

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ALICIA WILMOTH, on behalf)	
of herself and others similarly)	
situated,)	Jury Trial Demanded
)	
Plaintiffs,)	
)	Case no.: 1:21-cv-1507
vs.)	
)	
STEAK N SHAKE, INC.)	
(an Indiana Corporation), and)	
)	
SARDAR BIGLARI)	
)	
Defendants.)	

COMPLAINT
Collective Action under the Fair Labor Standards Act

COMES NOW, the Plaintiff Alicia Wilmoth, on behalf of herself and all others similarly situated, and brings this collective class action under § 216(b) of the Fair Labor Standards Act against Defendants Steak N Shake, Inc. and Sardar Biglari for damages and other relief as follows:

NATURE OF ACTION

1. Plaintiff brings this collective action claim pursuant to § 216(b) of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”) on behalf of herself and a class of other similarly situated current and former “Managers” employed by Defendants at their corporate owned “Steak N Shake by Biglari” restaurants throughout the United States. Plaintiff alleges that these Managers are entitled to unpaid overtime wages for all hours worked in excess of forty for any given workweek, liquidated damages, costs, and attorneys’ fees.

JURISDICTION AND VENUE

2. This Court has original jurisdiction to hear this Complaint and to adjudicate

the claims stated herein under 28 U.S.C. § 1331, in that this action is being brought under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b), since the Defendants conduct business and can be found in the Southern District of Indiana, and the cause of action set forth herein has arisen and occurred in part in New Castle, Henry County, Indiana. Venue is also proper under 28 U.S.C. §1132(e)(2) because Defendants have substantial business contacts within Indiana, and this judicial district.

PARTIES

4. Defendant Steak N Shake, Inc. (“Steak N Shake”) is an Indiana corporation registered to do business and in good standing in the state of Indiana that serves food and drink products at restaurants (or “stores”) operating under the name “Steak N Shake by Biglari.” It’s principal place of business is located at 107 S. Pennsylvania, Ste. 400, Indianapolis, Indiana 46204. Its registered agent is the Corporation Service Company, 135 N. Pennsylvania Street, Ste. 1610, Indianapolis, Indiana 46204. Steak N Shake, Inc. is a wholly owned subsidiary of Biglari Holdings, Inc.

5. Defendant Sardar Biglari is the President and Chief Executive Officer of Defendant Steak N Shake, Inc. Sardar Biglari is also the Chairman and Chief Executive Officer of Biglari Holdings, Inc. Sardar Biglari is the majority shareholder of Biglari Holdings, Inc., and in turn, the majority shareholder of Steak N Shake, Inc. Sardar Biglari’s place of business as President of Steak N Shake, Inc. is 107 S. Pennsylvania, Ste. 400, Indianapolis, Indiana 46204. Biglari’s principal place of business as President and CEO of Biglari Holdings, Inc. is 17802 IH 10 West, Ste. 300 San Antonio, Texas 78257. Sardar Biglari is a resident of San Antonio, Texas.

6. At all relevant times herein, the Defendants operate over 276 corporate owned retail restaurants throughout the United States including fifty (50) or more Steak N Shake restaurants in Indiana. This includes a Steak N Shake restaurant where Plaintiff worked as a Manager located in New Castle, Henry County, Indiana. In addition to Indiana, Steak N Shake operates 226 other locations in fifteen (15) other states.

7. Upon information and belief, Defendants gross annual sales made or business done has been \$500,000 per year or greater at all relevant times.

8. Defendants are, and have been, an “employer” engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. § 203(d).

9. Plaintiff Alicia Wilmoth currently resides in Anderson, Indiana.

10. Plaintiff, and others similarly situated as alleged herein, are current or former employees of Defendant within the meaning of the FLSA, 29 U.S.C. § 203(e)(1).

FACTUAL ALLEGATIONS

11. Each of Defendants’ retail restaurants are modeled to be staffed with the following positions that Defendants designated as exempt from overtime pay within the past three years of this filing (listed in their respective chain of supervision): “General Manager,” “Restaurant Manager” [at some, but not all locations], and one or more “Managers.”

12. In addition to these designated overtime exempt positions set forth in paragraph 11, Defendants also employ numerous employees they have designated as overtime eligible (or nonexempt) at each retail restaurant such as Operation Supervisors, Production Trainers, Service Trainers, Production Workers, and Servers (hereafter collectively referred to as “nonexempt restaurant workers”).

13. Plaintiff Wilmoth was employed by Defendants as an exempt “Manager” from approximately September 2018 through January 2019. Plaintiff worked at Defendants’ Steak N Shake restaurant located at 23 Executive Drive, New Castle, Henry County, Indiana.

14. Regardless of location, Defendants have a uniform corporate-wide job description for Managers setting forth their alleged job duties, requirements, responsibilities and designating this position as exempt from overtime pay.

