

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO

SHAWNA PRIEST and CHRISTOPHER  
BURROWS, *individually and on behalf of all  
other persons similarly situated,*

Plaintiffs

v.

DARDEN RESTAURANTS, INC., and GMRI,  
INC.

Defendants

**COMPLAINT  
WITH JURY DEMAND**

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Plaintiffs Shawna Priest and Christopher Burrows, individually and on behalf of all others similarly situated, through their attorneys, upon personal knowledge as to Plaintiffs' own conduct and upon information and belief as to other matters, allege as follows:

**NATURE OF THE ACTION**

1. This action is brought on behalf of Restaurant Managers ("RMs"), and individuals holding comparable salaried positions with different titles, employed at Longhorn Steakhouses, a wholly owned subsidiary of Defendants Darden Restaurants, Inc. and GMRI, Inc. ("Longhorn" or "Defendants").

2. Longhorn is a nationwide restaurant chain of over 460 steakhouses operated in 35 states. As alleged herein, Longhorn has misclassified Plaintiffs and other similarly-situated RMs as exempt under federal, Ohio, and Maryland overtime laws and failed to pay overtime for hours worked above 40 in a workweek.

3. Plaintiffs bring this case as a collective and class action on behalf of Longhorn RMs and similarly-situated current and former employees holding comparable positions with different titles, who worked at Longhorn's restaurants throughout the country (other than in

California). This action asserts that Longhorn misclassified these individuals as exempt from overtime under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (hereafter “FLSA”), the Ohio Minimum Fair Wage Standards Act (“OMFWSA”), R.C. 4111.01, *et seq.*, the Maryland Wage and Hour Law, MD. Lab. & Empl. Code §§ 3-401, *et seq.* (“MWHL”), and the Maryland Wage Payment and Collection Law, MD. Lab. & Empl. Code §§ § 3-501, *et seq.* (“MWPCL”). The action also asserts that Longhorn failed to maintain wage and hour records as required by Article II, Section 34a of the Ohio Constitution (“Section 34a”).

4. Plaintiffs Shawna Priest (“Priest”) and Christopher Burrows (“Burrows”) allege on behalf of themselves and all current and former Longhorn RMs and similarly-situated current and former employees holding comparable positions with different titles, employed by Defendants in the United States, who elect to opt into this action pursuant to the FLSA, 29 U.S.C. § 216(b) (the “Collective Action Members”), that they are entitled to: (i) unpaid overtime wages for hours worked above 40 in a workweek, as required by law, and (ii) liquidated damages pursuant to the FLSA.

5. Plaintiff Priest, pursuant to FED. R. Civ. P. 23, also brings this action on behalf of herself and all current and former Longhorn RMs and similarly-situated current and former employees holding comparable positions with different titles, who worked in Ohio at Longhorn restaurants (the “Ohio Class”) who are entitled to: (i) unpaid overtime wages for hours worked above 40 in a workweek, as required by the OMFWSA; (ii) liquidated damages; and (iii) penalties for Defendant’s willful failure to comply with the record-keeping requirements of Section 34a.

6. Plaintiff Burrows, pursuant to FED. R. Civ. P. 23, also brings this action under the MWHL and MWPCL on behalf of all RMs and similarly-situated current and former employees

holding comparable positions with different titles, who worked in Maryland at Longhorn restaurants (the “Maryland Class”) who are entitled to: (i) unpaid overtime wages for hours worked above 40 in a workweek, as required by the MWHL and MWPCCL; and (ii) liquidated damages.

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over Plaintiffs’ FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

8. This Court has jurisdiction over Plaintiff Priest’s OMFWSA and Section 34a claims and Plaintiff Burrows’s MWHL and MWPCCL claims pursuant to 28 U.S.C. § 1332(d)(2)(A), the Class Action Fairness Act (“CAFA”). The parties are diverse and the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

9. Upon information and belief, at least one member of the Ohio Class is a citizen of a state different from that of the Defendants.

10. Upon information and belief, at least one member of the Maryland Class is a citizen of a state different from that of the Defendants.

