

**BEFORE THE ARKANSAS DEPARTMENT OF LABOR AND LICENSING  
DIVISION OF LABOR  
STATE OF ARKANSAS**

**LABOR STANDARDS SECTION**

**AGENCY**

**VS.**

**CASE NO. SA20221216A**

**JARED NICK WARFORD, INDIVIDUALLY, AND  
NICK WARFORD, INDIVIDUALLY, AND  
D/B/A KREAM KASTLE, LLC**

**RESPONDENTS**

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**ORDER**

This matter came before the Arkansas Department of Labor and Licensing on Thursday, June 22, 2023. The above listed Respondents appealed the findings of the Labor Standards Section of the Division of Labor of the Department of Labor and Licensing (hereafter referred to as the “Agency”) that violations under A.C.A. § 11-4-210 and A.C.A. § 11-4-211 occurred regarding the payment of wages to certain employees.

The Agency was represented by Miles Morgan, Associate General Counsel. The Respondents represented themselves and Kream Kastle, LLC (hereafter referred to as “Kream Kastle”). The Agency presented seven witnesses whom all testified in person: Bethany Davis, a former employee of Kream Kastle, Melissa Doddridge, a former employee of Kream Kastle, Rebecca Maynard, a former employee of Kream Kastle, Ladonna Vess, a former employee of Kream Kastle, Madison Homesley, a former employee of Kream Kastle, Amberlyn Easterly, a former employee of Kream Kastle, and Shawn Andersyn, Labor Standards Investigator. Jared Nick Warford and Nick Warford testified on their own behalf and on behalf of Kream Kastle, LLC.

The Agency's Exhibits were accepted into the record with no objections. The Respondents did not enter any exhibits prior to or at the hearing.

### **FINDINGS OF FACT**

Kream Kastle is a dairy bar located in Benton, Arkansas, that serves lunch, dinner, and ice cream. Nick Warford and Jared Nick Warford are the owners and/or operators and/or agents of this establishment. Kream Kastle is a family-owned business that opened in 1963. Kream Kastle is open seven days a week from 10:00 a.m. until 7:00 p.m. during daylight standard time and 10:00 a.m. until 8:00 p.m. during daylight savings time.

The Agency received a complaint alleging minimum wage and overtime violations at Kream Kastle. Shawn Andersyn, Labor Standards Investigator, was assigned to investigate the complaint. Investigator Andersyn performed an audit of weekly hours worked and amounts paid to employees during the audit period of February 1, 2021, through August 31, 2022. Jared Nick Warford provided employee information, a paycheck history report, and copies of work schedules to Investigator Andersyn.

At the hearing six former Kream Kastle employees testified as witnesses for the Agency. Their testimony was consistent and not disputed or challenged by the Respondents. The witnesses testified that during the audit period Kream Kastle was open seven days a week. The work week was Monday through Sunday and employees were scheduled to work four days each week. Occasionally an employee would be called in to work an additional day. Employees started work at 9:30 a.m. each workday and worked past closing time to finish cleaning up. Employees testified they would work 5-25 minutes after Kream Kastle closed cleaning up. The amount of time worked past closing varied each night depending on how many customers they had during the day and how

late customers ordered food at night. Employees were paid one hundred dollars (\$100.00) cash at the end of their shift as compensation for all hours worked. Employees also split all tips amongst themselves at the close of the day, Kream Kastle did not monitor tips. Respondents questioned Bethany Davis and Melissa Doddridge about tips and if they were docked pay for being late. Both responded that tips were equally divided at the end of each shift to all employees that worked. If an employee arrived late or left early, they did not get tips. Bethany Davis testified she remembered being docked twenty dollars (\$20.00) in pay because she worked from 12:00 p.m. until 8:00 p.m. Melissa Doddridge testified she was never docked for being late.

Nick Warford testified how employees were scheduled and compensated. Nick Warford stated that his son, Jared Nick Warford, filled out the schedules for employees and oversaw the daily payment of wages to employees. Employees were scheduled to work four days a week and were able to choose which four days they worked. Employees were to arrive at 9:30 a.m. to start their shift. Employees were paid one hundred dollars (\$100.00) cash at the end of their shift each day they worked. If an employee arrived late or left early, they were paid fifty dollars (\$50.00) for their shift. The cash paid to the employee was their net pay, not their gross pay. Employees were paid the same year-round, even though employees worked more hours during their summer hours than winter hours. Employees were paid cash to help them take care of immediate needs for their family. Nick Warford testified he knew employees received tips but left it up to the employees to decide who and how much each employee received. The employee work schedules (*See Agency Exhibit 10*) show which day of the week an employee was scheduled and at the bottom showed the total hours paid to each employee for that work week. Employees were paid for ten hours of work each day they worked. Nick Warford testified Kream Kastle does not have a time clock, but

they are doing a better job of documenting the actual hours worked of each employee. Employees are paid for breaks. Employees are not charged for food or drinks they consume when working.

