

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

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

COMPLAINT-COLLECTIVE ACTION

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

JURISDICTION AND VENUE

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

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

PARTIES

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

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

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

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

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

FACTS

8. Defendant employs Servers at its IHOP restaurants.

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

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

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

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

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

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

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

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

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

COLLECTIVE ALLEGATIONS

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

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

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

COUNT I
(Alleging Violations of the FLSA)

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

JURY TRIAL DEMAND

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

PRAYER FOR RELIEF

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

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

Date: May 21, 2015

/s/ Scott C. Harris

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**pro hac vice* admission anticipated