

WHISARD Compliance Action Report

FLSA

| Violation / Compliance Status | Violations | EEs ATP | BWs Computed | BWs Agreed | LDs Computed | LDs Agreed | CMPs* |
|---|------------|---------|--------------|------------|--------------|------------|--------|
| <i>Failure to pay Minimum Wage / Agree to Comply</i> | 29 | 29 | \$3,708.64 | \$3,708.64 | \$0.00 | \$0.00 | |
| <i>Failure to pay proper overtime / Agree to Comply</i> | 20 | 20 | \$3,912.96 | \$3,912.96 | \$0.00 | \$0.00 | |
| <i>Failure to keep accurate records / Agree to Comply</i> | 1 | 0 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |
| FLSA Totals: | 29 | 29 | \$7,621.60 | \$7,621.60 | \$0.00 | \$0.00 | |
| Total Violations Under FLSA : | | 50 | | | | | \$0.00 |

FMLA

| Violation / Compliance Status | Violations | EEs ATP | BWs Computed | BWs Agreed | LDs Computed | LDs Agreed | CMPs* |
|---|------------|---------|--------------|------------|--------------|------------|-------|
| <i>No Violation found for this act / Compliance (no violations found)</i> | | | | | \$0.00 | \$0.00 | |
| FMLA Totals: | 0 | 0 | \$0.00 | \$0.00 | \$0.00 | \$0.00 | |

* CMPs computed do not necessarily indicate CMPs assessed.

| | | | |
|-------------------------------|-------------------|--------------------------------|-------------------|
| Unduplicated Employees Found: | 29 | Unduplicated Employees Agreed: | 29 |
| Total Amount BWs Computed: | \$7,621.60 | Total Amount BWs Agreed: | \$7,621.60 |
| Total Amount LDs Computed: | \$0.00 | Total Amount LDs Agreed: | \$0.00 |

WHISARD Compliance Action Report

Conclusions & Recommendations:

ER ATC/ATP \$7,621/60 in MW/OT BWs for hours worked off the clock. Pubs: HRG, FLSA, 541,516,785,778,825,CL101,EEP/FLSA/FMLA posters, FS 28,28A,28B,28C,WH380E,WH381,WH-382,WH-384,WH-385.

WHI Signature: _____ Date: 04/30/2012

Reviewed By: _____ Date: _____

Hardee's Case ID: 1630338

Restaurant Management Group, LLC
d/b/a Hardee's
107 Broad Street
Elizabethton, TN 37643
(423) 524-4271

Corporate Office
Restaurant Management Group, LLC
d/b/a Hardee's
113 Regional Park Drive
Kingsport, TN 37660
(423) 349-6204
Fax: (423) 349-6721
www.rmgrestaurants.com

Case ID: 1630338
File #: 2011-253-00255
Federal ID: 33-0905172

COVERAGE:

Restaurant Management Group, LLC d/b/a Hardee's operates 18 Hardee's establishments, including 15 restaurants in TN and 3 restaurants in VA. The firm is owned by Pierre Boursse (b) (4), Craig McClure (b) (4), silent partner JR Delang (b) (4) and the estate of Jack Mangan (b) (4). These owners also own Restaurant Management Group of West Virginia, LLC that operates 24 Hardee's locations (22 in WV, 1 in PA, 1 in OH) and TN RMG LC that operates 35 Little Caesars (15 in TN, 15 in NC, 3 in FL, 2 in VA). The same four owners plus Mark Weninger own RMG LC GA, LLC that operates 5 Little Caesars in GA. These establishments make up an enterprise under the FLSA. The firm currently has 1716 employees working at 82 locations. Pierre Boursse and Craig McClure are the employers within the meaning of the FLSA. (See ex. C-1-a, C-3)

The ADV for Restaurant Management Group, LLC was \$21,327,398 in

2010, \$19,972,940 in 2009 and 19,673,969 in 2008. (See ex. C-1-c, C-2) All employees of the establishment were covered on an enterprise basis under Section 3(s)(1)(a) for the entire investigative period. The employees regularly handle goods that have been shipped in interstate commerce.

The cashiers process credit cards on a daily basis. They are individually covered under the FLSA. (See ex. C-1-c)

Investigative History

There was a full investigation of Restaurant Management Group d/b/a Little Caesars Pizza in Kingsport, TN with an investigation period of 12/19/06 to 10/25/07. No violations of the FLSA were found. (See ex. D-2-a-g)

There was a spin-off case conducted of Restaurant Management Group d/b/a Hardee's at 2676 E. Andrew Johnson Highway, Greeneville, TN 37734 as a result of this investigation. The investigation period was 1/3/10 to 1/2/12. The employer agreed to comply and agreed to pay \$781.51 in minimum wage and overtime back wages to 8 employees that were not paid for short breaks. (See ex. D-2-h-n)

MODO

The Knoxville Area Office is the MODO for this employer. This case was associated to the MODO. There was also a MODO file set up in NC. After much discussion, it was determined that TN is the MODO for this employer. (See ex. D-1-a-g)

Family and Medical Leave Coverage (FMLA)

A policy review was conducted during the Greeneville investigation

and the firm was in compliance with the FMLA provisions. (See ex. C-1-e-f)

EXEMPTIONS:

541.100 - Jill Runley - General Manager - Salary (b) (4) [REDACTED]
bi-weekly - Hires, fires, supervises and schedules employees.

541.100 - Tim Eicler - Restaurant Manager - Salary (b) (4) [REDACTED]
bi-weekly - Hires, fires, and supervises employees.

STATUS OF COMPLIANCE:

This investigation resulted from a (b) (6), (b) (7)(C) [REDACTED] that (b) [REDACTED] worked off the clock and was not paid at least minimum wage for all hours worked. The (b) (6), (b) (7) [REDACTED] was substantiated. (b) (6), (b) (7)(C) [REDACTED] is due \$34.65. (b) (6), (b) (7)(C) [REDACTED] was notified of the results of the case via telephone on April 30, 2012.

The investigation period is 11/1/09 to 10/31/11.

Section 6 - Minimum Wage

The firm was not in compliance with the minimum wage provisions of the FLSA.

The workers on third shift punched out for 30 minutes to 3 hours and continued to work. (See ex. B-2,4,5,7,8, D-4-i-o,x-y,dd,ee,ll) The time punched out while on 3rd shift was added to the total hours worked. If the worker's regular rate was \$7.25 the unpaid hours were multiplied by \$7.25. If the worker's rate was above \$7.25 the straight-time paid was divided by the actual hours worked. If the amount was less than minimum wage, the difference was multiplied by all hours worked. (See ex. A-1-8,10-29, B-3,4,5,7,11)

To lower labor costs the manager would have workers take two breaks during a single shift of 8 hours or less. Many times these breaks occurred during the first and last hour of the workers shift. The additional breaks were included as hours worked. Minimum wage was calculated for all hours worked. (A-1-3,5,6,8,10,11,13-19,21-26,29, B-3,5,7,11)

In non-overtime weeks if the unpaid hours worked did not bring the regular rate below minimum wage, back wages were not calculated. Many workers were due less than \$20.00 and the back wages were not requested. (See ex. D-5-a-bb)

Minimum Wage back wages of \$3,661.58 due 28 employees. (See ex. A-1-8, 10-29)

Section 7 - Overtime

The firm was not in compliance with the overtime provisions of the FLSA in that the workers on third shift punched out for 30 minutes to 3 hours and continued to work. (See ex. B-5,7,11, D-4-i-o,x-y,dd,ee,ll) The time punched out while on 3rd shift was added to the total hours worked. If the worker's hours were above 40 in a work week the additional straight-time pay was calculated for all unpaid hours worked and half of the regular rate was calculated for unpaid hours worked over 40 in a work week. (See ex. A-1-4,6,8,12-19,21,22,24,25,28,29, B-5,7,11)

To lower labor costs the manager would have workers take two breaks during a single shift of 8 hours or less. Many times these breaks occurred during the first and last hour of the workers shift. The additional breaks were included as hours worked. If the worker's hours were above 40 in a work week the additional straight-time pay was calculated for all unpaid hours worked and half of the regular rate was calculated for unpaid hours worked over 40 in a work week. (See ex.

A-1-3,6,8,9,11,13-19,21,22,24,25,29, B-5,7,11)

Many workers were due less than \$20.00 and the back wages were not requested. (See ex. D-5-a-bb)

Overtime Back Wages of \$3,960.02 was found due 21 employees. (See ex. A-1-4,6,8,9,12-19,21,22,24,25,28,29)

Section 11 - Record Keeping

The firm was not in compliance with the record keeping provisions of the FLSA.

The workers were required to punch out for breaks and they continued to work. The firm did not maintain an accurate record of hours worked.

