

WHISARD Compliance Action Report

FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<i>Failure to pay proper overtime / Refuse to Comply</i>	7	7	\$4,927.15	\$4,927.15	\$4,927.15	\$4,927.15	
FLSA Totals:	7	7	\$4,927.15	\$4,927.15	\$4,927.15	\$4,927.15	

* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	7	Unduplicated Employees Agreed:	7
Total Amount BWs Computed:	\$4,927.15	Total Amount BWs Agreed:	\$4,927.15
Total Amount LDs Computed:	\$4,927.15	Total Amount LDs Agreed:	\$4,927.15

Conclusions & Recommendations:

Sec. 3(s)(1)A Employer paid employees on a bi-weekly basis. ER owns and operates two restaurant locations. EE hours were not combined when they worked at both locations in a workweek or in a bi-weekly pay period; those hours were paid at straight time. FC held on 2/13/13 with Owner Seenu Nannapaneni and Manager Paul Combs. ER refused to pay \$5,094.90 in BWs and \$5,094.90 in LDs. Also, ER refused to sign settlement agreement and tolling agreement. Case will be referred to RSOL for further action.

WHI Signature: _____ Date: 03/21/2013

Reviewed By: _____ Date: _____

FLSA CASE NARRATIVE

Legal Name of Firm: Ishaan Enterprises, LLC **dba:** Hardee's

Address of Firm: 35155 Mound Road **EIN#:** 51-0487113
 Sterling Heights, MI 48310

Contact Name: Owner Seenu Nannapaneni

Telephone: (586) 274-9708 (office/Sterling Heights)
 (248) 545-2470 (office/Hazel Park)
 (248) 961-4149 (cell)

Case Assignment Information

This full investigation was (b) (6), (b) (7)(C) Ishaan Enterprises, LLC dba Hardee's violated the provisions of the FLSA by failing to pay her proper overtime. Regan claims that the employer owns and operates two Hardee's restaurants located at 35155 Mound Rd., Sterling Heights, MI 48310 and 23240 John R Road., Hazel Park, MI 48030. Ms. Regan worked at both restaurant locations, yet the employer failed to combine all of the hours worked for overtime compensation. Hours worked at both locations were paid as straight time, unless while working at both locations, the employee accumulated over 40 hours at a single restaurant location. The employer only paid employees time and a half for hours worked over 40 at a single restaurant location.

(b) (6), (b) (7)(C) was substantiated.

Section 3(d) Employer: Mr. Seenu Nannapaneni has sole ownership of Ishaan Enterprises, LLC dba Hardee's. Mr. Nannapaneni is considered a 3(d) employer as he provides continuous management of the enterprise's daily operations, implements policy and rules, and makes all business decisions for both restaurant locations. (See Exhibit E-1)

MODO: The Detroit DO is the MODO for this firm, a Hardee's franchisee.

Hardee's Case ID: 1671361

Note: The MODO for the Franchisor (Hardee's) is the St. Louis, Missouri District Office.
(MODO information corrected by ADD Bowlby)

Previous History

The employer has no prior investigations.

Investigation Period

The investigative period was from October 20, 2010 to October 19, 2012.

Investigation Type

This is a full investigation.

Number of Establishments

The employer owns and operates two Hardee's restaurants at the following locations: 35155 Mound Rd., Sterling Heights, MI 48310* and 23240 John R Road, Hazel Park, MI 48030.

*Only Hardee's located at 35155 Mound Rd., Sterling Heights, MI 48310 was physically investigated.

Coverage

The firm is a quick service franchise restaurant, which sells a variety of hamburgers, fries and other food and beverage products. Hardee's is covered on an enterprise basis as stipulated in Section 3(s)(1) of the FLSA. The enterprise's annual dollar volume for the previous three years was (b) (4) in 2009, \$(b) (4) in 2010 and \$(b) (4) 9 in 2011. (See Exhibit C-1)

Ishaan Enterprises, LLC, exclusively owned and operated by President Seenu Nannapaneni, was incorporated in 2004. The enterprise operates two Hardee's restaurants located at 35155 Mound Rd., Sterling Heights, MI 48310 and 23240 John R. Road, Hazel Park, MI 48030. Ishaan Enterprises, LLC has common control of these establishments and both businesses

operate for a common business purposes: restaurant chain. Both of these restaurant locations share employees. In fact, District Manager Paul Combs schedules and instructs employees to work at both locations. Also, Mr. Combs manages and orders supplies for both locations. All financial documents, including payroll and timekeeping records for both locations are maintained by the owner at his home address.

The enterprise currently employs approximately 55 employees as crew members and a district manager. All employees regularly handle and work on goods which have been moved in or produced for interstate commerce. Hardee's receives virtually all of its products from MBM in the state of North Carolina, which include the following:

- Mayonnaise
- Mustard
- Gravy Mix
- Ketchup
- Forks
- Spoons

Exemptions

Section 13(a)(1): No exemptions were challenged.

Status of Compliance

Section 6 (Minimum Wage)

The employer complied with Section 6 of the Fair Labor Standards Act by compensating its lowest paid employee \$7.25 per hour.