15. Regardless of location, all of Defendants’ Managers, including the Plaintiff, have the same or similar primary job duties which are controlled in every aspect by Defendants’ centralized corporate policies and procedures.

16. Regardless of location, the Plaintiff’s and other Managers’ primary job duties involved spending the vast majority of their time performing the job tasks of nonexempt restaurant workers, whereby they exercised little to no managerial responsibilities, were not free from supervision, and were effectively paid an hourly rate equivalent to the nonexempt restaurant workers. If Plaintiff and other similarly situated employees failed to perform these primary duties, the restaurant operation would fail.

17. Regardless of location, within three years of filing this Complaint, the Defendants classified all Managers, including the Plaintiff, as exempt from overtime compensation under the FLSA.

18. During her employment with the Defendant as a Manager, the Plaintiff and other similarly situated employees, were routinely scheduled on a weekly basis to work 50 hours per workweek.

19. Plaintiff, and other similarly situated employees, never received overtime pay for hours worked in excess of forty per workweek and would also have weeks where they worked in excess of 50 hours. On a weekly basis while working as a Manager, the Plaintiff Wilmoth worked an average of approximately 50-52 hours per week.

20. On February 26, 2019, a federal jury returned a verdict on behalf of a class of Managers working at Defendants' corporate owned restaurants in the state of Missouri under Missouri's wage laws, and Managers working in Defendants' St. Louis Group Market under the FLSA, finding that this position was not exempt from overtime pay under the FLSA's executive, administrative, and combination exemptions and that overtime was owed. *See Drake, et al. v. Steak N Shake, Inc.*, case no. E.D.Mo. 4:14-cv-1535-JAR (Doc. 324).¹

21. Defendant Sardar Biglari, in his position as President and CEO of Steak N Shake, Inc., exerts control over areas of management at corporate owned restaurants throughout the United States including Indiana. He determined the terms and conditions of employees' employment, and in particular to the allegations made herein regarding Managers, was responsible for deciding that Managers were overtime exempt—even after a federal jury and court concluded otherwise two years earlier in *Drake, supra*. Up through the filing of this Complaint, Defendants continue to treat Managers as overtime exempt.

22. Upon information and belief, Defendants did not keep accurate records of all hours worked by Plaintiff and others similarly situated as required by the FLSA.

COUNT I
COLLECTIVE CLASS ACTION CLAIM UNDER FLSA

23. Plaintiff, on behalf of herself and others similarly situated, re-alleges and incorporates by reference the above paragraphs as if fully set forth herein.

24. The FLSA requires each covered employer, such as Defendants, to compensate all non-exempt employees at a rate of not less than one and one-half the regular rate of pay for work performed in excess of forty hours in a work week.

¹ The court entered its final judgment and order granting liquidated damages for Steak N Shake, Inc. Managers. *Drake v. Steak N Shake Operations, Inc.*, 4:14-CV-01535-JAR, 2019 WL 2075895 (E.D. Mo. May 10, 2019).

25. Plaintiff files this action on behalf of herself and all others similarly situated pursuant to the FLSA, 29 U.S.C. §216(b). The proposed collective for the FLSA claims is defined as follows:

All persons who worked, or will work during the liability period, as Managers for Defendants at its corporate owned “Steak ‘n Shake” restaurants located in the United States at any time within three years prior to the filing of this Complaint — but excluding any persons who consented to join and participated in the settlement agreement reached in *Drake, supra*, [the *Drake* settlement also included FLSA opt-in plaintiff Managers from a related matter: *Clendenen, et al. v. Steak N Shake, Inc.*, case no.: E.D.Mo. 4:17-cv-1506]² (hereafter Plaintiff’s proposed class is referred to as the “FLSA Collective”).

26. This Complaint may be brought and maintained as an “opt-in” collective action pursuant to the FLSA, 29 U.S.C. §216(b), for all claims asserted by the Plaintiff because the claims of the Plaintiff are similar to the FLSA Collective.

27. During the applicable statutory period, Plaintiff and the FLSA Collective routinely worked in excess of 40 hours per workweek without receiving overtime compensation at the proper overtime rate of pay for their overtime hours worked in violation of the FLSA.

28. Plaintiff, and the FLSA Collective, are similarly situated in that are all subject to Defendants’ same policies and procedures governing every aspect of their job duties, all routinely work(ed) in excess of 40 hours per workweek, perform the same or similar primary duties, and are all subject to the same pay policy and practice of failing to pay Managers’ overtime for hours worked in excess of forty per workweek.

29. Defendants are liable under the FLSA, 29 U.S.C. § 201, *et seq.*, for failing to properly compensate Plaintiff and the FLSA Collective for overtime pay owed.

