IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

STEPHEN SOLAREK, on behalf of himself and those similarly situated,	:	
Plaintiff,	:	
v.	:	**CLASS ACTION COMPLAINT**
WENDCENTRAL CORP. d/b/a WENDPARTNERS GROUP; INTEGRATED FOOD SYSTEMS, INC.; WENDSTICK, LLC; LEWIS E. TOPPER; JEFFREY J. COGHLAN; and DOE CORPORATIONS 1-329;	:	**JURY DEMAND ENDORSED HEREON**
Defendants.	:	

CLASS ACTION COMPLAINT

Plaintiff Stephen Solarek ("Plaintiff"), on behalf of himself and all others similarly situated, as class representative, upon personal knowledge as to himself and upon information and belief as to other matters, hereby alleges as follows:

PRELIMINARY STATEMENT

1. This action seeks to recover unpaid minimum wages, unlawful deductions and chargebacks, and unreimbursed expenses, in an amount to be determined at trial, on behalf of Plaintiff and similarly situated Wendy's restaurant crew members who work or worked at one of the 330 Wendy's restaurants jointly owned and operated by Defendants WendCentral Corp. d/b/a WendPartners Group ("WendPartners"), Integrated Food Systems, Inc. ("Integrated"), Wendstick, LLC ("Wendstick"), Lewis E. Topper ("Topper"), Jeffrey J. Coghlan ("Coghlan") (collectively, "Defendants"), within the last three years.

2. WendPartners is the largest Wendy's franchisee in the United States, owning and operating approximately 330 Wendy's restaurants in 20 states nationwide.

3. Started in 1989, WendPartners is a consortium of franchise groups controlled by Lewis E. Topper ("Mr. Topper"), Jeffrey J. Coghlan ("Mr. Coghlan"), and several other subsidiary companies.

4. Among WendPartners' subsidiary entities is Wendstick, LLC, which operates the Wendy's restaurant located at 14180 Airport Highway in Swanton, Ohio (the "Airport Highway Wendy's").

5. WendPartners and all of its subsidiary entities are centrally controlled by Defendants from Cortland, New York.

6. Employees at all WendPartners franchise locations are governed by substantially the same employment policies and practices no matter which of Defendants' restaurants they worked in, including policies and practices with respect to wages.

7. WendPartners, Integrated, Wendstick, Topper, and Coghlan jointly employed Plaintiff and similarly situated crew members at all time relevant.

8. At all relevant times, Defendants have shared or co-determined those matters governing the essential terms and conditions of employment for Plaintiff and similarly situated crew members.

9. At all relevant times, all Defendants have had direct or indirect control over the terms and conditions of Plaintiff's work and the work of similarly situated crew members.

10. At all relevant times, all Defendants have possessed the authority to control the terms and conditions of Plaintiff's employment and the employment of similarly situated crew members, and have exercised that authority.

11. Defendants maintain a policy and practice of underpaying their crew members in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq*., and the Ohio Constitution, Art. II, § 34a ("Section 34a").

12. Defendants maintain a policy and practice of requiring crew members to pay for the cost of required uniforms, including shoes, causing Plaintiff's and similarly situated crew members' wages to fall below minimum wage.

13. Defendants also maintained a policy and practice of requiring crew members to accept their wages on a debit card, which carried with it mandatory fees each time it was used or cash was withdrawn from the account, causing Plaintiff's and similarly situated crew members' wages to fall below minimum wage.

14. Plaintiff brings this action on behalf of himself and similarly situated current and former crew members nationwide 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.

15. Plaintiff also brings this action on behalf of himself and similarly situated current and former crew members in Ohio pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the Ohio Constitution, Art. II, § 34a and O.R.C. § 4113.15.

16. Plaintiff also brings this action on behalf of himself, individually, seeking damages for Defendants' discriminatory actions in violation of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. § 12101, *et seq*., and Ohio Revised Code § 4112.01, *et seq*.

JURISDICTION AND VENUE

17. This action is brought pursuant to the FLSA, 29 U.S.C. §201, *et seq*., the ADA, 42 U.S.C. § 12101, *et seq*., Ohio Constitution, Art. 2 §34a, O.R.C. § 4113.15, O.R.C. § 4112.01, *et seq*., and 28 U.S.C. §1331 and §1343(a)(4).

