

# EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Jane Harding, indiv., and on behalf of herself and all other similarly situated Store Managers employed by Defendant in Stores Scheduled to be open 24/7 and who opt-in to this collective class of Plaintiffs

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

2014-CP - 1c - 2082

The Pantry, Inc., aka and dba Kangaroo Express,

Defendant(s)

Submitted By: Thomas Bailey Smith

Address: Smith Law Office 2557 Ashley Phosphate Road  
North Charleston, SC 29418

SC Bar #: 66246

Telephone #: 843-531-5396

Fax #:

Other:

E-mail: tsmithlawfirm@aol.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION (Check all that apply)***\*If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION (Check One Box Below)**

- |   |  |   |  |
|---|--|---|--|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input checked="" type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199)<br><b>29 U.S.C. Sec.</b><br><b>216(b), Fair Labor</b><br><b>Standards Act</b> | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20 ____-CP-_____<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)  | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399)   | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)  |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)  | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Drv. License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture—Consent Order (850)<br><input type="checkbox"/> Other (899) | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Confession of Judgment (770)<br><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)<br><input type="checkbox"/> Other (799) | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Comm. (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)   | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)   |   |  |

Submitting Party Signature: 

Date: April 25, 2014

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS

Jane Harding, individually, and on behalf of )  
herself and all other similarly situated Store )  
Managers employed by Defendant in Stores )  
Scheduled to be open 24/7 and who opt-in )  
to this collective class of Plaintiffs, )

Plaintiff, )

v. )

The Pantry, Inc., aka and dba Kangaroo )  
Express, )

Defendant. )

Case 2014-CP- 10-2682

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 APR 25 PM 2:45

FILED

**SUMMONS**

**TO: The Pantry, Inc., aka and dba Kagaroo Express**

**YOU ARE HEREBY SUMMONED** and required to serve your Answer to the attached Complaint, exclusive of the day of service, within 30 days after service upon the Plaintiffs' attorney, Thomas Bailey Smith, SMITH LAW OFFICE, 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418, and to file your Answer with the Clerk of Court within a reasonable time. If you fail to serve your Answer within this time period, then default judgment will be taken against you for the damages claimed in the Complaint.



Thomas Bailey Smith, Esq.  
Plaintiffs' Attorney

SMITH LAW OFFICE  
2557 Ashley Phosphate Road  
N. Charleston, SC 29418  
843-531-5396  
tsmithlawfirm@aol.com

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

JANE HARDING, individually, and on behalf  
of herself and all other similarly situated  
Store Managers employed by Defendant in  
Stores Scheduled to be open 24/7 and who  
Opt-In to this collective class of Plaintiffs,

Plaintiffs,

v.

The Pantry, Inc., aka and dba Kangaroo  
Express,

Defendant.

Case No. \_\_\_\_\_

**Jury Trial Demanded**

FILED  
2014 APR 25 PM 2:45  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**COMPLAINT**

**COMES NOW** JANE HARDING, individually and on behalf of herself and all other similarly situated Store Managers employed by the Defendant at its stores scheduled to be open 24 hours a day seven days a week and who Opt-In to this collective class of Plaintiffs, by and through their undersigned counsel, and complain of THE PANTRY, INC. also known as and also doing business as KANGAROO EXPRESS ("Defendant") as follows:

**A. INTRODUCTION**

1. This is an action for failure to pay overtime wages pursuant to the Fair Labor Standards Act, 29 U.S.C. Sec. 201, et seq. (as amended), 29 U.S.C. Sec. 216 and 29 U.S.C. Sec. 207(a) (collectively referred to as "FLSA").

2. Plaintiff Harding is a citizen and resident of the State of South Carolina and she consents to this action being filed on her behalf and on behalf of the other Plaintiffs.

3. The Class Plaintiffs are individuals who have worked for Defendant at its stores scheduled to be open 24 hours a day seven days a week, whose job titles were Store Manager, who were not paid overtime wages for those hours each workweek actively worked in excess of 40 hours and who opt-in to this collective action lawsuit.