² The court in *Drake* approved a global settlement which included the *Clendenen* opt-in class of plaintiff Managers. *See Drake v. Steak N Shake, Inc.*, 4:14-CV-1535-JAR, 2019 WL 12104295, at *1 (E.D. Mo. July 26, 2019).

30. Plaintiff and the FLSA Collective are victims of Defendants' widespread, repeated, systematic and consistent illegal policies that have resulted in violations of their rights under the FLSA, and that have caused significant damage to Plaintiff and the FLSA Collective.

31. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a) as Defendants knew, or showed reckless disregard for, the fact that its compensation practices were in violation of these laws.

32. As the direct and proximate result of Defendants' unlawful conduct, Plaintiff and the FLSA Collective have suffered, and will continue to suffer, a loss of income and other damages. Plaintiff and the FLSA Collective under § 216(b) of the FLSA are entitled to liquidated damages and attorney's fees and costs incurred in connection with enforcing this claim.

33. The Plaintiff and the FLSA Collective have suffered from Defendants' common policies and would benefit from the issuance of a Court-supervised notice of this lawsuit and the opportunity to join. Those similarly situated employees are known to Defendants and are readily identifiable through Defendants' records.

PRAYER FOR RELIEF

Plaintiff Alicia Wilmoth, on behalf of herself and the FLSA Collective, seek the following relief:

- a) Designation of this action as a collective action on behalf of the FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the FLSA Collective apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual consent forms pursuant to 29 U.S.C. § 216(b);
- b) Judgment against Defendants finding they failed to properly pay Plaintiff and those similarly situated overtime at the correct overtime rate of pay for all overtime hours worked as required under the FLSA;
- c) Judgment against Defendants for Plaintiff and those similarly situated for damages for unpaid overtime pay;

- d) An amount equal to their damages as liquidated damages;
- e) A finding that Defendants' violations of the FLSA are willful;
- f) All costs and attorneys' fees incurred prosecuting this claim;
- g) An award of prejudgment interest (to the extent liquidated damages are not awarded);
- h) Leave to add additional plaintiffs by motion, the filing of consent forms, or any other method approved by the Court;
- i) Leave to amend to add additional state law claims; and
- j) All further relief as the Court deems just and equitable.

Request for Jury Trial

The Plaintiff hereby requests a jury trial to be held in Indianapolis, Indiana for all claims asserted herein.

Respectfully Submitted,



/s/ Brendan J. Donelon
Brendan J. Donelon
4600 Madison, Suite 810
Kansas City, Missouri 64112
Tel: (816) 221-7100
Fax: (816) 709-1044
brendan@donelonpc.com

Daniel W. Craig*
6614 Clayton Road, #320
St. Louis, Missouri 63117
Tel: (314) 297-8385
Fax: (816) 709-1044
dan@donelonpc.com

Pete Winebrake*
R. Andrew Santillo*
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491
pwinebrake@winebrakelaw.com
asantillo@winebrakelaw.com

Attorneys for Plaintiff

**motion for pro hac vice forthcoming*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

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

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

See attached.

DEFENDANTS

Steak N Shake, Inc. and Sardar Biglari

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

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

Attorneys (If Known)

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

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

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

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

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

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes codes like 110 Insurance, 310 Airplane, 365 Personal Injury, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause: Collective action for overtime pay.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE June 4, 2021

SIGNATURE OF ATTORNEY OF RECORD

/s/ Brendan J. Donelon

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Brendan J. Donelon
DONELON, P.C.
4600 Madison, Suite 810
Kansas City, Missouri 64112
Tel: (816) 221-7100
Fax: (816) 709-1044
brendan@donelonpc.com

Daniel W. Craig
DONELON, P.C.
6614 Clayton Road, #320
St. Louis, Missouri 63117
Tel: (314) 297-8385
Fax: (816) 709-1044
dan@donelonpc.com

Pete Winebrake
Andy Santillo
Winebrake & Santillo, LLC
715 Twining Road, Suite 211
Dresher, PA 19025
(215) 884-2491
pwinebrake@winebrakelaw.com
asantillo@winebrakelaw.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF INDIANA

ALICIA WILMOTH

Plaintiff(s)

v.

STEAK N SHAKE, INC. & SARDAR BIGLARI

Defendant(s)

Civil Action No. 1:21-cv-1507

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Registered Agent for Steak N Shake, Inc.
Corporation Service Company
135 N. Pennsylvania, Ste. 1610
Indianapolis, IN 46204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF INDIANA

ALICIA WILMOTH

Plaintiff(s)

v.

STEAK N SHAKE, INC. & SARDAR BIGLARI

Defendant(s)

Civil Action No. 1:21-cv-1507

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Sardar Biglari
President of Steak N Shake, Inc.
107 S. Pennsylvania, Ste. 400
Indianapolis, IN 46204

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: