller has had the power to enter into contracts on behalf of America's Pizza.

40. At all relevant times, Mr. Stolzenhaller has had the power to close, shut down, and/or sell America's Pizza.

FACTS

CLASSWIDE FACTUAL ALLEGATIONS

41. During all relevant times, Defendants have operated a chain of approximately 129 Pizza Hut restaurants in Ohio, Louisiana, Texas, North Carolina, and South Carolina.

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

43. Each or most 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 Plaintiffs 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 Pizza Hut 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, cellular telephone charges, GPS capability, 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 purchase gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and suffered automobile depreciation, 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, GPS/maps, and other expenses, all for the primary benefit of Defendants.

51. At all times relevant, Defendants have paid Plaintiffs and other similarly situated delivery drivers the applicable minimum wage during the hours they worked inside the restaurant, and minimum wage minus a "tip credit" for the hours Plaintiffs and similarly situated drivers were making deliveries.

52. Defendants did not provide Plaintiffs and similarly situated delivery drivers with proper notification of their intention to take a tip credit from their wages.

53. Defendants 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 have 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 have not even attempted to reasonably approximate the automobile expenses incurred by Plaintiffs and similarly situated delivery drivers.

57. In addition to paying delivery drivers minimum wage minus a tip credit, Defendants also paid Plaintiffs and other similarly situated delivery drivers \$1.00 per delivery.

58. This pay rate was applied uniformly to all delivery drivers at all of the America's Pizza restaurants.

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

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

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

- a. 2013: 56.5 cents/mile
- b. 2014: 56 cents/mile

c. 2015: 57.5 cents/mile

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

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

63. 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.

64. 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.

65. 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.

66. Upon information and belief, Defendants apply the same pay policies, practices, and procedures to all delivery drivers at all America’s Pizza restaurants.

67. Defendants have willfully failed to pay federal and Ohio state minimum wage and overtime to Plaintiffs and similarly situated delivery drivers at America’s Pizza restaurants.

PLAINTIFFS’ INDIVIDUAL FACTUAL ALLEGATIONS

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

Hamdi Hassan

69. Mr. Hassan has been a delivery driver for Defendants from December 2015 to

present. He works at the America's Pizza locations at 6716 Perimeter Loop Road, Dublin, Ohio 43017 and at 2052 Crown Plaza Dr., Columbus, Ohio 43235.

70. At both locations, Mr. Hassan is subject to the same employment practices described herein.

71. Mr. Hassan typically works between 35 and 45 hours per week for Defendants.

72. As a delivery driver, Mr. Hassan delivers pizza and other food items to Defendants' customers' homes and businesses.

73. When he is not making deliveries, Mr. Hassan works 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.

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

75. Defendants pay Mr. Hassan minimum wage - \$8.10 per hour – for the hours he performs work within the store.

76. Defendants pay Mr. Hassan minimum wage minus a tip credit when he is dispatched to deliver a pizza to a customer outside the store.

77. During Mr. Hassan's employment with Defendants, Defendants took deductions from Mr. Hassan's wages by requiring him to pay for automobile expenses and other job-related 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.

78. 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.

79. Mr. Hassan regularly drove up to six miles away from his restaurant to make deliveries.

80. Mr. Hassan regularly made approximately two to four deliveries per hour during the hours he worked as a delivery driver.

81. For example, on Saturday, May 14, 2016, Mr. Hassan worked 7 hours for Defendants, completed 17 deliveries, and drove a total of 95 miles to make those deliveries.

82. On Sunday, May 15, 2016, Mr. Hassan worked 6 hours for Defendants, completed 8 deliveries, and drove a total of 45 miles to make those deliveries.

Ahmadou Alpha

83. Mr. Alpha has been a delivery driver for Defendants from 2007 to present. He works at the America's Pizza location at 4300 Macsway Ave., Columbus, OH 43232.

84. Mr. Alpha is subject to the same employment practices described herein.

85. From fall of 2014 to present, Mr. Alpha has worked approximately one shift per week for Defendants.

86. Prior to the fall of 2014, Mr. Alpha worked as a full time employee for Defendants, working from 30-50 hours per week.

87. Mr. Alpha was robbed at gunpoint while making a delivery for Defendants in approximately the fall of 2014.

88. As a delivery driver, Mr. Alpha delivers pizza and other food items to Defendants' customers' homes and businesses.

89. When he is not making deliveries, Mr. Alpha works 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.

90. At all times during his employment, Mr. Alpha has been qualified to perform the essential functions of his job and performed his duties competently.

91. Throughout his employment, Defendants have paid Mr. Alpha minimum wage for the hours he performs work within the store.

92. From approximately 2010 to present, Defendants have paid Mr. Alpha minimum wage minus a tip credit when he is dispatched to deliver a pizza to a customer outside the store.

93. Until 2010, Defendants paid Mr. Alpha full minimum wage, whether he was working inside the restaurant or outside making deliveries.