4. Section 7(a) of the FLSA requires payment of time-and-one-half an employee's regular or proper hourly rate when a covered employee works more than 40 hours in a workweek.

5. Defendant The Pantry, Inc., is also known as and also does business Kangaroo Express, it is a corporation formed under the laws of the State of Delaware and conducts business in the State of South Carolina.

6. The acts complained of herein occurred in Charleston County, South Carolina, in the State of South Carolina and in the other States in which the Defendant conducts business.

7. This Court has original jurisdiction over Plaintiff's claims pursuant to 29 U.S.C. Section 216(b), as amended.

8. All or substantially all of the wrongful acts giving rise to Plaintiff Harding's claims arose in Charleston County, South Carolina.

9. Defendant owns and operates more than 1000 convenience stores and employees more than 1,000 individuals in several States including the States of Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

10. Defendant is in the business of owning and operating convenient stores which sell products, gasoline and food in interstate commerce.

11. Defendant's gross income or gross sales has exceeded Five Million and No/100 Dollars (\$5,000,000.00) for each of the past five years.

12. At all times relevant to this Complaint, Defendant has employed more than 100 individuals at its stores who have engaged in interstate commerce by selling goods, products, food, gasoline and other products to its customers in many different States.

13. Defendant is an "employer" as defined by the FLSA.

#### **C. GENERAL ALLEGATIONS**

14. Plaintiffs incorporate in this Section those allegations above as if set forth in their entirety herein.

15. In 2009, Defendant hired Plaintiff Harding to work in Charleston County, South Carolina, at its store located at 8501 Dorchester Road, North Charleston, South Carolina.

---

16. In 2009, Defendant promoted Plaintiff Harding to become a Store Manager at its Dorchester Road store.

17. Plaintiff Harding regularly worked more than forty (40) hours during one or more workweeks of her employment with Defendant.

18. Plaintiff Harding regularly worked between 45 and 70 hours per workweek.

19. Defendant regularly paid Plaintiff Harding the same amount each week regardless of the numbers of hours that she worked.



20. Defendant informed Plaintiff Harding that, as a Store Manager, she was exempt from the requirements of the FLSA and that she was not entitled to overtime pay for those hours in excess of 40 that she worked during a workweek.

21. Defendant informed Plaintiff Harding that it maintained corporate-wide policies for paying Store Managers and that Store Managers were not entitled to overtime pay for those hours worked in excess of 40 in a workweek.

22. Defendant required Plaintiff Harding and its other Store Managers to perform the following tasks that it also requires its "hourly" employees, including Assistant Managers and Associates, to perform (see Ex. A., incorporated herein by reference):

- a. Clean the parking lot, remove trash, remove weeds in sidewalk cracks and in the parking lot;
- b. Clean the ice machine that sets outside and wipe the drink machines;
- c. Perform a daily walk around the building to ensure that it is neat and clean;
- d. Take the trash from the store to the dumpster;
- e. Clean the entrance door and the windows;
- f. Straighten and restock gum, candy and other reas near athe cash registers;
- g. Count stock and manually enter the count into the computer – which automatically calculates the amount to re-order;
- h. Unload merchandise from incoming trucks and schedule myself to work on the designated days when trucks were supposed to arrive;

- i. Unpack the merchandise and place it on the shelves;
- j. Attach labels to merchandise;
- k. Place merchandise on the shelves;
- l. Greet customers entering the store;
- m. Perform cashier duties, including scanning merchandise, ringing up sales, accepting payments from customers and giving change to customers;
- n. Count the money in the register when coming on or getting off of a shift;
- o. Sign in to each cash register before performing cashier duties;
- p. Walk up and down the merchandise aisles to check proper placement of merchandise;
- q. Clean around the cash registers with solution and paper towels sweep the entry mat and mop the floor;
- r. Clean the bathrooms;
- s. Perform maintenance around the store such as changing light bulbs;
- t. Prepare bank deposits and travel to the bank; and
- u. Send in daily reports that are all prepared automatically by the computers.

