

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Sandra Thomason)	Civil Action No:
On behalf of herself and all)	
Others similarly situated,)	
)	
Plaintiffs,)	COMPLAINT
)	Jury Trial Demanded
v.)	
)	
FGX International, Inc.,)	
)	
Defendant.)	
<hr style="width: 40%; margin-left: 0;"/>)	

COMES NOW the Plaintiff, Sandra Thomason, individually and on behalf of all other similarly situated, by and through counsel, and hereby sets forth this representative action for violations of the Fair Labor Standards Act under 29 USC § 216(b) and/or representative class actions for violations of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* as follows:

PRELIMINARY STATEMENT

1. Plaintiff, Sandra Thomason, individually and on behalf of all others similarly situated, brings this action against FGX International Inc. ("FGX" or "Defendant") for unpaid wages including, minimum wages, straight time, and overtime compensation and related penalties and damages. Defendant's policies, practices and/or procedures have been, and continue to be, to require Plaintiff and all other similarly situated employees to work off-the-clock and to fail and refuse to reasonably reimburse Plaintiff and all other similarly situated employees for their automobile and business expenses incurred during their employment with FGX. FGX's policies, practices, and/or procedures therefore result in a willful failure to properly pay minimum wages,

straight time and overtime compensation due and owing to Plaintiff and all other similarly situated employees. Doing so is in direct violation of both state and federal law.

2. Plaintiff was previously employed by FGX as a Merchandiser. During the course of her employment, FGX employed hundreds of persons throughout South Carolina as Merchandisers. At all times relevant hereto, FGX sent its Merchandisers to retail stores to collect and record information about product placement and inventory. Merchandisers also installed, set up, maintained, and took down product displays. Merchandisers then relayed to FGX information collected on their visits including how much product to order for each store. FGX did not, however, pay the Merchandisers for all the time that it required them to work and did not reimburse them for their required and employment-related use of internet access and cell phone service. Further, instead of compensating Merchandisers for the reasonably approximate costs of the business use of their vehicles, FGX paid Merchandisers a flat rate per store that results in the payment of an unreasonably low reimbursement rate beneath any reasonable approximation of the expenses they incur. During some or all workweeks, unreimbursed expenses and off-the-clock work by Merchandisers caused their wages to fall below the wage rate required by federal and state minimum wage laws and resulted in FGX's failure to properly pay Merchandisers for overtime hours worked.

3. Again, Plaintiff previously worked as a Merchandiser for FGX. This lawsuit is brought as (a) a collective action under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, *et seq.*, to recover unpaid minimum and overtime wages owed to Plaintiff and all other similarly situated workers employed by FGX; and (b) a Rule 23 class action under the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* to recover unpaid wages on behalf of Merchandisers.

4. This is a "hybrid" action, where both "opt-out and "opt-in" representative claims are asserted. The South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* claim is brought as traditional class actions under FED. R. Civ. P. 23, where class members are given the opportunity to opt out of the case. Pursuant to 29 U.S.C. § 216(b), FLSA class members opt into the case after it is conditionally certified as a collective action.

JURISDICTION AND VENUE

5. The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiff's FLSA claims are based upon 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

6. This Court has original federal question jurisdiction over the claims in this case pursuant to 28 U.S.C. § 1331 for the claims brought under the FLSA, 29 U.S.C. § 201, *et seq.*

7. This Court has jurisdiction over Plaintiff's claims for violation of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*, pursuant to 28 U.S.C. § 1367 because the state statutory claims are so related to the FLSA claims that they form part of the same case or controversy.

8. This Court has personal jurisdiction over FGX because it conducts business, and has substantial business contacts within this Judicial District.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as the Defendant conducts business, has substantial business contacts and/or can be found in this Judicial District, and the causes of action set forth herein have arisen and occurred in part within this Judicial District.

10. Venue is also proper because Defendant has substantial business contacts within the State of South Carolina.

11. At all relevant times, Defendant has been an "employer[s]" within the meaning of the FLSA and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*

12. At all relevant times, Defendant has employed "employee[s]," including Plaintiff, the FLSA Putative Class Members and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Putative Class Members.

13. At all relevant times, Plaintiff and other putative Plaintiffs were engaged in commerce and/or worked for Defendant, which is an enterprise engaged in commerce.

14. At all times relevant herein, Defendant has had gross annual operating revenues in excess of \$500,000.00 (Five Hundred Thousand Dollars).

PARTIES

15. Plaintiff Sandra Thomason was employed as a Merchandiser by Defendant and worked in the state of South Carolina on behalf of Defendant from approximately 2007 to 2015.

16. Defendant, FGX, is a Delaware Business Corporation doing business throughout the United States and within the state of South Carolina with its principal executive office located at 500 George Washington Highway, Smithfield, RI 02917. FGX may be served in this jurisdiction by serving its registered agent, Corporation Service Company at 1703 Laurel Street, Columbia, SC 29223.

17. FGX International designs and markets non-prescription reading glasses and sunglasses.

18. FGX employs persons as "Merchandisers," which as used herein includes, but is not limited to, "Field Merchandisers," "Service Representatives," "Field Service Representatives," and equivalent positions. On information and belief, FGX does business

and employ Merchandisers in all 50 states and the District of Columbia. Merchandisers have the same primary job duties: to visit assigned retail stores to stock, maintain, and obtain information regarding the FGX products within the retail store.

19. Merchandisers typically are assigned to visit multiple retail stores where they record information such as which products are placed in which areas of retail shelving and in what quantities. Merchandisers also ensure that the appropriate merchandise is on sale and is displayed properly. This involves checking date codes, rotating seasonal stock, attaching tags properly, and related work. In addition, Merchandisers install, set up, and monitor product displays.

20. FGX initially paid Plaintiff approximately \$9.00 per hour, but increased her pay with subsequent pay raises. The federal minimum wage has been \$7.25 per hour at all times since July 24, 2009. At no time, however, did FGX properly pay Plaintiff for all hours that she actually worked.

OFF THE CLOCK WORK

21. FGX only paid Merchandisers for time spent working in retail stores.

22. FGX used an online system called the Reporting Online Service System ("ROSS") to communicate weekly schedules and any changes to those schedules to Merchandisers. FGX required Merchandisers to check ROSS and download information about their weekly work assignments at the beginning of each week. Merchandisers re-ordered their store assignments and planned their routes at the beginning of each week. Merchandisers were not paid for any of this work time. Plaintiff spent multiple hours every week downloading her weekly assignments and planning her routes.

23. FGX also required Merchandisers to check ROSS each day before beginning their service visits to ensure they had the most up to date information on all service activity. Merchandisers were expected and required to view and print the information from their home computers and printers in order to plan their routes and schedules for the day before they departed for their first retail store. Merchandisers were not paid for any of this work time. Plaintiff spent several minutes each morning before leaving for her first route reviewing and printing any changes to her assignments. This resulted in Plaintiff spending several hours per week updating her routes prior to leaving her house to travel to her first retail store.

24. Merchandisers were not compensated for any time spent travelling to and from assigned stores or for the time spent travelling between stores. Merchandisers began and ended their workday at home completing required administrative tasks. Plaintiff spent several hours each week travelling to, from, and between stores.

25. Merchandisers were required to have a cell phone to maintain communication with FGX supervisors and managers. Merchandisers received and were required to read many emails each day regarding the status of projects. Merchandisers were not paid for any of this work time. Plaintiff spent many minutes each day and week, reviewing emails.

26. FGX required Merchandisers to report data collected during the day about their store visits to ROSS on the same day of service. Merchandisers were also expected and required to input store orders. Merchandisers were expected and required to report the information from their home computers or personal mobile devices. Entering the information collected each day could take anywhere from minutes to hours, depending on the quantity of information that needed to be entered. Merchandisers were not paid for any of this work time. Plaintiff spent

multiple hours at the end of each workday and/or week reporting data collected during her store visits.

27. FGX has/had a policy and practice of only paying Merchandisers for time spent working in retail stores. FGX has/had a policy and practice of failing to pay Merchandisers for any time spent outside of retail stores completing required administrative tasks and did not pay for drive time. This time is significant and resulted in overtime and a significant reduction to Merchandisers' hourly rates. Plaintiff spent multiple hours and/or minutes each week performing unpaid administrative tasks. In addition, Plaintiff spent multiple hours each week driving to and from stores. Therefore, FGX failed to pay Plaintiff for an average of no less than 16 hours per week.

28. During her employ, Plaintiff was paid less than the federal minimum wage of \$7.25 per hour applicable during that time period. Indeed, as set forth herein, much of the Plaintiff's actual time work was not compensated at all.

29. As well, Plaintiff's unrecorded drive time and administrative time resulted in Plaintiff often working more than 40 hours per week. FGX's policy and practice of not compensating Merchandisers for drive time and administrative time resulted in a failure to pay overtime compensation at a rate of one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a workweek.

30. All of FGX's Merchandisers had similar experiences to those of Plaintiff. They were subjected to the same time recording policy; completed store visits of similar distances and at similar frequencies; and were paid similar hourly wages.

31. FGX's policy and practice of denying Plaintiff and the proposed collective and class members minimum wages, straight time, and overtime pay for all hours worked is

unlawful. Plaintiff and the proposed collective and class members are entitled to recover damages for these violations of state and/or federal law.

Failure to Reimburse Employment Expenses
FGX's Flawed Reimbursement Policy and Methodology

32. To work for FGX, Merchandisers were required to maintain and pay for safe, legally-operable and insured vehicles to travel to their assigned retail stores each day. FGX required Merchandisers to carry equipment they needed for a job, such as a company binder with rules and procedures for each store, hooks, signage, and order forms, in their own vehicles.

33. Merchandisers incurred costs for gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and depreciation ("automobile expenses") while visiting retail stores for the primary benefit of FGX.

34. FGX also required Merchandisers to use personal equipment and supplies for the discharge of their employment duties. Merchandisers were required to provide and pay for the following: (a) high speed internet access to receive communications from FGX and transmit information to FGX; (b) printer cartridges and paper to print email communications from FGX, weekly store visit schedules, and route information; (c) cell phone service to make and receive calls from FGX supervisors and managers throughout the day; and (d) pens and notepads to record information during store visits.

35. FGX maintained a policy of paying Merchandisers a \$2.55 "premium" for each store visited to offset Merchandisers' expenses.

36. Despite the relative ease of tracking actual miles driven by its Merchandisers, FGX did not do so. FGX's reimbursement rate did not take into account the number of miles driven by its Merchandisers or the printing, internet, and cell phone expenses incurred by its Merchandisers.

37. The net result of FGX's reimbursement policy is an average reimbursement of \$.15 per mile and a complete failure to reimburse Merchandisers for their printing, internet, and cell phone expenses.

38. During the applicable limitations period, the IRS business mileage reimbursement rate ranged approximately between \$.51 and \$.565 per mile. Likewise, reputable companies that study the cost of owning and operating a motor vehicle and/or reasonable reimbursement rates, including the American Automobile Association, have determined that the average cost of owning and operating an average sedan ranged approximately between \$.585 and \$.608 per mile during the same period. These figures represent a reasonable approximation of the average cost of owning and operating a vehicle for Merchandisers' use in travelling to retail stores.

39. The driving conditions associated with the work performed by Merchandisers resulted in more frequent routine maintenance costs, higher costs due to repairs associated with driving, and more rapid depreciation associated with driving a car as much as required of a Merchandiser's car.

40. FGX's reimbursement policy did not reimburse its Merchandisers for their out-of-pocket expenses, much less other costs they incurred to own and operate their vehicle, and thus uniformly failed to reimburse its Merchandisers at any reasonable approximation of the cost of owning and operating their vehicles for FGX's benefit.

41. FGX's systematic failure to adequately reimburse automobile expenses and other expenses incurred by Merchandisers constituted a "kickback" to FGX such that the hourly wages it payed to Plaintiff and other Merchandisers are not paid free and clear of all outstanding obligations to FGX.

42. FGX failed to reasonably approximate the amount of its Merchandisers' automobile, printing, internet, and cell phone expenses to such an extent that its Merchandisers' wages were diminished beneath both the federal and state minimum wage rate requirements

43. In sum, FGX's reimbursement policy and methodology fail to reflect the realities of Merchandisers' automobile, printing, internet, and cell phone expenses.

FGX's Failure to Reimburse Expenses Causes Minimum Wage Violations

44. Regardless of the precise amount of the per-store reimbursement, FGX's reimbursement has resulted in an unreasonable underestimation of Merchandisers' automobile, printing, internet, and cell phone expenses, causing systematic violations of federal and various state minimum wage requirements where FGX employs Merchandisers.

45. Plaintiff was paid no less than approximately \$9.00 per hour (for those hours actually compensated by Defendant). The federal minimum wage is \$7.25 per hour, effective July 24, 2009.

46. Plaintiff drove her own vehicle while working as a Merchandiser for FGX.

47. Throughout Plaintiff's employment by FGX, the per-store reimbursement rate has been approximately \$2.55.

48. At all times relevant hereto, Plaintiff drove 120 miles per week on average and received an average reimbursement premium of \$25.50 per week. Thus, during this time period, FGX's effective reimbursement rate averaged \$0.2125 per mile.

49. During this same time period, the IRS business mileage reimbursement rate was approximately \$.565 per mile, which was a reasonable approximation of the automobile expenses incurred by Merchandisers.

50. Using the IRS rate as an approximation of Plaintiff's automobile expenses incurred visiting retail stores, FGX's average reimbursement of \$0.2125 per mile under-reimbursed Plaintiff in the amount of \$0.3525 per mile (\$.565 per mile - \$0.2125 per mile), or \$42.30 per week (\$0.3525 per mile X 120 miles per week).

51. Plaintiff was also not reimbursed for printing, internet, and cell phone expenses incurred for FGX's benefit, which was approximately \$121.00 per month or \$30.25 per week for a total under-reimbursement of approximately \$72.55 per week.

52. Prior to 2012, Plaintiff was paid no greater than \$178.50 ($\10.50×17) per week for recorded in-store time and recorded an average of 17 hours of in-store time each week. A \$72.55 per week reduction in Plaintiff's wages for under-reimbursed mileage and expenses results in an hourly wage of only \$6.23 per hour ($(\$178.50 - \$72.55) / 17$).

53. After 2012, Plaintiff was paid no greater than \$198.00 ($\11.00×18) per week for recorded in-store time and recorded an average of 18 hours of in-store time each week. A \$72.55 per week reduction in Plaintiff's wage for under-reimbursed mileage and expenses results in an hourly wage of only \$6.97 per hour ($(\$198.00 - \$72.55) / 18$).

54. FGX's reimbursement rate did not consider the mileage Plaintiff drove on Defendant's behalf, or any other automobile expenses Plaintiff incurred on Defendant's behalf or administrative expenses. As a result of Defendant's unreasonable under-reimbursement policy, Plaintiff "kicked back" to FGX an average of \$4.27 per hour worked ($\$10.50 - \6.23) for mileage. In 2012, the amount kicked back decreased to \$4.03 per hour when FGX increased Plaintiff's hourly rate to \$11.00 for mileage ($\$11.00 - \6.97).

55. All of FGX's Merchandisers had similar experiences to those of Plaintiff. They were subjected to the same reimbursement policy; received similar reimbursements; incurred

similar expenses; completed store visits of similar distances and at similar frequencies; and were paid similar hourly wages.

56. FGX's unreasonable under-reimbursement significantly diminished Plaintiff's wages for each hour worked. The wages of the putative collective and class action Plaintiffs were similarly reduced as they incurred similar expenses and have been provided similar reimbursements. The amount by which Plaintiff's wages were reduced as a result of not being fairly reimbursed for her expenses far exceeds the amount over the federal minimum wage FGX paid to any putative class members.

57. Based on the allegations set forth above, FGX's average under-reimbursement of automobile expenses over the past several years has exceeded the difference between hourly wages paid in each state in which FGX operates and the federal minimum wage during part or all of the limitations period, thereby resulting in company-wide minimum wage violations.

58. While the amount of FGX's actual reimbursements per store may vary over time and based on geographic issues such as the price of gas and other cost differences, FGX is relying on the same flawed policy and methodology with respect to all Merchandisers nationwide. Thus, although reimbursement amounts may have differed somewhat by geographic region, the amounts of under-reimbursements relative to automobile costs incurred are consistent between regions.

Combined Effect of Off the Clock Time and Failure to Reimburse

59. The combination of unreimbursed automobile, printing, internet, and cell phone expenses and off-the-clock work resulted in Merchandisers "kicking back" to FGX wages sufficient to bring that their wages below the federal minimum wage. FGX thus paid Merchandisers less than the federal minimum wage in some or all workweeks.

60. As previously discussed, prior to 2012 Plaintiff was paid no less than \$178.50 per week for recorded in-store time and recorded an average of 17 hours of in-store time each week. Plaintiff worked an average of 11.50 off-the-clock hours for a total of 28.50 hours worked per week. Plaintiff's pay was reduced by an average of \$72.55 each week for under-reimbursed mileage and expenses. Plaintiff was therefore only paid \$105.95 per week for all hours worked (\$178.50-\$72.55). This results in an hourly rate of only \$4.15 per hour, \$3.10 less than the federal minimum wage (\$7.25 - \$4.15).

61. After 2012, Plaintiff was paid an average of \$198.00 per week for recorded in-store time and recorded an average of 18 hours of in-store time each week of in-store time each week. Plaintiff worked an average of 11.50 off-the-clock hours for a total of 29.50 hours worked per week. Plaintiff's pay was reduced by an average of \$72.52 each week for under-reimbursed mileage and expenses. Plaintiff was therefore only paid \$125.45 (\$198.00 - \$72.55). This results in an hourly rate of only \$4.25 per hour, \$3.00 less than the federal minimum wage (\$7.25 - \$4.25).

62. All of FGX's Merchandisers had similar experiences to those of Plaintiff. They were subjected to the same reimbursement policy; received similar reimbursements; incurred similar expenses; completed store visits of similar distances and at similar frequencies; were subject to the same time-recording policy; and were paid similar hourly wages. The net effect of FGX's flawed policy and methodology, instituted and approved by company managers, is that it willfully failed to pay the federal minimum wage to its Merchandisers. Further, FGX willfully failed to pay minimum wages required by state law in the time periods during which individual states' minimum wage laws require a minimum wage higher than the federal minimum wage. FGX thereby enjoyed ill-gained profits at the expense of its employees.

63. FGX's policy and practice of denying Plaintiff and the proposed collective and class members minimum wages, straight time, and overtime pay for all hours worked was unlawful. Plaintiff and the proposed collective and class members are entitled to recover damages for these violations of state and/or federal law.

COLLECTIVE AND CLASS ACTION ALLEGATIONS

64. Plaintiff hereby incorporates the foregoing paragraphs as if fully set forth herein.

65. Plaintiff and other similarly situated Merchandisers regularly performed off-the-clock work and worked in excess of forty (40) hours per week without receiving minimum wages, straight time, and overtime compensation in violation of the FLSA and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*

66. As Merchandisers, Plaintiff, the FLSA Putative Class Members, the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Putative Class Members were forced to work off the clock and were denied reasonable reimbursement of automobile and business expenses resulting in a denial of minimum wage, straight time, and overtime compensation in violation of the FLSA and South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*

67. Plaintiff and other similarly situated Merchandisers regularly performed off the clock work and work in excess of forty (40) hours per week without receiving minimum wages, straight time, and overtime compensation in violation of the FLSA and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*

68. Plaintiff's claims challenge Defendant's practice of failing to pay employees for all time worked and for failing to reimburse employees for automobile and other business-related expenses resulting in a failure to pay employees minimum wages and all wages due. Plaintiff and

similarly situated Merchandisers are seeking recovery of all unpaid minimum wages, straight time, and overtime compensation wrongfully withheld, together with an award of all attorneys' fees, costs, and expenses incurred in this action. Plaintiff brings this action on behalf of herself and all others similarly situated as an "opt-in" collective action.

69. The FLSA claims may be pursued by those Merchandisers, or other persons with similar job titles, duties and compensation structures, employed by Defendant who opt-in to this case pursuant to 29 U.S.C. § 216(b).

70. Plaintiffs' South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* claims challenge Defendant's practice of failing to pay employees for all time worked and for failing to reimburse employees for automobile and other business-related expenses resulting in a failure to pay employees minimum wages and all wages due in violation of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Plaintiff and the state law Putative Class Members are seeking recovery of all unpaid minimum wages, straight time, and overtime compensation, treble damages, together with an award of all attorneys' fees, costs, and expenses incurred in this action. Plaintiff brings this action individually and on behalf of all others similarly situated as an "opt-out" class action pursuant to FED. R. Civ. P. 23.

71. The South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* claims may be pursued by those Merchandisers employed by Defendant, or other persons with similar job titles, duties and compensation structures, who do not opt-out of this case pursuant to FED. R. Civ. P. 23.

72. At all relevant times, Plaintiff, the FLSA Putative Class Members and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Putative Class Members are/were similarly situated in that:

- a. They were employees of the Defendant under state and federal law.
- b. They held the position of Merchandiser or other positions with similar job titles, duties, and compensation structures.
- c. They were only compensated for in-store time and were therefore forced to work off the clock to complete their necessary job duties.
- d. They travelled to Defendant-assigned retail stores using automobiles not owned or maintained by FGX.
- e. They were not compensated for time spent travelling to Defendant-assigned retail stores.
- f. They incurred costs for gasoline, vehicle parts and fluids, automobile repair and maintenance services, automobile insurance, and depreciation ("automobile expenses") while travelling to retail stores for the primary benefit of FGX.
- g. They incurred costs for printing, internet access, and cell phone service while planning for store visits for the primary benefit of FGX.
- h. They were subject to the same pay policies and practices of FGX.
- i. They were subject to the same Merchandiser reimbursement policies, which underestimate both automobile and business expenses, thereby systematically depriving Merchandisers of reasonably approximate reimbursements, resulting in their wages falling below federal and various state minimum wages in some or all workweeks.
- j. They were reimbursed similar set amounts of automobile/business expenses per store visit.
- k. They were paid an hourly wage equal to or very near Plaintiff's hourly rate.

1. They were not compensated for all hours worked and for all expenses including automobile and other business expenses resulting in a denial of minimum wage, straight time, and overtime compensation in violation of the FLSA and state wage laws.

73. Plaintiff brings Count I — Merchandisers' FLSA Claim as an "opt-in" collective action pursuant to 29 U.S.C. § 216(b). Plaintiff, individually and on behalf of all other similarly situated Merchandisers or others with similar job titles, duties and compensation structures, seeks relief on a collective basis challenging Defendant's policies, practices, and/or procedures of failing to pay employees for all time worked and for failing to reimburse employees for automobile and other business-related expenses resulting in a failure and refusal to pay Merchandisers all minimum wages, straight time, and overtime compensation at the applicable and legal rates in violation of the FLSA. The FLSA Putative Class Members pursuant to Count I are therefore defined as:

All current and former Merchandisers, and others with similar job titles, duties and compensation structures, who have worked at any time within the preceding three year period for the Defendant and who were denied minimum wages, straight time, and/or overtime compensation in violation of the FLSA.

74. Defendant has failed to compensate Plaintiff and the FLSA Putative Class Members with all minimum wages, straight time and overtime compensation at the applicable and legal rates set by the FLSA and therefore, Defendant has violated the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 206 & 207.

75. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a). Defendant's conduct was willful in that it knew that its payroll policies, practices and/or procedures were in violation of the FLSA or it showed

reckless disregard as to whether such policies, practices and/or procedures were in violation of the Act.

76. Plaintiff brings Count II — Merchandisers' South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Minimum Wage and Overtime Claims as a class action against Defendant pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff, individually and on behalf of other similarly situated employees, seeks relief on a class basis challenging Defendant's policies, practices and/or procedures of failing to pay employees for all time worked and for failing to reimburse employees for automobile and other business-related expenses resulting in a failure and refusal to pay Merchandisers all minimum wages, straight time, and overtime compensation at the applicable and legal rates in violation of state and/or federal law. The South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Class Members pursuant to Count II are therefore defined as:

All current and former Merchandisers, and others with similar job titles, duties and compensation structures, of Defendant who performed work within the State of South Carolina and who were denied minimum wages, straight time, and/or overtime compensation at a rate of one and one-half times their regular rate of pay for all hours worked in excess of forty in a workweek in violation of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.*

77. Plaintiff's South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* claims against Defendant satisfy the numerosity, commonality, typicality, adequacy, and superiority requirements of a class action.

78. The South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Classes satisfy the numerosity standards, as they are believed to be in excess of 100 individuals. As a result, joinder of all South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 *et seq.* Putative Class Members in a single action is impracticable. The South Carolina Payment

of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members may be informed of the pendency of this class action through direct mail.

79. There are questions of fact and law common to the class predominating over any questions affecting individual members. The questions of law and fact common to the class arising from Defendant's actions include, without limitation, the following:

- a. Whether Defendant had a policy, practice, and/or custom of requiring Merchandisers to work off-the-clock;
- b. Whether Defendant had a policy, practice, and/or custom of failing to pay Merchandisers all wages due to them;
- c. Whether Defendant had a policy, practice, and/or custom of failing to reasonably approximate and pay automobile and business expenses for its Merchandisers;
- d. Whether Defendant's compensation policies and practices properly accounted for the time Merchandisers were working;
- e. Whether Defendant's withholding of minimum wages, straight time and overtime compensation from Merchandisers was lawful under the state law and its implementing regulations;
- f. Whether Defendant knew or had reason to know such policies and compensation practices were unlawful; and
- g. Whether Defendant retained a benefit for such unlawful policies and compensations practices.

80. The aforementioned common questions predominate over any questions affecting individual persons, and a class action is the superior procedural vehicle for the fair and efficient adjudication of the claims asserted herein given that:

- a. There is minimal interest of members of these classes in individually controlling their prosecution of claims under the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. in that all claims will be similar in nature under the Court's analysis of the Defendant's time recording policy and its compliance with the States' laws;
- b. There is no known prior litigation being prosecuted against Defendant by these classes of employees for violations of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq.;
- c. Because all class members will have the same legal claims for violations of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq., it is desirable to concentrate the litigation of these claims in a single forum simultaneously, efficiently and without the unnecessary duplication of effort and expense if these claims were brought individually;
- d. There are no unusual difficulties likely to be encountered in the management of this case as a class action and Plaintiff and her counsel are not aware of any reason why this case should not proceed as a class action on the claim that Defendant has violated the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Class members can be easily identified from Defendant's business records, enabling class members to have their claims fairly adjudicated by the Court or enabling them to opt-out of this class.

81. The claims of the Representative Plaintiff are typical of those of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Class in that the class members have been subject to the same or similar unlawful practices as the Class Representative.