11. Plaintiffs’ claims involve matters of national or interstate interest.

12. Defendants are subject to personal jurisdiction in Ohio.

13. Venue in this Court is proper pursuant to 28 U.S.C. § 1391.

14. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

### **THE PARTIES**

#### **Plaintiff Shawna Priest**

15. Plaintiff Priest resides in South Salem, Ohio.

16. Plaintiff Priest was employed by Longhorn as an RM from in or about January 2013 to in or about May 2014 at Defendants' restaurant in Chillicothe, Ohio.

17. Plaintiff Priest worked in excess of 40 hours per workweek without receiving wages from Defendants for all hours worked, and without receiving overtime compensation as required by the FLSA and the OMFWSA.

**Plaintiff Christopher Burrows**

18. Plaintiff Burrows resides in Laurel, Maryland.

19. Plaintiff Burrow was employed by Longhorn as an RM from in or about July 2013 to in or about July 2014 at Defendants' restaurant in Bowie, Maryland.

20. Plaintiff Burrows worked in excess of 40 hours per workweek, without receiving wages from Defendants for all hours worked, and without receiving overtime compensation as required by the FLSA, the MWHL, and the MWPCCL.

**Defendants**

21. Upon information and belief, Darden Restaurants Inc. is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 1000 Darden Center Drive, Orlando, Florida 32837.

22. Upon information and belief, Defendant GRMI, Inc. ("GRMI") is a corporation organized and existing under the laws of the State of Florida, with its principal place of business at 1000 Darden Center Drive, Orlando, Florida 32837.

23. Defendants, as joint employers within the meaning of the FLSA, the OMFWSA, the MWHL and the MWPCCL, operate a chain of more than 460 Longhorn restaurants throughout the United States.

24. Defendants jointly employed Plaintiffs and other similarly-situated current and former employees.

25. Defendants are each covered employers within the meaning of the FLSA, the OMFWSA, the MWHL, and the MWPCCL.

26. Upon information and belief, each Defendant has had gross revenues exceeding \$500,000 for all relevant periods herein.

### **FLSA COLLECTIVE ACTION ALLEGATIONS**

27. Pursuant to 29 U.S.C. § 216(b), Plaintiffs seek to prosecute their FLSA claims as a collective action on behalf of all persons who are or were employed by Defendants as an RM at any time from three years from date of filing this Complaint, to the entry of judgment in this case (the “Collective Action Period”), who Defendant classified as exempt from overtime.

28. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and other RMs.

29. There are many similarly-situated current and former RMs who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join it. Thus, notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

30. The similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants’ records.

### **OHIO CLASS ALLEGATIONS**

31. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Priest brings a claim for unpaid overtime under R.C. 4111.10 on behalf of herself and the following Ohio Class: All RMs who work or have worked for Defendants in Ohio at any time during the two years prior to the

filing of this action and the date of final judgment in this action (“the Ohio Class Period”), who Defendant classified as exempt from overtime.

32. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Priest brings a claim for a record-keeping violation under Section 34a on behalf of herself and the following Ohio Sub-Class: All RMs who work or have worked for Defendants in Ohio at any time during the three years prior to the filing of this action and the date of final judgment in this action (the “Ohio Subclass Period”), about whom Defendants did not maintain a record of the hours worked.

33. The Class and Sub-Class are each so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, the similarly-situated RMs are known to Defendants, are readily identifiable, and can be located through Defendants’ records. Upon information and belief, there are at least 100 members of the Ohio Class.

34. There are questions of law and fact common to the members of the Ohio Class and Ohio Sub-Class that predominate over any questions solely affecting the individual members of the Ohio Class and Ohio Sub-Class.

35. The critical questions of law and fact common to Plaintiff Priest and the Ohio Class that will materially advance the litigation is whether the OMFWSA required Longhorn to pay RMs performing non-exempt duties an overtime premium for hours worked in excess of 40 per week, as well as whether Section 34a required Longhorn to maintain records of the hours worked by RMs performing non-exempt duties.