Investigator Andersyn testified using the company's own records, admissions by Nick Warford and Jared Warford, and employee interviews he determined that employees were not compensated at the required minimum wage rate of eleven dollars (\$11.00) per hour and not compensated at time and one-half for all hours worked over forty in a work week. Investigator Andersyn testified he based his calculations for back wages on employee work schedules that listed employee names on the bottom of the work week with a total number of hours worked that work week (*See Agency Exhibit 10*) and if work weeks were missing, he relied on employee payroll records (*See Agency Exhibit 12*) to determine total hours worked each work week. Employee payroll records only covered the time periods of October 2021 through January 2022 and July 2022 through August 2022. Total compensation was based on the cash payment of one hundred dollars (\$100.00) paid to each employee at the end of their daily shift. During Kream Kastle's summer hours (Daylight Savings Time) employees worked from 9:30 a.m. until 8:15 p.m. for a total of 10.75 hours but were only paid for 10 hours as shown on the bottom of the Respondent's work schedule (*See Agency Exhibit 10*) so 0.75 hours was added to each day an employee worked for purposes of computing minimum wage and overtime. The 0.75 was determined by adding the thirty minutes employees were required to arrive before opening each day and averaging the time spent after closing to clean up. The above information was compiled into a spreadsheet for each employee (*See Agency Exhibit 8*). Employees spreadsheets contains each workweek's beginning date, total hours worked each work week, gross amount paid each work week, total straight time earnings each work week, total overtime earnings each work week, and the difference total gross wages paid, and back wages owed. As a result of the audit, nineteen employees or former

employees were found to be due a total of nine thousand two hundred fifty-three dollars and fifty cents (\$9,253.50) in minimum wage and thirty-four thousand four hundred sixty-six dollars and ninety-three cents (\$34,466.93) in overtime wages for a total of forty-three thousand seven hundred twenty dollars and forty-three cents (\$43,720.43).

After hearing the Agency's case Nick Warford testified that they (himself, Jared Nick Warfod, and Kream Kastle) did not have a defense and they were wrong. He testified he did question the Agency adding on an additional 0.75 work hours each day for every employee during the summer hours into their calculations because he believed when he paid the employees for ten hours during the winter hours for each day of work it balanced out.

The Agency mailed a notice of assessment to Respondent on January 23, 2023. The notice of assessment listed a total of 247 violations of A.C.A. § 11-4-210 (Arkansas Minimum Wage) and 377 violations of A.C.A. § 11-4-211 (Overtime) and a total owed in back wages of forty-three thousand seven hundred twenty dollars and forty-three cents (\$43,720.43) to nineteen employees (*See* Agency Exhibit 4). No monetary penalties were assessed by the Agency. Respondent was directed to make payment to the Agency by February 10, 2023, or file a notice of appeal. Respondent filed a notice of appeal that was received by the Agency on February 16, 2023 (*See* Agency Exhibit 3).

## CONCLUSIONS OF LAW

1. The Department of Labor and Licensing, Division of Labor, is the agency of Arkansas state government charged with the enforcement of the Arkansas Minimum Wage and Overtime laws, A.C.A. §11-4-201 *et. seq.* Since Kream Kastle, LLC operates in the State of Arkansas and had more than four employees during the audit period, it falls under the jurisdiction of the Arkansas wage and hour laws and rules.

2. When the Agency received a complaint alleging minimum wage and overtime violations at Kream Kastle, LLC, it had an obligation to investigate and determine whether Respondents failed to pay required minimum wage and overtime wages for hours worked by former and current employees of Kream Kastle. Investigator Shawn Andersyn with the Agency performed an investigation and audit of Kream Kastle for the time period of February 1, 2022 through August 31, 2023 and found 247 violations of A.C.A. §11-4-210 for failure to pay minimum wage and 377 violations of A.C.A. §11-4-211 for failure to pay overtime.

3. Respondent admitted it did not keep accurate time records and had no time keeping document of actual hours worked by each employee. Since no actual time records exist, no paycheck stubs exist showing actual hours worked each work week, the Agency is allowed to rely on employee statements of hours they worked each day and work week and compensation paid to calculate if additional compensation is owed to employees. See *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 66 S. Ct. 1187, 90 L. Ed. 1515 (1946).