Section 12 - Child Labor

The firm was in compliance with the Child Labor provisions of the FLSA. (See ex. B-1-11, C-1-e, D-8-a-e)

DISPOSITION:

A copy of the FLSA Handy Reference Guide (HRG) was given to Shane Ailey during the initial conference at the Elizabethton establishment and Randy Rippetoe during the initial conference at the Greeneville location.

A final conference was held on February 2, 2012 with Randy Rippetoe, Director of Operations for Hardees, John Briggs, Area Director of Operations for Hardees, Shane Ailey, District Manager for Hardee's, Todd Winstead, District Manager for Hardees, Dustin Williams, District Manager for Little Caesars, Tommy Gergish, Training Manager for Little Caesars, and Debbie Goode, District Manager for Little Caesars at the corporate office in Kingsport,

TN. Investigator (b) (6), represented the department. The various provisions of the FLSA were discussed in detail including Minimum Wage, Overtime, Record Keeping, Child Labor, coverage, exemptions, hours worked, and regular rate.

The 541 executive, administrative, professional, computer and outside sales exemption were discussed in detail. It was noted that the General Managers and Restaurant Managers were found to be exempt under 541.100.

It was pointed out that the firm was not in compliance with the record keeping provisions of the FLSA in that the workers were required to punch out for breaks and they continued to work. The firm did not maintain an accurate record of hours worked.

Randy Rippetoe stated that corporate policy states that workers are not supposed to perform any work off the clock. It was pointed out that the third shift only has 2 workers, and they are required to punch out to bring down labor costs. The investigation found that in some cases both workers are punched out at the same time. The investigation found that most workers helped out while off the clock when customers showed up.

Hours worked were discussed in detail including suffer or permit, rest and meal periods, meal periods being free and clear and at least 30 minutes in duration, meetings and training. It was noted that only one meal period should be given during a shift. If the firm needs to have the worker punch out to bring down labor costs they need to be informed that they are completely relieved of their duties and they can leave, the employee should be given a set time to return or call in and they should be given enough time to use the time effectively, at least one hour. They should not be given a lunch break during the first or last hour of their shift.

It was pointed out that the firm was not in compliance with the

minimum wage provisions of the FLSA.

The workers on third shift punched out for 30 minutes to 3 hours and continued to work. It was pointed out that the time punched out while on 3rd shift was added to the total hours worked. It was noted that in a non-overtime week we only calculated to cover minimum wage for all hours worked.

It was pointed out that to lower labor costs the manager would have workers take two breaks during a single shift of 8 hours or less. Many times these breaks occurred during the first and last hour of the workers shift. The additional breaks were included as hours worked. Minimum wage was calculated for all hours worked.

It was pointed out that the firm was not in compliance with the overtime provisions of the FLSA in that the workers on third shift punched out for 30 minutes to 3 hours and continued to work. The time punched out while on 3rd shift was added to the total hours worked. If the worker's hours were above 40 in a work week the additional straight-time pay was calculated for all unpaid hours worked and half of the regular rate was calculated for unpaid hours worked over 40 in a work week.

To lower labor costs the manager would have workers take two breaks during a single shift of 8 hours or less. The additional breaks were included as hours worked. If the worker's hours were above 40 in a work week the additional straight-time pay was calculated for all unpaid hours worked and half of the regular rate was calculated for unpaid hours worked over 40 in a work week.

It was pointed out that the firm was in compliance with the Child Labor provisions of the FLSA. The child labor provisions were reviewed in detail.

The firm agreed to accurately record all hours worked, pay at

least minimum wage for all hours worked, pay time and one-half for hours worked over 40 in a workweek, and comply with all child labor provisions.

They stated that they did not believe workers were working off the clock. They stated that there should never be a time when the workers were both off the clock at the same time, but when there was only one worker on the clock that person would be able to both take the orders and make the orders, unless it got busy. They stated that if it were to get busy, the worker would be punched back in and paid for the entire break.

They were given a copy of the WH-56, WH-58s and BCDS letter. They were informed of the workers 16(b) rights. The possibility of CMPs for future violations was discussed.

Randy Rippetoe requested time to look at the records and discuss the issues with the owners.

The firm retained Bill Ford from SESCO Management Consultants to review the case. They requested time to look at the records.