36. Other common questions of law and fact common to the Ohio Class that will materially advance the litigation include, without limitation:

- a. Whether Longhorn employed Plaintiff Priest and the Ohio Class members within the meaning of the OMFWSA;

b. What proof of hours worked is sufficient when the employer fails in its duty to maintain time records;

c. Whether Longhorn has a policy of misclassifying RMs as exempt from coverage of the overtime provisions of the OMFWSA;

d. Whether Longhorn failed to pay Plaintiff Priest and the Ohio Class members for all of the hours they worked;

e. Whether Longhorn failed to pay Plaintiff Priest and the Ohio Class the legally-required amount of overtime compensation for hours worked in excess of forty hours per workweek, in violation of the OMFWSA and the regulations promulgated thereunder including, by adoption, 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104;

f. Whether Longhorn is liable for all damages claimed by Plaintiff Priest and the Ohio Class, including, without limitation, compensatory, punitive and statutory damages, interest, costs and disbursements, and attorneys' fees; and

g. Whether Longhorn can prove that its unlawful policies were implemented in good faith; and

h. Whether Longhorn should be enjoined from continuing to violate the OMFWSA and Section 34a in the future.

37. Plaintiff Priest's claims are typical of the claims of the members of the Ohio Class and the Ohio Sub-Class. Plaintiff Priest has the same interest in this matter as all other members of the Ohio Class and the Ohio Sub-Class.

38. Plaintiff Priest is an adequate class representative, committed to pursuing this action and has retained competent counsel experienced in wage and hour law and class action litigation.

39. Class certification of Plaintiff Priest's OMFWSA and Section 34 claims is appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Longhorn has acted or refused to act on grounds generally applicable to the Ohio Class and the Ohio Subclass, making appropriate both declaratory and injunctive relief with respect to the Ohio Class and the Ohio Subclass as a whole. The members of the Ohio Class and the Ohio Subclass are entitled to injunctive relief to end Longhorn's common and uniform policy and practice of denying the Ohio Class and the Ohio Subclass the wages to which they are entitled.

40. Class certification of Plaintiff Priest's OMFWSA and Section 34 claims is also appropriate pursuant to FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Ohio Class and the Ohio Subclass predominate over questions affecting only individual members of the Ohio Class and the Ohio Subclass, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation because (a) the damages of class members, though not *de minimus*, are small compared to the expense and burden of bringing individual cases; and (b) class treatment will obviate the need for duplicative litigation that may result in inconsistent judgments about Defendants' practices.

41. Plaintiff Priest knows of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

#### **MARYLAND CLASS ALLEGATIONS**

42. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Burrows brings a claim for unpaid overtime under the MWHL and MWPCCL on behalf of himself and the following

Maryland Class: All RMs who work or have worked for Defendants in Maryland at any time during the three years prior to the filing of this action and the date of final judgment in this action (the “Maryland Class Period”), who Defendant classified as exempt from overtime.

43. The Maryland Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, these similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants’ records. Upon information and belief, there are at least 100 members of the Maryland Class.

44. There are questions of law and fact common to the members of the Maryland Class that predominate over any questions solely affecting the individual members of the Maryland Class.

45. The critical question of law and fact common to Plaintiff Burrows and the Maryland Class that will materially advance the litigation is whether Longhorn is required by the MWHL and the MWPCCL to pay Plaintiff Burrows and the Maryland Class at a rate of 1.5 times their regular hourly rate for hours worked overtime.

46. Other questions of law and fact common to the Maryland Class that will materially advance the litigation include, without limitation:

- a. Whether Longhorn employed Plaintiff Burrows and the Maryland Class Members within the meaning of the MWHL and MWPCCL;
- b. What proof of hours worked is sufficient when the employer fails in its duty to maintain time records;
- c. Whether Longhorn has a policy of misclassifying RMs as exempt from coverage of the overtime provisions of the MWHL and MWPCCL;

d. Whether Longhorn failed to pay Plaintiff Burrows and the Maryland Class members for all of the hours they worked;

e. Whether Longhorn failed to pay Plaintiff Burrows and the Maryland Class the legally required amount of overtime compensation for hours worked in excess of 40 hours per workweek, in violation of the MWHL and MWPCCL and the regulations promulgated thereunder including, by adoption, 29 U.S.C. §§ 207(a)(1), 215(a), and 29 C.F.R. §§ 778.104;

e. Whether Longhorn is liable for all damages claimed by Plaintiff Burrows and the Maryland Class, including, without limitation, compensatory, punitive and statutory damages, interest, costs and disbursements, and attorneys' fees; and

f. Whether Defendants can prove that their unlawful policies were implemented in good faith; and

g. Whether Longhorn should be enjoined from continuing to violate the MWHL and MWPCCL in the future.

