

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Mariam Karkache,

Plaintiff,

v.

Penny's Coffee LLC, Dean Phillips,  
and Jay Phillips,

Defendants.

Judge:

Magistrate Judge:

Jury Demand Endorsed Hereon

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**Complaint and Demand for Jury Trial**

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Plaintiff Mariam Karkache ("Plaintiff") brings this Complaint and the following cause of action against Defendants Penny's Coffee LLC, Dean Phillips, and Jay Phillips ("Defendants" or "Penny's Coffee"), alleging as follows:

**INTRODUCTION**

1. Plaintiff seeks appropriate monetary, declaratory, and equitable relief based on Defendants' willful failure to compensate Plaintiff with time-and-one-half overtime wages for hours worked in excess of 40 hours per week as required by the Fair Labor Standards Act ("FLSA").

2. Defendant operated two cafes in the State of Minnesota, one located in the city of Minneapolis and another in the city of Wayzata.

3. Plaintiff was employed by Defendants from April 2019 to September 2022.

4. During her employment at Defendants' stores, she was entitled to overtime pay at a rate of one and a half times (1.5×) her regular rate.

5. Despite having an obligation to pay Plaintiff overtime wages, Defendants repeatedly failed to pay her overtime for hours worked in excess of 40 per workweek.

6. Plaintiff now brings this lawsuit to recover her unpaid wages, liquidated damages, and all other relief available to her under the FLSA, including attorneys' fees and costs.

### **JURISDICTION AND VENUE**

7. Under 28 U.S.C. § 1331 and 29 U.S.C. § 216 (b), this Court has original jurisdiction over Plaintiff's FLSA claims because they raise a federal question of law.

8. Venue is proper under 28 U.S.C. § 1391(b) because Defendants' principal place of business is located at 3509 W. 44th St., Minneapolis, MN 55410 and the events giving rise to Plaintiff's cause of action occurred in Minnesota.

### **PARTIES**

#### **Mariam Karkache**

9. Plaintiff Mariam Karkache is a resident of Minnesota.

10. At all times relevant herein, Plaintiff was an "employee" of Defendant as defined in the FLSA.

11. Plaintiff was classified as a “non-exempt” employee.

12. Mariam Karkache has given written consent to join this action.

**Penny’s Coffee LLC d/b/a Penny’s Coffee**

13. Defendant Penny’s Coffee LLC d/b/a Penny’s Coffee (“Penny’s Coffee”) is a domestic limited liability company organized under the laws of the State of Minnesota.

14. Defendant’s principal place of business is located at 3509 W. 44th St., Minneapolis, MN 55410.

15. Penny’s Coffee is an “employer” of Plaintiff as that term is defined by the FLSA.

16. “Penny’s LLC” is the corporate entity that appears on Plaintiff’s paystubs for work that she completed for Defendants.

17. At all relevant times, Penny’s Coffee has maintained control, oversight, and direction over Plaintiff, including, but not limited to, hiring, firing, disciplining, timekeeping, payroll, and other practices.

18. At all relevant times, Penny’s Coffee 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.

19. Penny’s Coffee’s gross revenue exceeds \$500,000 per year.

**Dean Phillips**

20. Dean Phillips is an owner of Penny’s Coffee.

21. According to the Minnesota Secretary of State's Business Search, Dean Phillips is listed as the Manager of Penny's Coffee.<sup>1</sup>

22. According to his website, Dean Phillips is a present co-owner of Penny's Coffee.<sup>2</sup>

23. Indeed, on the Dean Phillips for Congress Facebook Page, it says "At Penny's Coffee, we pay a \$15 minimum wage not because it's the easy thing to do, but because it's the right thing to do." This suggest that Defendant Dean Phillips has the right to hire and fire employees, set rates of pay, and have control over Defendants' operations.