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

19. 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.

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

PARTIES

Plaintiff

Stephen Solarek

21. Plaintiff Stephen Solarek is a citizen of the United States and resides in the Northern District of Ohio. Further, at all times material herein Plaintiff worked within the boundaries of Northern District of Ohio.

22. At all times relevant herein, Plaintiff was an "employee" of Defendants as defined in the FLSA, Section 34a, the ADA, and Ohio discrimination law.

23. Plaintiff has given written consent to join this action, a copy of which is attached to this Class Action Complaint.

Defendants

24. Defendants jointly employed Plaintiff and similarly situated employees at all times relevant.

25. Each Defendant has had substantial control over Plaintiff's and similarly situated employees' working conditions, and over the unlawful policies and practices alleged herein.

26. Defendants are part of a single integrated enterprise that jointly employed Plaintiff and similarly situated employees at all times relevant.

27. Defendants' operations are interrelated and unified.

28. During all relevant times, the Airport Highway Wendy's has been centrally controlled and/or owned by Defendants, along with 329 other Wendy's restaurants in 20 states.

29. During all relevant times, Defendants centrally controlled the labor relations of all 330 Wendy's restaurants, including the Airport Highway Wendy's.

30. During all relevant times, Defendants have shared or co-determined those matters governing the essential terms and conditions of employment for Plaintiff and similarly situated crew members.

31. During all relevant times, all Defendants have had direct or indirect control over the terms and conditions of Plaintiff's work and the work of similarly situated crew members.

32. During all relevant times, all Defendants have possessed the authority to control the terms and conditions of Plaintiff's employment and the employment of similarly situated crew members, and have exercised that authority.

33. During all relevant times, Defendants exercised operational control over the management of the Airport Highway Wendy's, including but not limited to, control over: compensation of workers, payroll practices, workplace policy and standards, recruiting and training workers, products offered, sales and marketing programs, public relations, promotional services, inventory controls, and other issues.

WendCentral Corp. d/b/a WendPartners Group

34. Defendant WendCentral Corp., d/b/a WendPartners Group is a foreign business corporation incorporated in the state of New York.

35. According to Defendant Coghlan, "WendPartners Group" is how Defendants' 330 Wendy's restaurants are known collectively. See *Wendy's International, Inc., et al v. Lewis Topper, et al*, Civil Action No. 2:11-cv-00660 (MHW)(TPK)(S.D. Ohio 2011), ECF # 33-1, PAGE ID # 260-61.

36. WendPartners and its subsidiaries are operated by Lewis Topper and Jeffrey Coghlan.

37. WendPartners is an "employer" of Plaintiff and similarly situated crew members as that term is defined by the FLSA, Section 34a, the ADA, and Ohio discrimination law.

38. WendPartners owns over five percent of Wendy's total franchised restaurants in the United States.

39. WendPartners consolidates administrative efforts in order to create efficiencies and streamline processes for over 330 Wendy's franchise restaurants.

40. WendPartners has integrated operations, including food, labor, and other financial operations, between all of its franchise restaurants.

41. WendPartners handles all back office and administrative processes for Wendstick, LLC, including but not limited to accounting, payroll, POS system support, technical support, and cost management.

42. WendPartners centrally controls and manages store operations of all 330 WendPartners Wendy's restaurants through its internal website, www.wendcentral.com.

43. Many of WendPartners' subsidiary entities, like Wendstick, LLC, contain the

prefix "Wend." For example, upon information and belief, WendPartners owns and operates, among many others, the following Ohio corporations: Wendalia, LLC; Wenday East, LLC; Wenday South, LLC; Wenday West, LLC; Wendledo, LLC; Wendmiddle, LLC; Wendpark, LLC; and Wendtole, LLC.

44. WendPartners applies the same employment policies, practices, and procedures to all crew members at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, deductions, and expenses.

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

46. At all relevant times, WendPartners 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.

47. WendPartners' gross revenue exceeds $500,000 per year.

Integrated Food Systems, Inc.