47. Plaintiff Burrows's claims are typical of the claims of the members of the Maryland Class. Plaintiff Burrows has the same interests in this matter as all other members of the Maryland Class.

48. Plaintiff Burrows is an adequate class representative, is committed to pursuing this action and has retained competent counsel experienced in wage and hour law and class action litigation.

49. Class certification of Plaintiff Burrows' MWHL and MWPCCL claims are appropriate pursuant to FED. R. CIV. P. 23(b)(2) because Longhorn has acted or refused to act on grounds generally applicable to the Maryland Class, making appropriate both declaratory and

injunctive relief with respect to the Maryland Class as a whole. The members of the Maryland Class are entitled to injunctive relief to end Longhorn's common and uniform policy and practice of denying the Maryland Class the wages to which they are entitled.

50. Class certification of Plaintiff Burrows' MWHL and MWPCl claims are also appropriate pursuant to FED. R. CIV. P. 23(b)(3) because questions of law and fact common to the Maryland Class predominate over questions affecting only individual members of the Maryland Class because (a) the damages of class members, though not *de minimus*, are small compared to the expense and burden of bringing individual cases; and (b) class treatment will obviate the need for duplicative litigation that may result in inconsistent judgments about Defendants' practices.

51. Plaintiff Burrows knows of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

### **STATEMENT OF FACTS**

52. Defendants employed Plaintiffs, the Collective Action Members, and the members of the Ohio Class, the Ohio-Subclass, and the Maryland Class (together "the Class Members") as RMs.

53. Defendants maintained control, oversight, and discretion over the operation of their restaurants, including their employment practices with respect to Plaintiffs, the Collective Action Members, and the Class Members.

54. Plaintiffs', the Collective Action Members', and the Class Members' work as RMs was performed in the normal course of Defendants' business and was integrated into it.

55. Consistent with the Defendants' policy, pattern and/or practice, Plaintiffs, the Collective Action Members, and the Class Members regularly worked in excess of 40 hours per

workweek without being paid overtime wages, in violation of the FLSA, the OMFWSA, the MWHL and the MWPCCL.

56. All of the work that Plaintiffs, the Collective Action Members, and the Class Members performed was assigned by Defendants, and/or Defendants are aware of all of the work that Plaintiffs, the Collective Action Members, and the Class Members performed.

57. Defendants scheduled Plaintiff Priest to work 50 hours per workweek, but Plaintiff Priest actually worked 60 to 70 hours per week and was not paid overtime for hours she worked in excess of 40 in any workweek. In fact, in one week during December 2013, Plaintiff Priest worked over 75 hours.

58. Defendants scheduled Plaintiff Burrows to work 50 hours per workweek, but Plaintiff Burrows actually worked 65 to 70 hours per week and was not paid overtime for the hours he worked in excess of 40 in any workweek. Plaintiff Burrows worked more than 75 hours in a workweek at least once during his employment with Defendants.

59. The work performed by Plaintiffs, the Collective Action Members and the Class Members required little skill and no capital investment. Nor did it include managerial responsibilities, or the exercise of meaningful independent judgment and discretion.

60. Throughout the Collective Action and the Ohio Class Period, the Ohio Subclass Period, and the Maryland Class Period (together “the Class Periods”), Plaintiffs, the Collective Action Members, and the Class Members performed the same primary job duties including, but not limited to:

- a. bussing tables;
- b. cleaning the restaurant;
- c. checking to make sure that supplies were properly shelved;

- d. checking inventory;
- e. cooking; and
- f. helping customers.