A final conference was held at SESCO on March 27, 2012 with Randy Rippetoe, Jim Lutyens, Keith Treadway and Bill Ford. Investigator (b) (6), represented the department. The firm provided statements from an internal investigation they conducted in March 2011. (b) (6) that (b) (6) was required to work off the clock. (b) (6). The firm had taken statements (b) (6) from other workers and the manager Jill Runley and found no violations.

The firm also provided copies of statements that Bill Ford had taken from some of the current employees. The firm stated that in looking at the records they did find a couple occasions where both workers on 3rd shift would be punched out at the same time. They stated that this was certainly an issue, but that it was a rare occurrence. The firm felt that with the exception of a couple people, nobody else worked off the clock. They provided the time

records and the daily sales records along with copies of their March 2011 and February 2012 investigations. Bill Ford also made it very clear that there is no problem with any employer sending their workers on multiple breaks in the same shift. He stated that an employer could send their workers on as many breaks as they wanted, as long as they are relieved from work. He was informed that only one break would be allowed and the break should not be in the first or last hour of the worker's shift. It was pointed out if the employer wanted to reduce labor costs they would need to let the employee know that they could leave the establishment and be given enough time for the employee to use the time to their benefit, at least one hour.

In looking at the March 2011 investigation it was noted that the GM Jill Runley had been the witness on most of the interviews the firm conducted during the March 2011 employer investigation. (See ex. D-4-aa-dd,ff-jj,ll-nn) The investigation by the firm was initiated because (b) (6), (b) (7)(C) that (b) (6) was required to work while off the clock. Upon review of the (b) (6) time records, it was determined that (b) (6), (b) (7)(C) had both been punched out at the same time. Upon further review of the time and sales records for a random 102 days, it was determined that approximately 50% of the shifts had both workers punched out during the same time period. Sales were made during these time periods. (See ex. D-3-a-oo) Time records were reviewed and back wage calculations were updated. The new back wage total was \$8,510.60.

A final conference was held with Randy Rippetoe, Shane Ailey, and Bill Ford on April 24, 2012. The samples of time and sales records showing both employees punched out at the same time were reviewed. It was pointed out that these workers were engaged to wait and required to be paid for all hours.

The firm agreed that they would pay for the back wages calculated for hours worked off the clock. They would not agree to pay for

hours computed for multiple breaks, especially since Wage and Hour could not provide any documentation showing that it was not allowed. For settlement purposes, they requested 10% of the back wages be deducted towards the lunches.

The firm has new policies in place. Third shift workers have not been taking breaks if there are only 2 workers on. When crew takes breaks the manager needs to log in and watch the worker log in and out to ensure they are using break in and break out for lunch breaks. No workers are allowed to work off the clock. Breaks are not given in the first or last hour of a shift.

Although we believe the multiple lunches should not be allowed, the employer did agree to not do multiple lunch breaks in the future. For settlement purposes, and since it is believed that these workers probably did take some valid lunch breaks during their work shifts, we agreed to reduce each workers back wages by 10%.

The employer agreed to keep accurate records, pay at least minimum wage for all hours worked and pay overtime for hours worked over 40 in a workweek.

The BCDS letter was given to Randy Rippetoe. The updated WH-56 was faxed to Randy Rippetoe. The updated WH-58s were mailed to Randy Rippetoe. The firm will provide the signed WH-56 and BCDS letter to the Knoxville Area Office.

The employer agreed to pay \$7,621.60 in minimum wage and overtime back wages by May 4, 2012.

Pubs given (3 copies of each): HRG, FLSA and EPP poster (Enq. & Span.), FMLA poster, FLSA, 825, 516, 778, 785, 541, CL 101, Fact Sheets: 28,28A,28B,28C, WH-380E, WH380F, 381, 382, 384, 385.

Recommendations/Civil Money Penalties (CMPs)

Hardee's Case ID: 1630338

Recommend case be administratively closed upon receipt of proof of payment. CMPs are not recommended. The previous investigation of a Little Caesars in 2007 found no violations. The firm has agreed to pay back wages and comply in the future.

All correspondence should be sent to:

Restaurant Management Group, LLC
d/b/a Hardee's
113 Regional Park Drive
Kingsport, TN 37660
(423) 349-6204
Fax: (423) 349-6721

Craig McClure
Pierre Boursse
Restaurant Management Group, LLC
8606 Aviation Blvd.
Concord, NC 28027
(704) 784-3430
Fax (704) 784-3431

(b) (6), (b) (7)(C)
Investigator