48. Defendant Integrated Food Systems, Inc. is a foreign corporation incorporated in New Jersey with its principal place of business in New York.

49. Integrated Food Systems, Inc. is to be served with process at 1 Commercial Drive, Area E, Florida, New York 10921 – the same address that is listed on Plaintiff's paystubs for work he completed for Defendants.

50. According to the New York Department of State, Division of Corporations, Lewis Topper is the Chief Executive Officer of Integrated Food Systems, Inc.

51. Upon information and belief, Integrated is among the operating entities of WendPartners.

52. Integrated is an "employer" of Plaintiff and similarly situated crew members as that term is defined by the FLSA, Section 34a, the ADA, and Ohio discrimination law.

53. Integrated consolidates administrative efforts in order to create efficiencies and streamline processes for over 330 Wendy's franchise restaurants.

54. Integrated has integrated operations, including food, labor, and other financial operations, between all of its franchise restaurants.

55. Integrated applies the same employment policies, practices, and procedures to all crew members at all of its locations, including policies, practices, and procedures relating to payment of minimum wages, deductions, and expenses.

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

57. At all relevant times, Integrated 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.

58. Integrated's gross revenue exceeds $500,000 per year.

Wendstick, LLC

59. Defendant Wendstick, LLC is a domestic limited liability company organized and existing under the laws of Ohio

60. Together with WendPartners, Integrated, Topper, and Coghlan, Wendstick is an "employer" of Plaintiff and similarly situated crew members as that term is defined by the FLSA,

Section 34a, the ADA, and Ohio discrimination law.

61. "Wendstick, LLC" is the corporate name that appears on paychecks received by Plaintiff for worked performed for Defendants at the Airport Highway Wendy's.

62. Plaintiff's paystubs indicate Wendstick's address is "1 Commercial Drive, Area E, Florida, NY 10921." This is the same address as Integrated Food Systems, Inc., and other WendPartners subsidiaries Wenday West, LLC; Wendgrand, LLC; Wendtal, LLC; Wendwayne, LLC; and Wendponca, LLC.

63. Wendstick applies the same employment policies, practices, and procedures to all crew members at all of its locations, including policies, practices, and procedures relating to payment of minimum wages and uniform expenses.

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

65. At all relevant times, Wendstick 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.

66. Wendstick's gross revenue exceeds $500,000 per year.

Doe Corporations 1-329

67. Defendants "Doe Corporations 1-329" represent the legal entities associated with each of WendPartners' 330 Wendy's restaurants nationwide.

68. Together with WendPartners, Integrated, Wendstick, Topper, and Coghlan, the Doe Corporations are "employers" of Plaintiff and similarly situated crew members as that term is defined by the FLSA, Section 34a, the ADA, and Ohio discrimination law.

69. Upon information and belief, many of Doe Corporations 1-329 include the prefix "Wend." For example, upon information and belief, the following entities, among many others, are among Doe Corporations 1-329:

- Wenday West, LLC
- Wendgrand, LLC
- Wendtal, LLC
- Wendwayne, LLC
- Wendponca, LLC
- Wendalia, LLC
- Wenday East, LLC
- Wenday South, LLC
- Wendledo, Limited Liability Company
- Wendpark, Limited Liability Company
- Wendtole, Limited Liability Company
- Wendal Corp.
- Wendfield Corp.
- Wendhunt Corp.
- Wendmable Corp.
- Wendbus Corp.
- Wendnorm, LLC
- Wendcharles II, LLC
- Wendclark Corp.
- Wendgrand, LLC

70. Doe Corporations 1-329 apply the same employment policies, practices, and procedures to all crew members at all of its locations, including policies, practices, and procedures relating to payment of minimum wages and uniform expenses.

71. At all relevant times, Doe Corporations 1-329 has maintained control, oversight, and direction over Plaintiff and similarly situated employees, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other practices.

72. At all relevant times, Doe Corporations 1-329 have been and continue to be enterprises engaged in "the production of goods for commerce" within the meaning of the phrase as used by the FLSA.