61. Throughout the Collective Action and Class Periods, Plaintiffs', the Collective Action, and the Class Members' primary job duties did not include:

- a. hiring;
- b. firing;
- c. disciplining other employees;
- d. scheduling;
- e. supervising and delegating; or
- f. exercising meaningful independent judgment and discretion.

62. Plaintiffs', the Class Members', and Collective Action members' primary duties were manual in nature. The performance of manual labor duties occupied the majority of their working hours.

63. Pursuant to a centralized, company-wide policy, pattern and/or practice, Defendants have classified all RMs as exempt from coverage of the overtime provisions of the FLSA, the OMFWSA, the MWHL, and the MWPCCL.

64. Upon information and belief, Defendants did not perform a person-by-person analysis of Plaintiffs', the Collective Action Members', and the Class Members' job duties when making the decision to classify them (and other similarly situated current and former employees holding comparable positions but different titles) as exempt from the FLSA, the OMFWSA, the MWHL, and the MWPCCL's overtime protections.

65. Defendants established labor budgets to cover labor costs for the restaurants in which Plaintiffs and similarly situated RMs worked. The wages of Defendants' restaurant-level employees were deducted from the labor budgets. Defendants, however, did not provide sufficient money in the labor budgets to cover all hours needed to complete the necessary non-exempt tasks in each restaurant. Defendants knew or recklessly disregarded the fact that their underfunding of restaurant labor budgets resulted in Plaintiffs and other similarly situated RMs (who were not paid overtime) working more than 40 hours in a workweek without receiving any additional overtime compensation. This allowed Defendants to avoid paying additional wages (including overtime) to the non-exempt, restaurant-level employees.

66. Defendants' unlawful conduct as described above, was willful and/or in reckless disregard of the applicable wage and hour laws pursuant to Defendants' centralized, company-wide policy, pattern, and/or practice of attempting to minimize labor costs by violating the FLSA, the OMFWSA, the MWHL, and the MWPCCL. Defendants knew that Plaintiffs and other similarly situated RMs were not performing activities that complied with any FLSA, OMFWSA, MWHL, or MWPCCL exemption and, inasmuch as Defendants are substantial corporate entities aware of their obligations under the FLSA, the OMFWSA, the MWHL, and the MWPCCL, they, accordingly, acted willfully or recklessly in failing to classify Plaintiffs and other similarly situated RMs as non-exempt employees.

67. Defendants are aware or should have been aware, through, among other management level employees, their General Partners, Directors of Operations and Regional Vice Presidents, that RMs were primarily performing non-exempt duties. As a multi-billion dollar restaurant company operating over 460 Longhorn restaurants throughout the country, Defendants knew or recklessly disregarded the fact that the FLSA, the OMFWSA, the MWHL, and the

MWPCL required them to pay employees primarily performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

68. Accordingly, Defendants' unlawful conduct, as described above, was willful and/or in reckless disregard of the applicable wage and hour laws pursuant to Defendants' centralized, company-wide policy, pattern, and/or practice of attempting to minimize labor costs by violating the FLSA, the OMFWSA, the MWHL, and the MWPCL.

69. As part of their regular business practice, Defendants have intentionally, willfully and repeatedly engaged in a pattern, practice and/or policy of violating the FLSA, the OMFWSA, the MWHL, and the MWPCL with respect to Plaintiffs, the Collective Action Members, and the Class Members. This policy and pattern or practice includes, but is not limited to:

a. willfully misclassifying Plaintiffs, the Collective Action Members, and the Class Members as exempt from the requirements of the FLSA, the OMFWSA, the MWHL, and the MWPCL;

b. willfully failing to pay Plaintiffs, the Collective Action Members, and the Class Members overtime wages for hours that they worked in excess of 40 hours per week; and

c. willfully failing to provide enough money in their restaurant-level labor budgets for non-exempt employees to perform their duties and responsibilities, thereby forcing exempt RMs to perform such non-exempt tasks.

70. Defendants' willful violations of the FLSA, the OMFWSA, the MWHL, and the MWPCL are further demonstrated by the fact that during the course of the Collective Action Period and the Class Periods and continuing to the present, Defendants failed to maintain

accurate and sufficient time records for Plaintiffs, the Collective Action Members, and the Class Members. Defendants acted recklessly or in willful disregard of the FLSA, the OMFWSA, the MWHL, and the MWPCCL by instituting a policy and/or practice that did not allow Plaintiffs to record all hours worked, but only allowed them to report a maximum of 40 hours worked per week.

71. Upon information and belief, Defendants' unlawful conduct described in this Complaint is pursuant to a corporate policy or practice of minimizing labor costs by violating the FLSA, the OMFWSA, the MWHL, and the MWPCCL.

72. Due to the foregoing, Defendants' failure to pay overtime wages for work performed by Plaintiffs, the Collective Action, and the Class Action Members in excess of 40 hours per week was willful and has been widespread, repeated and consistent.

### **FIRST CAUSE OF ACTION**

#### **Fair Labor Standards Act – Unpaid Overtime Wages Brought on behalf of Priest, Burrows, and all Collective Action Members**

73. Plaintiffs, on behalf of themselves and the Collective Action Members, reallege and incorporate by reference all allegations in Paragraphs 1 through 72 as if fully set forth herein.

74. At all relevant times, Defendants have been, and continue to be, an employer engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

75. At all relevant times, Defendants employed Plaintiffs, and employed or continue to employ, each of the Collective Action Members within the meaning of the FLSA.

76. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as detailed in this Complaint.

77. Plaintiffs consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

78. The overtime wage provisions set forth in 29 U.S.C. §§ 201, *et seq.*, apply to Defendants.

79. At all relevant times and continuing to the present time, Defendants had a policy and practice of refusing to pay overtime compensation to their RMs and similarly situated employees in comparable positions but holding different titles, for hours worked in excess of 40 hours per workweek.

80. As a result of Defendants' willful failure to compensate their employees, including Plaintiffs and the Collective Action Members, at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

81. As a result of Defendants' willful failure to record, report, credit and/or compensate their employees, including Plaintiffs and the Collective Action Members, Defendants have failed to make, keep and preserve records with respect to each of their employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

82. As a result of Defendants' policy and practice of minimizing labor costs by underfunding the labor budgets for their restaurants, Defendants knew or recklessly disregarded

the fact that Plaintiffs and the Collective Action Members were primarily performing manual labor and non-exempt tasks.

83. Due to Defendants' (1) failure to provide enough labor budget funds, (2) failure to take into account the impact of the underfunded labor budgets on the job duties of Plaintiffs and the Collective Action Members, (3) Defendants' actual knowledge, through their General Partners, Directors of Operations, and their Regional Vice Presidents, that the primary duties of Plaintiffs and the Collective Action Members was manual labor and other non-exempt tasks, (4) Defendants' failure to perform a person-by-person analysis of Plaintiffs' and the Collective Action Members' job duties to ensure that they were performing exempt job duties, and (5) Defendants' instituting a policy and practice that did not allow Plaintiffs and Collective Action Members to record all hours worked, Defendants knew and/or showed reckless disregard that their conduct was prohibited by the FLSA. 29 U.S.C. § 255(a).

84. As a result of Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action Members, are entitled (a) to recover from Defendants their unpaid wages for all of the hours worked by them, as overtime compensation, (b) to recover an additional, equal amount as liquidated damages for Defendants willful violations of the FLSA, and (c) to recover their unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

85. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

**SECOND CAUSE OF ACTION**

**Ohio Minimum Fair Wage Standards Act – Unpaid Overtime Wages  
Brought on behalf of Priest and all Ohio Class Members**

86. Plaintiff Priest, on behalf of herself and the Ohio Class Members, realleges and incorporates by reference paragraphs 1 through 72 as if they were set forth again herein.

87. At all relevant times, Plaintiff Priest and the Ohio Class members were employed by Defendants within the meaning of the OMFWSA.

88. As a result of Defendants' policy and/or practice to minimize labor costs by providing their stores with an underfunded labor budget, Defendants willfully caused Plaintiff Priest and the members of the Ohio Class to perform primarily manual labor and non-exempt tasks.

89. Due to Defendants' (1) failure to provide enough labor budget funds, (2) failure to take into account the impact of the limited labor budgets on the job duties of Plaintiff Priest and the Ohio Class Members, (3) actual knowledge, through their General Partners, Directors of Operations, and Regional Vice Presidents that the primary duties of Plaintiff Priest and the members of the Ohio Class were manual labor and other non-exempt tasks, and (4) failure to perform a person-by-person analysis of Plaintiff Priest and the Ohio Class Members' job duties to ensure that they were primarily performing exempt job duties, Defendants knew and/or showed reckless disregard whether their conduct was prohibited by the OMFWSA and its regulations.

90. As a result of Defendants' willful violations of the OMFWSA, Plaintiff Priest and the Ohio are entitled (a) to recover from Defendants their unpaid wages for the legally required amount of overtime compensation for all hours worked by them in excess of 40 in a workweek,

(b) to recover actual and liquidated damages, including the employer's share of FICA, FUTA, state unemployment insurance, and (c) to recover any other required employment taxes, reasonable attorneys' fees and costs and disbursements of this action, and prejudgment and post-judgment interest.

91. Defendants' OMFWSA violations have caused Plaintiff Priest and the Ohio Class irreparable harm for which there is no adequate remedy at law.

### **THIRD CAUSE OF ACTION**

#### **Ohio Record-Keeping Claim Brought on behalf of Priest and all Ohio Sub-Class Members**

92. Plaintiff Priest, on behalf of herself and the Ohio Subclass Members, realleges and incorporates by reference paragraphs 1 through 72 as if they were set forth again herein.

93. Defendants failed to maintain records of the Sub-Class members' hours worked for each day worked.

94. Defendants' Section 34a violations have caused Plaintiff Priest and the Ohio Subclass irreparable harm for which there is no adequate remedy at law.

95. Defendants' failure to maintain such records violates Section 34a and entitles Plaintiff Priest and the Sub-Class to the remedies provided by that Section, as well as R.C. 4111.14.

### **FOURTH CAUSE OF ACTION**

#### **Maryland Wage and Hour Law – Unpaid Overtime Wages Brought on behalf of Burrows and all Maryland Class Members**

96. Plaintiff Burrows, on behalf of himself and the Maryland Class, realleges and incorporates by reference paragraphs 1 through 72 as if they were set forth again herein.

97. At all relevant times, Plaintiff Burrows and the members of the Maryland Class were employed by Defendants within the meaning of the MWHL, and each Defendant was an employer within the meaning of MWHL.

98. The overtime wage provisions of the MWHL and its supporting regulations apply to Defendants.

99. Defendants willfully violated Plaintiff Burrows' rights and the rights of the Maryland Class Members by failing to pay them for all hours worked, as well as for overtime compensation at rates not less than one and one-half times their regular rate of pay for each hour worked in excess of 40 hours in a workweek, in violation of the MWHL.

100. As a result of Defendants' policy and/or practice to minimize labor costs by providing their stores with an underfunded labor budget, Defendants willfully caused Plaintiff Burrows and the Maryland Class Members to perform primarily manual labor and non-exempt tasks.

101. Due to Defendants' (1) failure to provide enough labor budget funds, (2) failure to take into account the impact of the limited labor budgets on the job duties of Plaintiff Burrows and the Maryland Class Members, (3) Defendants' actual knowledge, through their General Partners, Directors of Operations, and Regional Vice Presidents, that the primary duties of Plaintiff Burrows and the Maryland Class Members were manual labor and other non-exempt tasks, (4) Defendants' failure to perform a person-by-person analysis of Plaintiffs' and the Maryland Class Members' job duties to ensure that they were performing exempt job duties, and (5) Defendants' instituting a policy and practice that did not allow Plaintiff Burrows and the Maryland Class Members to record all hours worked, Defendants knew and/or showed reckless disregard that their conduct was prohibited by the MWHL.

102. As a result of Defendants' willful violations of the MWHL, Plaintiff Burrows and the Maryland Class Members are entitled (a) to recover from Defendants their unpaid overtime wages, (b) to recover reasonable attorneys' fees and costs of the action, liquidated damages and pre-judgment and post-judgment interest, including the employer's share of FICA, FUTA, state unemployment insurance, and (c) to recover any other required employment taxes, reasonable attorneys' fees and costs and disbursements of this action, pursuant to the MWHL.