23. The District Managers or Corporate, and not the Store Managers, have the only authority to:

- a. Make hiring and firing decisions of applicants and employees;
- b. Determine the price that will be paid for each item;
- c. Determine where each item will be displayed in the store;

- d. Determine how many "labor" or "working" hours each store has available in its payroll budget to schedule the non-Store Manager employees to work each week;
- e. Close a store because of bad weather;
- f. Set rates of pay for employees and approve pay increases; and
- g. Hire outside vendors such as janitors;

24. Store Managers have no discretion regarding how many hours available for the payroll budget each week; rather, the Defendant allots each store only a certain number of hours for its non-Store Managers to work each week and the remaining hours that must be worked are performed by the Store Managers.

25. Scheduling more hours for non-Store Managers to work in a week, i.e., exceed the payroll budget set by the Defendant, subjects Store Managers to discipline, up to and including discharge.

26. Defendant requires its Store Managers to fill-in and work all of those hours when another employee's presence is needed but there are not enough hours in the weekly payroll budget to schedule non-Store Managers to work or when an Associate or Assistant Manager cannot appear for a scheduled shift.

27. Store Managers do not have the authority to schedule non-Store Manager employees to work more than 40 hours during a workweek.

28. Defendant Harding and the other Plaintiffs routinely worked 60 or more hours a week because the stores needed more employee coverage than was allotted in the budget payroll

and Store Managers do not have the authority to close the store when it is out of hours in the payroll budget.

29. The Defendant issues a schematic diagram for the layout of each store; the Store Managers have no authority to decide where each item is located, i.e., all "A" stores are arranged the same, all "B" stores are arranged the same, etc.

30. Even the smallest of details are proscribed by the Defendant: how to greet customers, how to organize drawers and cabinets, how to dress, etc.

31. When a Store Manager is not present, an Assistant Manager – who is paid overtime for all hours in excess of 40 worked during a workweek - fills-in for the Store Manager; when neither is available, then an hourly Associate employee is in charge of the store and performs all of the tasks needed.

32. Store Managers must follow strict rules regarding store keys, banks deposits, petty cash and store operating hours and procedures.

33. The District Managers closely scrutinize the Store Managers to ensure each store is run the same and is in compliance with corporate directives.

34. When taking into account Plaintiff Harding's and the other Plaintiffs' experience and years in the industry as compared to those of Assistant Managers, as well as the on-call time when Defendant requires Store Managers to be available to work and the hours that they actually work, Store Managers earned roughly the same or less than Assistant Managers per hour worked and/or on-call.

35. Plaintiff Harding had success as a Store Manager not because she exercised business discretion – of which none was available to a Store Managers – but because she followed the Defendant's rules.

36. At no time during her employment did Defendant or a District Manager ever visit the store at which Plaintiff Harding worked to determine her scope of duties or her actual working hours.

37. The only duties that Plaintiff Harding performed and that the non-Store Managers did not perform were filling out employee evaluations and arranging the weekly work schedule to accommodate the employees' requests, all of which accounted for less than 1% of her total working hours.

38. Store Managers do not have the discretion to hire or fire employees.

39. Plaintiff Harding's primary duty, as well as Defendant's other Store Managers', is not supervising employees or managing the store; rather, it is to unload the stock, operate the cash register and sell merchandise.

40. Plaintiff Harding and Defendant's other Store Managers are not exempt from the FLSA and are entitled to overtime pay for all hours worked in excess of 40 during a workweek.

41. Defendant intentionally and in reckless disregard of their rights failed and refused to pay Plaintiff Harding and its other Store Managers time-and-a-half for all hours worked in excess of 40 worked in a workweek.

42. The persons similarly-situated to Plaintiff Harding and those collective class members who were or are Defendant's Store Managers who Defendant did not pay time-and-a-half for all hours worked in a workweek in excess of 40 hours.