4. Agency was correct in its finding that Respondent did not pay employees Arkansas minimum wage of eleven dollars (\$11.00) per hour as required under A.C.A. §11-4-210 and Respondent did not pay employees time and one-half their established hourly rate of pay for all hours worked over forty in a work week as required under A.C.A. §11-4-211. The Agency's

findings were based on Respondent's own records, employee interviews that were corroborated during the hearing by testimony of former employees, and admissions by Nick Warford and Jared Warford. Calculation sheets showing total compensation owed to each employee were based on employee work schedules that listed employee names on the bottom of the work week with a total number of hours worked beside it. The total number of hours was inputted in the spread sheet along with total compensation paid to the employee for the work week. Total compensation was based on the cash payment of one hundred dollars (\$100.00) paid to each employee at the end of their daily shift. So, if an employee worked four shifts in a week for a total of forty hours, as indicated on the employee work schedule (*See Agency Exhibit 10*), and they were paid one hundred dollars (\$100.00) per shift for a total of four hundred dollars (\$400.00) in a work week, they would have been paid ten dollars (\$10.00) per hour which is one dollar (\$1.00) under what is required by A.C.A. §11-4-210 Arkansas Minimum Wage leaving that employee owed forty dollars (\$40.00). During Kream Kastle's summer hours (Daylight Savings Time) employees worked an average of 10.75 hours but were only paid for 10 hours so 0.75 hours was added to each day an employee worked and those adjusted hours were used in calculating total weekly hours worked for the purposes of minimum wage and overtime. Based on Respondent's admission that employees started at 9:30 a.m. each day and witness testimony they worked 5-25 minutes past closing making the addition of 15 minutes a reasonable average of minutes worked past closing. If an employee worked over forty hours in a work week, they are owed wages at time and one-half minimum wage, since it was established, Respondent did not pay minimum wage to employees. Agency Exhibit 8 is accepted as an accurate finding of wages owed to employees that performed work during the audit period.

5. Respondent's argument that the cash payment to employees was their net pay falls short. Deductions are made to an employee's gross pay based on several factors, all unique to the individual employee. It is odd that each employee's total hours worked, and deductions taken from their gross pay would be the same for all employees each work week resulting in them all being paid exactly one hundred dollars (\$100.00) per shift they worked. Respondent's employee payroll records (*See Agency Exhibit 12*) are limited in scope to just a few months period but show employee's total pay and their net pay varies for each employee each pay week, but the document does not list the total hours worked by each employee or their rate of pay. The document conflicts with witness and Respondent's testimony as to what employees were actually paid making the Agency's case stronger that employees were just paid one hundred dollars (\$100.00) per shift. If the paycheck history is correct a lot of employees were underpaid if they only received one hundred dollars (\$100.00) per shift.

6. Based upon testimony presented by the Agency's investigator and witnesses and the Agency's exhibits the Agency has met its burden of proof to show Respondents failed to pay minimum wage and overtime wages during the audit period of February 1, 2021 through August 31, 2022 to the following nineteen employees in amounts as follows: Bethany Davis (\$1,879.50); Melissa Doddridge (\$6,134.76); Easterly Amberlyn (\$1,709.25); Hailey Fitzgibbon (\$885.38); Andrew Fletcher (\$3,750.25); Ethan Fletcher (\$1,273.00); Makayla Havnier (\$2,675.50); Clayton Hines (\$3,237.50); Madison Homesley (\$626.50); Edith Kimbrell (\$5,979.39); Adrianna Klink (\$1,916.00); Rebecca Maynard (\$784.50); Jesse Metcalf (\$40.00); Christina Ridgeway (\$770.75); Austin Chase Southworth (\$478.00); Dalton Taylor (\$1,061.88); LaDonna Vess (Shamhart) (\$2,562.50); Bridget Whitham (\$1,552.63); and Miguel Zamora (\$6,403.14).



THEREFORE, IT IS CONSIDERED AND ORDERED that Respondents Jared Nick Warford individually and Nick Warford individually and d/b/a Kream Kastle, LLC is found liable for a total sum of forty-three thousand seven hundred twenty dollars and forty-three cents (\$43,720.43) for minimum wage back wages and overtime back wages owed to nineteen individuals listed in Paragraph 5 of this Order. The Respondent is directed to submit payment to the Arkansas Department of Labor and Licensing.

**IT IS SO ORDERED.**

Ralph Hudson  
Director of the Division of Labor

BY: Heidi Massey  
Heidi Massey, Administrative Law Judge  
Arkansas Department of Labor and  
Licensing, Division of Labor  
900 West Capitol Ave. Suite 400  
Little Rock, AR 72201

DATE: July 18, 2023