73. Upon information and belief, each of Doe Corporations 1-329 have gross revenues that exceed $500,000 per year.

Lewis Topper

74. Defendant Lewis Topper is a principal of WendPartners, an owner of Wendstick, and the CEO of Integrated.

75. Mr. Topper is an executive officer at Wendstick, Integrated, and WendPartners.

76. According to Mr. Coghlan, Mr. Topper is an executive in each of the Doe Corporations 1-329.

77. Upon information and belief, Mr. Topper resides in New York.

78. At all relevant times, Mr. Topper has been an "employer" of Plaintiff and similarly situated crew members as that term is defined by the FLSA and Section 34a.

79. At all relevant times, Mr. Topper has been actively involved in managing the operations of WendPartners, Integrated, and Wendstick.

80. At all relevant times, Mr. Topper has had control over Defendants' pay policies and the unlawful policies and practices alleged herein.

81. At all relevant times, Mr. Topper has had power over personnel decisions and payroll decisions at WendPartners, Integrated, and Wendstick.

82. At all relevant times, Mr. Topper has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

83. At all times relevant, Mr. Topper has had the power to transfer the assets and liabilities of WendPartners, Integrated, and Wendstick.

84. At all relevant times, Mr. Topper has had the power to declare bankruptcy on behalf of WendPartners, Integrated, and Wendstick.

85. At all relevant times, Mr. Topper has had the power to enter into contracts on behalf of WendPartners, Integrated, and Wendstick.

86. At all relevant times, Mr. Topper has had the power to close, shut down, and/or sell WendPartners, Integrated, and Wendstick.

Jeffrey J. Coghlan

87. Defendant Jeffrey Coghlan is a principal of WendPartners and an owner of Wendstick.

88. According to the New York Department of State, Division of Corporations, Jeffrey Coghlan is the Chief Executive Officer of WendCentral Corp.

89. Upon information and belief, Mr. Coghlan is an executive officer at Wendstick.

90. Upon information and belief, Mr. Coghlan resides in New York.

91. At all relevant times, Mr. Coghlan has been an "employer" of Plaintiff and similarly situated crew members as that term is defined by the FLSA and Section 34a.

92. At all relevant times, Mr. Coghlan has been actively involved in managing the operations of WendPartners, Integrated, and Wendstick.

93. At all relevant times, Mr. Coghlan has had control over Defendants' pay policies and the unlawful policies and practices alleged herein.

94. At all relevant times, Mr. Coghlan has had power over personnel decisions and payroll decisions at WendPartners, Integrated, and Wendstick.

95. At all relevant times, Mr. Coghlan has had the power to stop any illegal pay practices that harmed Plaintiff and similarly situated employees.

96. At all times relevant, Mr. Coghlan has had the power to transfer the assets and liabilities of WendPartners, Integrated, and Wendstick.

97. At all relevant times, Mr. Coghlan has had the power to declare bankruptcy on behalf of WendPartners, Integrated, and Wendstick.

98. At all relevant times, Mr. Coghlan has had the power to enter into contracts on behalf of WendPartners, Integrated, and Wendstick.

99. At all relevant times, Mr. Coghlan has had the power to close, shut down, and/or sell WendPartners, Integrated, and Wendstick.

FACTS

CLASSWIDE FACTUAL ALLEGATIONS

100. During all relevant times, Defendants have operated the Airport Highway Wendy's, along with approximately 329 other Wendy's franchise restaurants.

101. The primary function of these Wendy's restaurants is to sell hamburgers and other food items to customers, whether they dine in, carry out, or drive thru.

102. Each of Defendants' restaurants employs crew members who are primarily responsible for taking orders, preparing orders, maintaining the dining area, and completing a number of other duties as required for the successful operation of the restaurant.

103. Plaintiff and the similarly situated persons he seeks to represent are current and former crew members employed by Defendants who were paid at or near minimum wage.

104. All crew members employed by Defendants over the last three years had essentially the same job duties.

105. Defendants have maintained a policy or practice of paying Plaintiff and similarly situated crew members minimum wage for the hours they worked.

106. Defendants require crew members to incur job-related expenses for Defendants' benefit, specifically the cost of uniform shoes.

107. Defendants require crew members to purchase one of three types of slip resistant shoes in order to work, and deduct the costs of the shoes from crew members' wages.