43. Defendant intentionally and in disregard of their rights misclassified Plaintiff Harding's and its other Store Managers' positions as being exempt from the FLSA's overtime provisions.

44. Plaintiff Harding and the other Store Managers were not exempt under the FLSA and are entitled to overtime pay for all hours in excess of 40 actively worked in a workweek.

45. Plaintiff Harding and all other similarly situated Store Managers are individually covered by the FLSA because they regularly handled and sold goods and gasoline within the flow of interstate commerce, their regular interaction with interstate clientele and their regular use of interstate telephone, fax and/or internet in the performance of their duties.

46. Defendant did not maintain accurate records of all of the hours worked by Plaintiff and others similarly situated.

47. To the extent they exist, Defendant is in possession of the majority of records reflecting the amounts paid and the hours clocked-in by Plaintiff and others similarly situated Plaintiffs.

48. Defendant did not rely on the advice of counsel in creating the pay structure for its store managers or, in the alternative, such legal advice was not provided in good faith and Defendant did not reasonably rely on such advice.

49. Defendant did not perform an investigation into the hours worked and duties performed by its Store Managers or, in the alternative, such investigation was not made in good faith and was made only to avoid the requirements of the FLSA.

**D. COUNT 1 – UNPAID OVERTIME WAGES**

50. Plaintiffs incorporate into this Count those allegations above as if set forth in their entirety herein.

51. Plaintiff Store Managers were Defendant's employees for all times relevant to this action.

52. Defendant was Plaintiff Store Managers' employer for all times relevant to this action.

53. Defendant was required to abide by the FLSA for all times relevant to the Plaintiff Store Managers.

54. Plaintiff Store Managers were covered by and come under the scope of the FLSA for all times relevant to this Complaint.

55. Plaintiff Store Managers regularly worked in excess of 40 hours in a workweek.

56. Defendant failed to pay Plaintiff Store Managers time-and-a-half their proper hourly rate for all hours worked in excess of 40 during a workweek.

57. Defendant has a uniform policy and practice of intentionally and wilfully failing to pay its Store Managers overtime as required by the FLSA.

58. Plaintiff Store Managers have suffered actual damages and harm in the form of unpaid overtime wages because of Defendant's wrongful acts, above.

59. Defendants owe Plaintiff Store Managers overtime compensation in the form of unpaid overtime wages.

60. Defendant's FLSA violations continue to be willful.

61. Plaintiff Store Managers have been forced to hire and retain a law firm to enforce their rights and the rights of others under the FLSA.

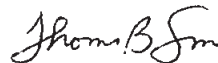
62. **WHEREFORE** Plaintiff Jane Harding and Plaintiff Store Managers, on their behalf and on behalf of all similarly-situated others, request conditional certification and then regular certification of a class of all of Defendant's Store Managers per the FLSA and pursuant to

Section 216(b) of the FLSA; an order permitting Notice to all potential class members and an order directing Defendant to provide the names and addresses of all of its Store Managers hired since May 1, 2011 and who will be or is hired while this matter is pending; an entry of final judgment in favor of the Plaintiff Jane Harding and Plaintiff Store Managers and all similarly situated Store Managers for payment of overtime wages owed and due, an equal amount of liquidated damages, prejudgment interest, payment of Plaintiffs' attorney fees and costs, an order requiring Defendant to notify in writing all of its past and present Store Managers of its failure to abide by the requirements of the FLSA and the steps it will take the remedy these violations and all other and further relief as required or allowed by the FLSA.

Dated this 25<sup>TH</sup> day of April 2014.