103. Defendants' MWHL violations have caused Plaintiff Burrows and the Maryland Class Members irreparable harm for which there is no adequate remedy at law.

### **FIFTH CAUSE OF ACTION**

#### **Maryland Wage Payment and Collection Law – Unpaid Overtime Wages Brought on behalf of Burrows and all Maryland Class Members**

104. Plaintiff Burrows, on behalf of himself and the Maryland Class, realleges and incorporates by reference paragraphs 1 through 72 as if they were set forth again herein.

105. At all relevant times, the Defendants were the employers of Plaintiff Burrows and the Maryland Class Members within the meaning of the MWPCCL, MD. Code Ann., Labor & Empl. § 3-501.

106. Plaintiff Burrows and members of the Maryland Class are entitled to compensation for time suffered and permitted as work benefitting Defendants.

107. Defendants violated the MWPCCL by failing to pay Plaintiff Burrows and the Maryland Class Members their full wages, including overtime compensation, due within the applicable two-week period as set forth MD. Code Ann., Lab. & Empl. §§ 3-502(a)(1)(ii) and 3-507.2.

108. The Defendants' failure to pay the Plaintiff Burrows and the Maryland Class Members was not the result of any bona fide dispute between the Defendants and Plaintiff Burrows and the Maryland Class Members within the meaning of MD. Code Ann., Lab. & Empl. § 3-507.2(b).

109. Due to the Defendants' failure to pay the Plaintiff Burrows and the Maryland Class Members their full overtime wages, Plaintiff Burrows and the Maryland Class Members are entitled to recover from the Defendants their unpaid wages or treble damages, court and other costs, and reasonable attorneys' fees and expenses as set forth under MD. Code Ann., Lab. & Empl. § 3-507.2(b).

110. Defendants' MWPCl violations have caused Plaintiff Burrows and the Maryland Class irreparable harm for which there is no adequate remedy at law.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs seek the following relief on behalf of themselves and all others similarly situated and seek an order or orders providing the following relief:

a. Designation of this action as an FLSA collective action on behalf of the Collective Action members and prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated members of the Collective Action, apprising them of the pendency of this action, permitting them to join this action pursuant to 29 U.S.C. § 216(b), and tolling of the statute of limitations;

b. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, the OMFWSA, the MWHL, the MWPCl, and Section 34a;

c. An award of unpaid wages for all hours worked in excess of 40 in a workweek at a rate of time and one-half of the regular rate of pay due under the FLSA, the OMFWSA, the

MWHL, and the MWPCCL using the following common methodology for calculating damages:

$((\text{Annual Salary} \div 52) \div 40) \times \text{Total Number of Overtime Hours Worked} \times 1.5;$

d. Certification of the Ohio Class as a class action pursuant to FED. R. CIV. P. 23(b)(2) and (b)(3), and the appointment of Plaintiff Priest and her counsel to represent the members of the Ohio Class, and Certification of the Ohio Sub-Class pursuant to FED. R. CIV. P. 23(c)(5), with Plaintiff Priest and her counsel to represent the members of the Ohio Sub-Class.

e. Certification of the Maryland Class as a class action pursuant to FED. R. CIV. P. 23(b)(2) and (b)(3), and the appointment of Plaintiff Burrows and his counsel to represent the members of the Maryland Class;

f. An injunction requiring Defendants to cease their unlawful practices under, and comply with the OMFWSA, the MWHL, and the MWPCCL;

g. An award of liquidated and/or punitive damages as a result of Defendants' willful failure to pay for all hours worked in excess of 40 in a workweek at a rate of time and one-half of the regular rate of pay pursuant to 29 U.S.C. § 216 and the OMFWSA, the MWHL, and the MWPCCL;

h. An award of damages representing the employers' share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;

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

j. An award of costs and expenses of this action together with reasonable attorneys' and expert fees and an award of a service payment to the Plaintiffs; and

k. Such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all questions of fact raised by the Complaint.

Respectfully submitted ,

s/ *Drew Legando*

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