108. Defendants order the slip resistant shoes for crew members, and have them shipped directly to the restaurant at which they worked.

109. Defendants also maintain and policy and practice whereby crew members are paid wages on a debit card, but are charged mandatory fees any time they use the card or withdrew money.

110. As a result, crew members' effective hourly rate fell below minimum wage.

111. WendPartners consolidates its administrative efforts for all of its franchises, handling "accounting, payroll, POS system support, technical support, and cost management" from its headquarters in New York.

112. Upon information and belief, Defendants apply the same pay policies, practices, and procedures to all crew members at all Defendants' restaurants.

113. Defendants have willfully failed to pay federal and Ohio state minimum wage to Plaintiff and similarly situated crew members at Defendants' restaurants.

PLAINTIFF'S INDIVIDUAL FACTUAL ALLEGATIONS

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

Stephen Solarek

115. Plaintiff worked for Defendants as a crew member at the Airport Highway Wendy's from approximately February 2015 to July 2015.

116. Plaintiff was paid minimum wage for all hours worked.

117. Defendants deducted money from Plaintiff's wages for the cost of work shoes.

118. Plaintiff's paystubs show that a deduction in the amount of $48.96 was made for the category "Shoes for Crew."

119. This deduction was made for the benefit of Defendants.

120. As a result of this deduction, Plaintiff was paid less than minimum wage.

121. Plaintiff received his wages on a debit card.

122. However, Plaintiff was charged a fee any time he attempted to withdraw cash from his debit card.

123. Plaintiff was also charge a fee each time he made a purchase with his debit card.

124. The fees Plaintiff was forced to pay each time he used his debit card amounted to deductions from Plaintiff's wages.

125. As a result of these deductions, Plaintiff was paid less than minimum wage.

126. Plaintiff has autism.

127. While picking Plaintiff up from work during Plaintiff's first week working for Defendants, Plaintiff's father, Toby Solarek, informed Defendants' manager that Plaintiff has autism.

128. Immediately after learning of Plaintiff's autism, Defendants' treatment of and behavior toward Plaintiff changed.

129. Despite working a full schedule during his first week, Plaintiff was suddenly scheduled for only 1-2 hour *per week*. Plaintiff had been hired to be a full-time crew member.

130. Despite drastically reducing Plaintiff's schedule with no explanation, at all times, Defendants had a "now hiring" sign posted in the restaurant's window.

131. During the single hour or two Plaintiff was permitted to work by Defendants, he was treated differently.

132. With one exception (when Plaintiff was assigned to serve drinks), Plaintiff was exclusively assigned to take out the trash, to clean the dining room, and to clean the bathrooms.

133. Plaintiff was never properly trained on or assigned to work on various crew member tasks, including taking orders from customers, preparing food, or working the drive-thru window.

134. Because he was scheduled to work so infrequently, he was treated by an outsider by his co-workers and managers. Some of his co-workers did not even know that he was an employee.

135. In April 2015, Plaintiff decided to ask the store manager, Dan, if he would work more hours. Plaintiff is a quiet person, and it was nerve-wracking and stressful for him to summon the courage to request additional hours from his manager.

136. Dan informed Plaintiff that he would be scheduled for more hours when the weather got warmer. He did not explain why Plaintiff's hours had been reduced, nor did he explain why the weather had anything to do with how many hours Plaintiff was scheduled to work.

137. When Toby Solarek picked Plaintiff up from work that day, Dan approached Toby Solarek to assure him that Plaintiff would be scheduled for additional hours when the weather was warmer.

138. Despite Dan's promises, Plaintiff was never given more hours. He continued to be scheduled for 1-2 hours per week, and continued to be relegated to garbage, cleaning, and bathroom duties.

139. On July 20, 2015, Plaintiff was finally assigned to work a task other than cleaning. Defendants' manager, Tom, assigned Plaintiff to work the fryer.

140. After his shift ended on July 20, 2015, Plaintiff approached Tom about being assigned to work more hours.

141. Tom told Plaintiff that he did a good job on the fryer, and that he would see to it that Plaintiff was assigned additional hours.

142. Plaintiff was excited by this new development, and believed his work experience for Defendants was finally going to improve.

143. However, thereafter, Plaintiff was *never again* placed on the work schedule.

144. Plaintiff had been told that he was not allowed to call in to ask for his work schedule, but instead had to go to the restaurant to check for himself.

145. The week after July 20, 2015, Plaintiff walked to the restaurant to learn that he was not on the schedule at all. His name was still on the schedule, but he was not scheduled for any hours.

146. For three straight weeks in July and August, Plaintiff walked to the restaurant to learn that he was not scheduled for any hours whatsoever. No one from Defendants ever provided him with an explanation.

147. After approximately three weeks, Plaintiff's name was removed from the schedule altogether.

148. Plaintiff was and is fully capable of completing all of the duties of a crew member at Defendants' Wendy's restaurants.

149. However, due to Defendants' discrimination, Plaintiff was never given an opportunity.

150. In a final show of discrimination and disrespect, Defendants terminated Plaintiff's employment without explanation or even notification.

151. Defendants' discriminatory treatment of Plaintiff has caused and continues to cause him severe emotional distress.

COLLECTIVE ACTION ALLEGATIONS

152. Plaintiff bring the First Count on behalf of himself and all similarly situated current and former crew members employed at WendPartners' restaurants owned, operated and controlled by Defendants, during the three years prior to the filing of the Class Action Complaint and the date of final judgment in this matter, who elect to opt-in to this action (the "FLSA Collective").

153. At all relevant times, Plaintiff 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 Plaintiff and the FLSA Collective minimum wage. Plaintiff's claims are essentially the same as those of the FLSA Collective.

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

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

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

157. The First Count is properly brought under and maintained as an opt-in collective action under 29 U.S.C. § 216(b).

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

159. 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.

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

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

CLASS ACTION ALLEGATIONS

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

> All persons who work or worked as minimum wage crew members and similar employees at the WendPartners Restaurants in Ohio between August 23, 2013 and the date of final judgment in this matter ("Rule 23 Class").

163. 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.

164. 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.

165. 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.

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

167. 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.

168. Plaintiff and the Rule 23 Class members were subject to the same corporate practices of Defendants, as alleged herein, of failing to pay minimum wage.

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

170. Plaintiff 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.

171. By asserting class claims, Plaintiff is exercising and intends to exercise his right to engage in concerted activity for the mutual aid or benefit of himself and his co-workers.

172. Plaintiff and the Rule 23 Class sustained similar losses, injuries, and damages arising from the same unlawful practices, polices, and procedures.

173. Plaintiff is able to fairly and adequately protect the interests of the Rule 23 Class and has no interests antagonistic to the Rule 23 Class.

174. Plaintiff is represented by attorneys who are experienced and competent in both class action litigation and employment litigation.

175. 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.

176. Upon information and belief, Defendants and other employers throughout the state violate 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.

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

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

a. Whether Defendants paid Plaintiff and the Rule 23 Class at the proper minimum wage rate for all hours worked;

b. Whether Defendants failed to reimburse uniform expenses, and other expenses, causing Plaintiff and the Rule 23 Class members' wages to drop below legally allowable minimum wage;

c. Whether Defendants failed to reimburse Plaintiff and the Rule 23 Class members for debit card expenses, causing their wages to drop below legally allowable minimum wage;

d. Whether Defendants failed to pay Plaintiff and the Rule 23 Class in a timely manner as described by O.R.C. § 4113.15;

e. Whether Defendants' policy of failing to pay Plaintiffs and the Rule 23 Class was instituted willfully or with reckless disregard of the law; and

f. The nature and extent of class-wide injury and the measure of damages for those injuries.

179. In recognition of the services Plaintiff has rendered and will continue to render to the Rule 23 Class, Plaintiff 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 Plaintiff and the FLSA Collective)

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

181. Plaintiff and the FLSA Collective are or were non-exempt, hourly employees entitled to receive no less than minimum wage for all hours worked.

182. Defendants made deductions from the wages of Plaintiff and the FLSA Collective for the benefit of Defendants.

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

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

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

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

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

187. Defendants paid Plaintiff and the Rule 23 Class below minimum wage for the hours they worked by taking deductions from their wages for uniforms and in the form of debit card fees.

188. 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.

189. Because Defendants took deductions from Plaintiff's pay and the pay of the Rule 23 Class, Defendants failed pay Plaintiff and the Rule 23 Class minimum wage during the hours they worked.

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

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

COUNT III
Untimely Payment of Wages - Ohio Revised Code § 4113.15
(On Behalf of Plaintiff and the Rule 23 Class)

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

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

194. O.R.C. § 4113.15(A) requires that Defendants pay Plaintiff 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.

195. Plaintiff 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.

196. In violating Ohio law, Defendants acted willfully, without a good faith basis and

with reckless disregard to Ohio law.

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

COUNT IV
Disability Discrimination - Ohio Revised Code § 4112.02(A)
(On Behalf of Plaintiff Against the Corporate Defendants)

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

199. Plaintiff is a "disabled individual" within the meaning of O.R.C. § 4112.01.

200. Despite Plaintiff's perceived disability, he was capable of completing the essential functions of his duties as a crew member for Defendants with reasonable accommodations from Defendants.

201. Plaintiff suffered adverse employment actions from the moment Defendants learned of his disability/perceived disability.

202. Among many other things, Plaintiff had his hours reduced despite Defendants advertising for new employees, was assigned to the least desirable tasks, was not trained or given an opportunity to complete the majority of the crew member tasks, was alienated and ostracized by Defendants' managers, and was ultimately forced out of his position without so much as an explanation.

203. Plaintiff did not require any accommodations, except to be trained on the various tasks of his job and supported as he carried out his duties like any other crew member.

204. Defendants failed to engage in a collaborative or interactive process with Plaintiff to determine if there were any reasonable accommodations they could provide to allow him to work. All that Plaintiff required was hours and training.

205. As a result of Defendants' discriminatory actions towards Plaintiff, he has suffered severe emotional distress and damage.

206. By the acts and conduct described above, Defendant violated the provisions of the O.R.C. § 4112.02(A), and disregarded Plaintiff's rights causing him injury.

207. Plaintiff is entitled to damages, including, but not limited to, loss of his job position, back pay and benefits, front pay and benefits, emotional damages, compensatory damages, punitive damages, interest, and attorneys' fees.

COUNT V
Disability Discrimination – Americans with Disabilities Act
(On Behalf of Plaintiff Against the Corporate Defendants)

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

209. Plaintiff is a person with a "disability" as defined by the ADA, 42 U.S.C. § 12102(1).

210. Plaintiff was and is capable of performing the essential functions of the crew member position with reasonable accommodations from Defendants.

211. Defendants' conduct as described herein violated the provisions of the ADA and disregarded Plaintiff's rights causing him injury.

212. Plaintiff is entitled to damages, including, but not limited to, reinstatement, back pay and benefits, front pay and benefits, emotional damages, compensatory damages, punitive damages, interest, and attorneys' fees.

WHEREFORE, Plaintiff Stephen Solarek prays 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 Plaintiff and their counsel to represent the collective action members.

B. Unpaid minimum wages, 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 Plaintiff 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 O.R.C. § 4113.15.

F. An award of unpaid minimum wages due under Section 34a.

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

H. An award of liquidated damages under O.R.C. § 4113.15.

I. An award of reinstatement, back pay, front pay, compensatory damages, emotional damages, punitive damages, and interest for Defendants' violations of the ADA and O.R.C. § 4112.02(A).

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/ Andrew P. Kimble
Andrew Kimble, Esq. (0093172)
Kimble Law, LLC
1675 Old Henderson Road
Columbus, Ohio 43220
Andrew@kimblelawoffice.com
614-983-0361 Direct Dial
614-448-9408 Facsimile

Counsel for the Plaintiff and the putative Class

JURY DEMAND

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

/s/ Andrew P. Kimble
ANDREW P. KIMBLE

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

I hereby consent to joining the civil action in the United States District Court against Wendstock LLC, and related entities and individuals, to recover unpaid minimum wages, overtime wages, unlawful deductions, 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 an employee who did not receive proper pay for the hours I worked for Wendstock LLC 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.

9-4-15
Date

Signature

Stephen Solarek
Name (Printed)