Respectfully submitted,

PLAINTIFFS' ATTORNEYS



---

Thomas Bailey Smith, Esq.  
S.C. Bar No 066246  
SMITH LAW OFFICE, INC.  
2557 Ashley Phosphate Road  
North Charleston, South Carolina 29418  
843-531-5396  
tsmithlawfirm@aol.com

Eric M. Poulin, Esq./S.C. Bar No. 100209  
Roy Willey, Esq./S.C. Bar No. 101010  
Anastopoulo Law Firm, LLC  
2557 Ashley Phosphate Road  
North Charleston, South Carolina 29418  
843-614-8888



STATE OF SOUTH CAROLINA )

**AFFIDAVIT**

COUNTY OF CHARLESTON )

Personally appeared before me the undersigned individual who swears under oath and under penalty of perjury as follows:

1. My name is Jane Harding, I am over the age of 18 and I have personal knowledge of all facts herein.
2. In 2009, The Pantry, Inc. ("Defendant") hired me to work in Charleston County, South Carolina, at its store located at 8501 Dorchester Road, North Charleston, South Carolina.
3. In or about February 2010, Defendant promoted me to become a Store Manager at this Dorchester Road store.
4. I regularly worked as a Store Manager more than forty (40) hours during one or more workweeks of my employment with Defendant.
5. I regularly worked as a Store Manager between 45 and 70 hours per workweek.
6. Defendant regularly paid me as a Store Manager the same amount each week regardless of the numbers of hours that I worked.
7. Defendant informed me that, as a Store Manager, I was exempt from the requirements of the FLSA and that I was not entitled to overtime pay for those hours in excess of 40 that I worked during a workweek.
8. Defendant informed me that it maintained corporate-wide policies for paying all of its Store Managers and that Store Managers were not entitled to overtime pay for those hours worked in excess of 40 in a workweek.



9. Defendant required me and its other Store Managers to perform the following tasks that it also requires its "hourly" employees, including Assistant Managers and Associates, to perform:

- a. Lock and unlock the store for stores that are not open 24/7;
- b. Clean the parking lot, remove trash, remove weeds in sidewalk cracks and in the parking lot;
- c. Clean the ice machine that sets outside and wipe the drink machines;
- d. Perform a daily walk around the building to ensure that it is neat and clean;
- e. Take the trash from the store to the dumpster;
- f. Clean the entrance door and the windows;
- g. Straighten and restock gum, candy and other areas near the cash registers;
- h. Count stock and manually enter the count into the computer – which automatically calculates the amount to re-order;
- i. Unload merchandise from incoming trucks and schedule myself (a Store Manager) to work on the designated days when trucks were supposed to arrive;
- j. Unpack the merchandise and place it on the shelves;
- k. Attach labels to merchandise;
- l. Place merchandise on the shelves;
- m. Greet customers entering the store;

- n. Perform cashier duties, including scanning merchandise, ringing up sales, accepting payments from customers and giving change to customers;
- o. Count the money in the register when coming on or getting off of a shift;
- p. Sign in to each cash register before performing cashier duties;
- q. Walk up and down the merchandise aisles to check proper placement of merchandise;
- r. Clean around the cash registers with solution and paper towels, sweep the entry mat and mop the floor;
- s. Clean the bathrooms;
- t. Perform maintenance around the store such as changing light bulbs;
- u. Prepare bank deposits and travel to the bank; and
- v. Send in daily reports that are all generated automatically by the computers.

10. The District Managers or Corporate, and not the Store Managers, have the authority to:

- a. Make hiring and firing decisions of applicants and employees;
- b. Determine the price that will be paid for each item;
- c. Determine where each item will be displayed in the store;
- d. Determine how many "labor" or "working" hours each store has available in its payroll budget to schedule the non-Store Manager employees to work each week;
- e. Close a store because of bad weather;
- f. Set rates of pay for employees and approve pay increases; and



g. Hire outside vendors such as janitors;

11. Store Managers have no discretion regarding how many hours available for the payroll budget each week; rather, the Defendant allots each store only a certain number of hours for its non-Store Managers to work each week and the remaining hours that must be worked are performed by the Store Managers.

12. Scheduling more hours for non-Store Managers to work in a week, i.e., exceeding the payroll budget set by the Defendant, subjects Store Managers to discipline up to and including discharge.