24. Upon information and belief, Dean Phillips resides in Hennepin County.

25. At all relevant times, Dean Phillips has been an "employer" of Plaintiff as that term is defined by the FLSA.

26. At all relevant times, Dean Phillips has been involved in managing the operations of Penny's Coffee.

27. At all relevant times, Dean Phillips has had control over Defendants' pay policies and the unlawful policies and practices alleged herein.

28. At all relevant times, Dean Phillips has had power over personnel and payroll decisions at Defendant.

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<sup>1</sup> <https://mblsportal.sos.state.mn.us/Business/SearchDetails?filingGuid=837b0433-dc16-e611-8169-00155d01c56d> (last visited: January 26, 2023).

<sup>2</sup> <https://phillips.house.gov/dean/> (last visited: January 26, 2023).

29. At all relevant times, Dean Phillips has had the power to stop any illegal pay practices that harmed Plaintiff.

30. At all relevant times, Dean Phillips has had the power to transfer assets and liabilities of Penny's Coffee.

31. At all relevant times, Dean Phillips has had the power to declare bankruptcy on behalf of Penny's Coffee.

32. At all relevant times, Dean Phillips has had the power to enter into contracts on behalf of Penny's Coffee.

33. At all relevant times, Dean Phillips has had the power to close, shut down, and/or sell Penny's Coffee.

**Jay Phillips**

34. Jay Phillips is an owner of Penny's Coffee.

35. Upon information and belief, Jay Phillips resides in Hennepin County.

36. At all relevant times, Jay Phillips has been an "employer" of Plaintiff as that term is defined by the FLSA.

37. At all relevant times, Jay Phillips has been actively involved in managing the operations of Defendant.

38. At all relevant times, Jay Phillips has had control over Defendants' pay policies and the unlawful policies and practices alleged herein.

39. At all relevant times, Jay Phillips has had power over personnel and payroll decisions at Defendant.

40. At all relevant times, Jay Phillips has had the power to stop any illegal pay practices that harmed Plaintiff.

41. At all relevant times, Jay Phillips has had the power to transfer assets and liabilities of Penny's Coffee.

42. At all relevant times, Jay Phillips has had the power to declare bankruptcy on behalf of Penny's Coffee.

43. At all relevant times, Jay Phillips has had the power to enter into contracts on behalf of Penny's Coffee.

44. At all relevant times, Jay Phillips has had the power to close, shut down, and/or sell Penny's Coffee.

### **FACTUAL ALLEGATIONS**

45. Plaintiff worked for Defendants from on or around April 2019 through August 2022 as a barista.

46. Plaintiff worked for Defendants from August 2021 to September 26, 2022 as a barista and café manager.

47. As a barista, Plaintiff's job duties included making drinks, serving customers, preparing food, cleaning, and maintaining the space.

48. As a barista and café manager, Plaintiff completed her job duties as a barista, and as café manager, Plaintiff made schedules, coordinated with vendors, managed inventory at the Wayzata location, and trained employees.

49. During the duration of Plaintiff's employment, she was classified as a non-exempt employee, meaning she was entitled to overtime pay at a rate of one and a half times (1.5×) her regular pay.

50. Plaintiff completed her job duties at the request and instruction of Defendants.

37. Plaintiff did not have the authority to hire or fire other employees.

38. Plaintiff's primary duties did not involve office or non-manual work directly related to management or general business operations of Defendants.

39. Plaintiff was not permitted to exercise discretion and independent judgment with respect to matters of significance relating to Defendants' operations.

40. Plaintiff was not paid on salary basis, but instead, on a hourly basis. In other words, if she did not work, she was not paid.

41. Plaintiff did not regularly receive each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in quality or quantity of the work performed.

42. Plaintiff was classified by Defendants as "non-exempt." Indeed, her "Return to Work" Offer (as of August 10, 2020) states the following:

**Compensation:** \$15.00/hr + Gratuity

**Hours of Work:** Weekly schedules may fluctuate, but may require early mornings, late evenings, and weekends on a regular basis, in addition to holidays. As of the date of this letter's draft, you should anticipate a schedule, consisting of [approximately] 25 hours per-week.