94. During Mr. Alpha's employment with Defendants, Defendants took deductions from Mr. Alpha's wages by requiring him to pay for automobile expenses and other job-related expenses out of his own pocket in order to carry out the essential functions of his job as a delivery driver. Mr. Alpha was never reimbursed or otherwise compensated for these automobile expenses.

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

96. Mr. Alpha regularly drove up to six miles away from his restaurant to make deliveries.

97. Mr. Alpha regularly made approximately two to four deliveries per hour during the hours he worked as a delivery driver.

COLLECTIVE ACTION ALLEGATIONS

98. Plaintiffs bring the First and Second Counts on behalf of themselves and all similarly situated current and former delivery drivers employed at the America's Pizza 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”).

99. 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 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, and other expenses. Plaintiffs’ claims are essentially the same as those of the FLSA Collective.

100. 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.

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

102. 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.

103. 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.

104. Defendants’ unlawful conduct has been widespread, repeated, and consistent.

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

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

107. 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.

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

109. 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

110. Plaintiffs bring the Third and Fourth Counts under Federal Rule of Civil Procedure 23, on behalf of themselves and a class of persons consisting of:

All persons who work or worked as Delivery Drivers and similar employees for America's Pizza Company, LLC in Ohio between May 11, 2013 and the date of final judgment in this matter ("Rule 23 Class").

111. 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.

112. 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.

113. 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.

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

115. Plaintiff's 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.

116. 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.

117. 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.

118. 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.

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

120. Plaintiffs are able to fairly and adequately protect the interests of the Rule 23 Class and have no interests antagonistic to the Rule 23 Class.

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

122. 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.

123. 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.

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

125. 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 properly notified Plaintiffs and the Rule 23 Class of their intent to take a tip credit from their wages;
- b. Whether Defendants paid Plaintiffs and the Rule 23 Class at the proper minimum wage rate for all hours worked;
- c. Whether Defendants failed to reimburse automobile expenses, gasoline expenses, and other expenses, as described herein, causing Plaintiffs and the Rule 23 Class members' wages to drop below legally allowable minimum wage and overtime;
- 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 pay Plaintiffs and the Rule 23 Class in a timely manner as described by O.R.C. § 4113.15;
- 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.

126. 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)**

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

128. 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 minimum wage minus a tip credit for all hours worked while making deliveries.

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

130. Defendants required Plaintiffs and the FLSA Collective to pay for automobile expenses and other job-related expenses out of pocket.

131. 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.

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

133. As a result of Defendants' violations, Plaintiffs and the FLSA Collective are entitled to damages, including, but not limited to, unpaid wages, unreimbursed expenses, costs, and attorneys' fees.

COUNT II

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

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

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

136. 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.

137. 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.

138. As a result of Defendants' willful violations, Plaintiffs and the FLSA Collective are entitled to damages, including, but not limited to, unpaid wages, unreimbursed expenses, costs, and attorneys' fees.

COUNT III

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

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

140. Defendants paid Plaintiffs and the Rule 23 Class below minimum wage for the hours they worked by requiring them to cover automobile expenses and other job-related expenses.

141. 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 permits employers to pay less than, but not less than half, of the minimum wage when the employee is working in a tipped capacity.

142. Because Defendants 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 minimum wage.

143. 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.

144. As a result of Defendants' violations, Plaintiffs and the Rule 23 Class are entitled to damages, including, but not limited to, unpaid wages, an additional two times unpaid wages in damages under Section 34a, unreimbursed expenses, 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)

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

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

147. Because they 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.

148. 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 violated the OMFWSA.

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

COUNT V
Untimely Payment of Wages – O.R.C. § 4113.15
(On Behalf of Plaintiffs and the Rule 23 Class)

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

151. During all relevant times, Defendants were entities covered by O.R.C. § 4113.15, and Plaintiffs and the Rule 23 Class were employees within the meaning of O.R.C. § 4113.15 and were not exempt from its protections.

152. O.R.C. § 4113.15(A) requires that Defendants pay Plaintiffs and the Rule 23 Class all wages, including unpaid overtime, on or before the first day of each month, for wages earned during the first half of the preceding month ending with the fifteenth day thereof, and on or before the fifteenth day of each month, for wages earned during the last half of the preceding calendar month.

153. Plaintiffs and the Rule 23 Class's unpaid wages and unreimbursed expenses have remained unpaid for more than thirty (30) days beyond their regularly scheduled payday.

154. In violating Ohio law, Defendants acted willfully, without a good faith basis and with reckless disregard to Ohio law.

155. As a result of Defendants' willful violation, Plaintiffs and the Rule 23 Class are entitled to unpaid wages and liquidated damages, as stated in O.R.C. § 4113.15.

WHEREFORE, Plaintiffs Hamdi Hassan and Ahmadou Alpha 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, reimbursement of expenses and unlawful deductions, 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 representative 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 and the OMFWSA.

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

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

K. 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)