Section 7 (Overtime)

A violation of Section 7 of the FLSA occurred when the employer failed pay proper overtime. Employees' hours were not combined and paid at time and a half, when they worked at both restaurant locations in a workweek or in a bi-weekly pay period. For example, the week

ending June 20, 2012, Ms. Regan worked 17.13 hours at the Hazel Park location and 40 hours at the Sterling Heights location, yet she was only paid straight time for those hours. (See Exhibit D-3)

Hours were compiled from the employer's payroll and timekeeping records to compute back wages using the following calculation method. (See Exhibits A-5 through A-13)

Regular rate (RR) = Gross Amount paid / number of hours worked

- Half time rate = RR / 2
- Overtime due = Half time rate x hours worked over 40 in a workweek

A total of \$5,094.90 in back wages due and a total of \$5,094.90 in liquidated damages due to nine employees.

Note: Back wages for Janeil Taylor in the amount \$5.18 are de minimis and will not be collected.

Section 11 (Recordkeeping)

Hardee's complied with the requirements of Section 11 of the FLSA by preserving electronic timekeeping and payroll records. The employer also maintained sufficient records that listed the birthdates of all minors.

Section 12 (Child Labor)

During the investigative period, the employer was found in compliance with CFR 570 Subpart C and Subpart E. Hardee's employs minors who are 16 to 17 years old, but does maintain all work permits for these minors. (See Exhibits B-1, & D-2)

Seventeen year old (b) (6), (b) (7)(C) ' occupational duties are in compliance with the child labor provisions of CFR 570 Subpart C. (b) (6) is not engaged in hazardous occupations at the firm. For example, (b) (6), (b) (7) does not operate any power-driven meat processing equipment or any power-driver bakery machines. Hardee's does not have any power-driven compactors on its premises. (See Exhibit B-6)

Disposition

WH (b) (6), (b) (7)(C) held a final conference on February 13, 2013 with owner, Seenu Nannapaneni and Manager Paul Combs located at 23240 John R. Road, Hazel Park, MI 48030. Investigator (b) (6), (b) (7)(C) reaffirmed Section 3(s)(1)(A) enterprise coverage and all applicable Fair Labor Standards (FLSA) requirements.

The employer's noncompliance of overtime provisions of the FLSA was discussed. Particularly, the employer's failure to pay proper overtime at time and a half the employees' regular rate of pay for hours worked over a week. Employees consistently worked over 40 hours in a workweek, yet they were not compensated time and a half of their regular rate of pay. The employer failed to combine hours worked at both restaurant locations in a workweek or in a bi-weekly pay period for proper overtime compensation. Mr. Nannapaneni and Mr. Combs were informed that this practice is in violation of Section 7 of the FLSA. It was made clear to the employer that overtime compensation must be paid in accordance with the law.

With regards to the overtime violation, Mr. Nannapaneni attributes the violation to data entry problems, which caused the computerized system not to add hours worked from both restaurant locations for overtime purposes. Currently, according to Mr. Nannapaneni, all employees are paid time and half their regular rate of payment for any hours worked over 40 in a week. The employer has changed the computer program to identify hours for both restaurant locations on a single spreadsheet. Also, only (b) (6), (b) (7)(C) is currently working at two restaurant locations.

Mr. Nannapaneni indicated that he understood the FLSA requirements, specifically the overtime requirements. However, he refused to sign the Settlement Agreement and the Statute of Limitations Tolling Agreement.

Mr. Nannapaneni requested a six month installment plan to pay back wages and liquidated damages owed due to financial hardship. Although WHD granted the employer a 90 day installment plan, he needed additional time to accept the 90 day installment plan offer. Also, Mr. Nannapaneni requested an opportunity to review the Statute of Limitations Tolling Agreement prior to signing the document. Subsequently, the WHD planned to offer Mr. Nannapaneni a 120 day installment plan for the payment of the back wages owed, with the

liquidated damages payable in 30 days. WHD attempted to contact Mr. Nannapaneni numerous times, without any success. Messages were left for Mr. Nannapaneni on the following dates: 2/15/13; 2/20/13; and 2/25/13. After being unsuccessful to contact Mr. Nannapaneni via telephone, the WHD mailed a certified letter to each restaurant location requiring Mr. Nannapaneni's attendance on March 7, 2013 at 10:00 a.m. for a meeting at the Detroit District Office. On March 7, 2013, WHD received two certified mail receipts with signatures acknowledging receipt of both certified letters. On March 12, 2013, WHD telephoned employer and left messages on his cell phone and at both restaurant locations to return the Department of Labor's phone call. As of the writing of this report, Mr. Nannapaneni has not responded to any of the WHD's phone message or mailed letters. Mr. Nannapaneni is uncooperative and has not made any attempts to contact the Department of Labor since February 13, 2013.

Publications

Mr. Nannapaneni was provided the following publications: CFR Part 516, Part 541, Part 778, Part 785, CL 101, Youth Employment Laws bulletin, Polygraph and Minimum Wage posters.

Recommendation

It is recommended that the case be forwarded to the RSOL's office for litigation.

WHI (b) (6), (b) (7)(C)
March 21, 2013