**FLSA Rules & Overtime:** As wages for the position are outlined above are earned on an hourly basis, you are a non-exempt employee as defined by provisions of the Fair Labor Standards Act and applicable Minnesota state law. As such, all hours worked in excess of 40 hours during a seven day work week requires overtime pay at 1.5 times your regular rate.

43. From April 2019 to August 2022, Plaintiff regularly worked in excess of 40 hours per workweek.

44. Plaintiff regularly clocked in via Defendants' point-of-sale (POS) system, which tracked all hours worked during each respective pay period.

45. Plaintiff was paid bi-weekly and her paystubs reflected hours worked per pay period.

46. During the duration of her employment, Plaintiff was paid her regular hourly rate between \$15.00 and \$20.00 per hour.

47. Despite regularly working in excess of 40 hours per workweek, Plaintiff was not properly paid one and a half times her regular rate for time worked in excess of 40 hours per workweek.

48. For instance, in the pay period ending on October 25, 2020, Plaintiff's time records show she worked 81.03 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek.

49. For instance, in the pay period ending on September 12, 2021, Plaintiff's time records show she worked 93.32 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek.



50. For instance, in the pay period ending on September 12, 2021, Plaintiff's time records show she worked 93.32 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

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53. For instance, in the pay period ending on November 7, 2021, Plaintiff's time records show she worked 92.17 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

54. For instance, in the pay period ending on February 13, 2022, Plaintiff's time records show she worked 81.59 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

55. For instance, in the pay period ending on February 27, 2022, Plaintiff's time records show she worked 84.75 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

56. For instance, in the pay period ending on March 27, 2022, Plaintiff's time records show she worked 86.81 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

57. For instance, in the pay period ending on May 22, 2022, Plaintiff's time records show she worked 95.17 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek

58. For instance, in the pay period ending on June 19, 2022, Plaintiff's time records show she worked 93.95 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek.

59. For instance, in the pay period ending on August 28, 2022, Plaintiff's time records show she worked 94.71 hours, but her paystubs show she was not paid 1.5× her regular rate for hours worked in excess of 40 per workweek.

60. Moreover, other paystubs show Plaintiff was paid overtime for hours worked in excess of 40 hours per workweek, thus indicating Defendants' own belief and acknowledgment that Plaintiff was not exempt from overtime.

61. Defendants violated the FLSA by failing to properly pay Plaintiff overtime for hours worked in excess of 40 hours per workweek.

### **Causes of Action**

#### **Count 1**

#### **Failure to Pay Overtime Wages –Fair Labor Standards Act**

**(29 U.S.C. § 207, *et seq.*)**

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

63. Plaintiff worked more than 40 hours in one or more workweeks during her employment with Defendants.

64. Defendants did not pay Plaintiff one and a half times (1.5×) her regular hourly rate for time worked in excess of forty hours per workweek, but instead paid her regular rate.

65. By not paying Plaintiff proper overtime wages for time worked in excess of 40 hours in a workweek, Defendants have willfully violated the FLSA.

66. As a result of Defendants' willful violations, Plaintiff is entitled to damages, including, but not limited to, unpaid wages, liquidated damages, costs, and attorneys' fees.

**WHEREFORE**, Plaintiff Mariam Karkache prays for all of the following relief:

A. Unpaid overtime pay and an additional and equal amount as liquidated damages pursuant to the FLSA and supporting regulations;

B. A declaratory judgment that the practices complained of herein are unlawful under the FLSA.

C. An award of prejudgment and post-judgment interest;

D. An award of reasonable attorneys' fees under the FLSA.

E. An award of costs and expenses of this action, including any reasonable expert fees; and

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

Respectfully submitted,

Dated: February 2, 2023

/s/ Philip J. Krzeski

Philip J. Krzeski (#0403291)

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**DEMAND FOR JURY TRIAL**

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

/s/ Phil Krzeski  
Philip J. Krzeski