82. A class action is the appropriate method for the fair and efficient adjudication of these controversies. Defendant has acted or refused to act on grounds generally applicable to respective class members covered by the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq., and because injunctive and declaratory relief prohibiting Defendant from further violating the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. is appropriate. The presentation of separate actions by individual class members could create a risk of inconsistent and varying results, establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of class members to protect their interests.

83. The Class Representative, Sandra Thomason, is an adequate representative of the classes because her interests do not conflict with the members she seeks to represent. The interests of the members of the classes will be fairly and adequately protected by the Class Representative and her undersigned counsel, who have experience in employment and class action lawsuits.

84. Maintenance of these actions as class actions is a fair and efficient method to resolve these controversies. It would be impracticable and undesirable for each member of the classes who suffered harm to bring a separate action. Furthermore, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine the rights of all class members in conformity with the interest of efficiency and judicial economy.

85. In the absence of a class action, Defendant would be unjustly enriched because it would be able to retain the benefits and fruits of its wrongful violations of the South Carolina's state laws.

86. Defendant has failed to compensate Plaintiff and the Putative Class Members with all minimum wages, straight time and overtime compensation at the applicable and legal rates set by state and federal law and therefore, Defendant has violated state wage laws.

87. The foregoing conduct, as alleged herein, was willful and without a good faith basis to believe that their conduct was in compliance with the law.

FIRST CAUSE OF ACTION
MERCHANDISERS' FLSA CLAIM

88. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

89. At all relevant times herein, Plaintiff has been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, *et seq.*

90. The FLSA requires, among other things, that employers whose employees are engaged in interstate commerce, engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce pay employees the minimum wage for all time worked and overtime pay at a rate not less than one and one-half their regular rate of pay for work performed in excess of forty hours in a work week. 29 U.S.C. § 206(a); 29 U.S.C. § 207 (a)(1).

91. FGX is subject to the FLSA's requirements because it is an enterprise engaged in interstate commerce and its employees are engaged in commerce.

92. Plaintiff and the putative class members are or were employed by Defendant as nonexempt Merchandisers throughout the United States.

93. Plaintiff and the putative class members regularly worked hours without receiving the requisite minimum wages pursuant to the FLSA.

94. Defendant regularly reimbursed Plaintiff and putative class members less than the reasonably approximate amount of their automobile and business expenses to such an extent that it diminished these employees' wages beneath the FLSA's minimum wage provisions.

95. Plaintiff and the putative class members regularly worked in excess of forty (40) hours per week without receiving compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of forty (40) in a workweek.

96. Plaintiff and other similarly situated hourly employees are not exempt from the right to receive overtime compensation under the FLSA.

97. Defendant employs/employed other non-exempt Merchandisers, like Plaintiff, who were subject to Defendant's time recording policy and were forced to perform work without receiving compensation for all hours worked, were forced to perform work in excess of forty (40) hours in a workweek without receiving all straight time and overtime compensation for such hours in excess of forty (40) in a workweek pursuant to the FLSA, and were reimbursed less than the reasonably approximate amount of their automobile and business expenses to such an extent that it diminishes their wages beneath the FLSA's minimum wage provisions. All such employees are hereby referred to as the "similarly situated" or the "putative representative action Plaintiffs."

98. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of the FLSA, on behalf of all persons who were, are, or will be employed by Defendant as similarly situated employees who have not been compensated for all hours worked at the applicable wage rates, including minimum wage, straight time, and overtime compensation at one and one-half times the regular rate of pay for all services performed in excess of forty (40) hours per week.

99. This Complaint is being brought and maintained as an "opt-in" collective action pursuant to 29 U.S.C. §216(b) of the FLSA for all claims asserted by Plaintiff because her claims are similar to the claims of the putative representative action Plaintiffs.

100. The names and addresses of the putative representative action Plaintiffs are available from Defendant. To the extent required by law, notice will be provided to said individuals via First Class Mail and/or by the use of techniques and a form of notice similar to those customarily used in representative actions.

101. Defendant failed to compensate Plaintiff and the putative representative action Plaintiffs for all time worked including minimum wage, straight time, and overtime at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a work week, and therefore, Defendant has violated, and continues to violate, the FLSA, 29 U.S.C. §§201, et seq., including 29 U.S.C. § 207(a)(1).

102. The foregoing conduct, as alleged herein, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. §255(a). Defendant's conduct was willful in that it knew that its time recording and reimbursement policies constituted a violation of the FLSA or it showed reckless disregard with regards to whether the policy was a violation of the FLSA.

103. Plaintiff, individually and on behalf of all similarly situated employees of Defendant, seeks damages equal to the difference between the minimum wage and actual wages received after deduction for reasonably approximated automobile and business expenses. Plaintiff further seeks damages in the amount of all respective unpaid minimum wages, straight time, and overtime compensation at a rate of one and one-half times the regular rate of pay for work performed in excess of forty (40) hours in a work week, plus liquidated damages, as

provided by the FLSA, 29 U.S.C. § 216(b), and such other relief as the Court deems just and proper.

104. Plaintiff, individually and on behalf of all similarly situated employees of Defendant, seeks recovery of all attorneys' fees, costs, and expenses of this action, to be paid by Defendant, as provided by the FLSA, 29 U.S.C. §216(b).

SECOND CAUSE OF ACTION

South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq.

105. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

106. Plaintiff, Sandra Thomason, individually and on behalf of all others similarly situated, brings a claim for Defendant's violations of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq.

107. At all relevant times, Defendant has been, and continue to be, "employer[s]" within the meaning of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq.

108. At all relevant times, Defendant employed, and/or continues to employ, "employee[s]," within the meaning of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq., including Plaintiff Sandra Thomason, and all others similarly situated.

109. Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members regularly worked hours without receiving the requisite minimum wages pursuant to the FLSA.

110. Defendant regularly reimbursed Plaintiff and South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members less than the reasonably

approximate amount of their automobile and business expenses to such an extent that it diminished these employees' wages beneath the FLSA's minimum wage provisions.

111. Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members regularly worked hours in excess of forty hours in a workweek without receiving compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of forty in a workweek.

112. Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members were not properly compensated for hours worked in excess of forty hours in a workweek, at the applicable straight time and overtime premiums that are due and owing under the FLSA.

113. At all relevant times, Defendant has had a policy and practice of failing and refusing to pay Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members for hours worked in excess of forty hours in a workweek, at the applicable straight time and overtime premiums that are due and owing in violation of the FLSA. By failing to make these payments as required by the FLSA, Defendant has violated the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq.

114. The South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. class claims are brought pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3).

115. Plaintiffs have met the requirements of FED. R. Civ. P. 23(a), (b)(2) and (b)(3).

116. Plaintiff is informed and believes that he is also now entitled to an award of her unpaid wages, wages expenses and/or other improper reimbursements, treble damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest.

WHEREFORE, Plaintiff Sandra Thomason, individually and on behalf of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members, prays for relief as follows:

- a. Designation of this action as a collective action on behalf of the proposed putative representative action Plaintiffs and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all putative representative action Plaintiffs (the FLSA opt-in class), apprising them of the pendency of this action and permitting them to assert timely FLSA claims in this action by filing individual Consents To Join pursuant to U.S.C. §216(b);
- b. Designation of Plaintiff as Representative Plaintiff of the putative representative action Plaintiffs;
- c. Designation of Plaintiff's counsel, Willcox, Buyck & Williams, PA, as Class Counsel of the putative members of the FLSA Collective Action;
- d. An award of damages for unpaid minimum wages, straight time, and overtime compensation due to Plaintiff and the putative representative action Plaintiffs, to be paid by Defendant;
- e. An award of liquidated damages for minimum wages, straight time, and overtime compensation due to Plaintiffs and the putative representative action Plaintiffs, to be paid by Defendant;
- f. Declaring and certifying this action as a proper class action under Fed. R. Civ. P. Rule 23 for the claim that Defendant violated the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. and naming the Plaintiff Sandra Thomason as proper class representative;

- g. Declaring and determining that Defendant violated the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. by failing to properly pay compensation due to the Plaintiff and the Putative Class Members;
- h. Enjoining and restraining Defendant from violating provisions of the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. and entering judgment herein against Defendant in the amount due Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members for unpaid compensation;
- i. An award of damages for compensation withheld from Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members, and others with similar job titles, duties, and compensation structures, to be paid by Defendant;
- j. An award of treble damages as a statutory penalty pursuant to South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq., for willfully withholding wages from the compensation of Plaintiff and the South Carolina Payment of Wage Statutes, S.C. Code Ann. § 41-10-10 et seq. Putative Class Members, and others with similar job titles, duties, and compensation structures, to be paid by Defendant;
- k. Reasonable attorney fees, costs and expenses of this action;
- l. Pre-Judgment and Post-Judgment interest, as provided by law; and
- m. Any and all such other and further legal and equitable relief as this Court deems necessary, just and proper.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/J. Scott Kozacki

J. Scott Kozacki

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August 11, 2015

Florence, South Carolina