13. Defendant requires its Store Managers to fill-in and work all of those hours when another employee's presence is needed but there are not enough hours in the weekly payroll budget to schedule non-Store Managers to work or when an Associate or Assistant Manager cannot appear for a scheduled shift.

14. Store Managers do not have the authority to schedule non-Store Manager employees to work more than 40 hours during a workweek.

15. I routinely worked 60 or more hours a week because the store needed more employee coverage than was allotted in the budget payroll and Store Managers do not have the authority to close the store when it is out of hours in the payroll budget.

16. The Defendant issues a schematic diagram for the layout of each store; the Store Managers have no authority to decide where each item is located, i.e., all "A" stores are arranged the same, all "B" stores are arranged the same, etc.

17. Even the smallest of details are directed by the Defendant: how to greet customers, how to organize drawers and cabinets, how to dress, etc.

18. When a Store Manager is not present, an Assistant Manager – who is paid overtime for all hours in excess of 40 worked during a workweek - fills-in for the Store Manager; when neither is available, then an hourly Associate employee would be the person in immediate charge of the store and perform all of the tasks needed.

19. Store Managers must follow strict rules regarding store keys, banks deposits, petty cash and store operating hours and procedures.

20. The District Managers closely scrutinize the Store Managers to ensure each store is run the same and is in compliance with corporate directives.

21. When taking into account my experience and years in the industry as compared to those of my Assistant Managers, as well as the on-call time when Defendant required me to be available to work and the hours that I actually worked, as a Store Manager I earned roughly the same or less than my Assistant Managers. Specifically, because I was on-call 24/7 and no other local store employee was on-call, I earned much less per hour than did an Assistant Manager.

22. I had success as a Store Manager not because I exercised business discretion – of which none was available to a Store Manager – but because I followed the Defendant's rules.

23. At no time during my employment did Defendant or a District Manager ever visit my store to investigate or ask me about the scope of my duties or my actual working hours.

24. The only duties that I performed and that the non-Store Managers did not perform were filling out employee evaluations and arranging the weekly work schedule to accommodate the employees' requests, all of which accounted for less than 1% of my total working hours.

25. Store Managers do not have the authority to hire and fire employees and they do not have the discretion to enter into contracts with vendors.

26. My primary duty, as well as Defendant's other Store Managers, was not supervising employees or managing the store; rather, it was to unload the stock, operate the cash register and sell merchandise; in other words, Store Managers are nothing more than lead cashiers; the District management staff referred to us as "chief reminders" for the hourly employees.

27. I believe that the Defendant intentionally misclassified its Store Managers as exempt and I am claiming that I should have been exempt from the FLSA and paid overtime pay for all hours worked in excess of 40 during a workweek.

28. Defendant refused to pay me and its other Store Managers time-and-a-half for all hours worked in excess of 40 worked in a workweek.

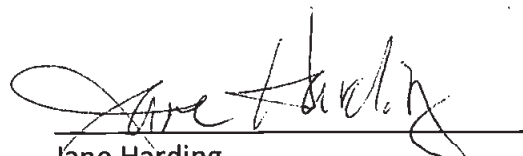
29. Defendant did not maintain accurate records of all of the hours I worked because, among other things, the Defendant was aware that on my scheduled days off I came by the store to check up on things and ensure that employees showed up for their shifts, but such time was not included in the clock-in or clock-out time.

30. Defendant is in possession of the majority of records reflecting the amounts paid and the hours clocked-in by me and the other Store Managers.

31. In this lawsuit I am demanding to be paid for the overtime I worked while I was employed as a Store Manager.

32. Further affiant saith not.

Date: April 24, 2014

  
Jane Harding

SWORN AND SUBSCRIBED before me this  
24 day of April, 2014.

Rene Anderson  
NOTARY PUBLIC – STATE OF SOUTH CAROLINA

COMM. EXP. November 27, 2022