



3. Plaintiff further complains, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of himself and a class of other similarly situated current and former assistant store managers of Defendant employed within the State of Connecticut (the “Connecticut Class”) that they are entitled to back wages from Defendant for all overtime work for which they did not receive overtime premium pay and an award of penalty damages, plus the cost of litigation and reasonable attorneys fees as required by the Connecticut Minimum Wage Act (“CMWA”) (Conn. Gen. Stat. Section 31-58, *et seq.*).

## II. JURISDICTION AND VENUE

4. This Court has jurisdiction over Plaintiff’s FLSA claims pursuant to 28 U.S.C. § 1331 and 29 U.S.C. Section 216(b).

5. This Court has jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. Section 1367 since it is so related to their FLSA claims that it forms part of the same case or controversy.

6. This court has jurisdiction over plaintiffs’ state law 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.

7. At least one member of the proposed class is a citizen of a state different from that of at least one defendant. Plaintiff’s claims involve matters of national or interstate interest.

8. Citizenship of the members of the proposed class is dispersed among a substantial number of states.

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

10. Venue is proper in this district under 28 U.S.C. § 1391(b)-(c) because the acts or

omissions giving rise to claims in this Complaint took place in this judicial district.

11. This court has personal jurisdiction over Defendant pursuant to Connecticut's long-arm statute because it transacts business in the State of Connecticut, it enters into employment contracts with the assistant store managers, including Plaintiff, and its conduct in violating the Fair Labor Standards Act and the Connecticut Minimum Wage Act is tortious as that term is defined under the long arm statute.

### **III. THE PARTIES**

12. Plaintiff is an individual residing within this judicial district. He worked as an assistant store manager for Defendant from approximately November 30, 2009 to June 12, 2010, at Defendant's Chicopee, Massachusetts store, and at its Wethersfield, and Torrington, Connecticut stores. After that date, he held the position of Store Manager.

13. On April 23, 2010, Plaintiff filed a bankruptcy petition with the U.S. Bankruptcy Court for the District of Connecticut in Hartford. Accordingly, his claim for earnings prior to that date are the property of the bankruptcy trustee and not a part of this action. In this action, he claims only those overtime wages that he earned between April 25, 2010 and June 12, 2010 when he worked in the position of assistant store manager in Connecticut, worked more than 40 hours per week and was not paid overtime premiums.

14. Defendant PRRC, Incorporated d/b/a PriceRite is a corporation organized and existing under the laws of New Jersey. Its principal office is located at 5000 Riverside Drive, Keasbey, New Jersey. In this Complaint, "PRRC, Incorporated d/b/a PriceRite" refers (unless otherwise stated) to the named defendant and all successors, predecessors, subsidiaries and related entities to which these allegations pertain.

15. Defendant owns and operates discount grocery stores throughout New England, New

York, Pennsylvania, and Maryland. PRRC, Incorporated refers to itself in its Corporate and Policies and Procedures and other documents as “PriceRite”.

16. Defendant sells “commodities” as that term is defined in Connecticut’s wage orders 7A and 7B, and accordingly, is involved in the “mercantile trade.”

17. It is from its corporate headquarters that PRRC, Incorporated d/b/a PriceRite operates the various stores by the creation, publication, and enforcement of its Corporate Policies and Procedures. These policies and procedures dictate the compensation of Defendant’s employees as well as the manner in which Defendant’s employees carry out recruiting, hiring, training, management, and termination of various store personnel including assistant store managers.

18. PRRC, Incorporated d/b/a PriceRite, which is subject to FLSA requirements, is an employer within the meaning of the FLSA. PRRC, Incorporated d/b/a PriceRite was the employer of Plaintiff and all other assistant store managers in the seven states in which they work, including Connecticut, Massachusetts, New York, Rhode Island, Pennsylvania, and Maryland because it had the power to hire and fire those employees, it supervised and controlled their work schedules and conditions of employment, it had the authority to set their rates and methods of payment and maintained their employment record.

#### **THE NATIONWIDE COLLECTIVE ACTION**

19. Plaintiff brings the first cause of action on behalf of himself and all other PriceRite assistant store managers at all PriceRite stores who have worked for Defendant as assistant store managers in all stores in Connecticut, Massachusetts, New York, Rhode Island, Pennsylvania, and Maryland.

20. Plaintiff brings this count under 29 U.S.C. § 216(b) of the Fair Labor Standards Act.

Plaintiff and the other assistant store managers are similarly situated in that they are all subject to PRRC, Incorporated d/b/a PriceRite's common plan or practice of designating them as exempt from the overtime requirements of the FLSA when in fact their work, as described and defined by the job description and required by Price Rite, is not exempt.

### **THE CONNECTICUT RULE 23 CLASS**

21. Plaintiff brings the second cause of action under Rule 23 of the Federal Rules of Civil Procedure, for himself and on behalf of a class consisting of all persons who have worked for Defendant as assistant store managers in Connecticut between October 6, 2009 and the date of final judgment in this matter.

22. As to Plaintiff's claims for money damages, pursuant to Conn. Gen. Stat. Section 31-58 *et seq.*, Plaintiff sues on behalf of himself and all other members of the above-defined Connecticut class. Class certification for these Connecticut law claims is appropriate under Rule 23(a) and Rule 23(b)(3) because all the requirements of the Rules are met.

23. The class is so numerous that joinder of all members is impracticable. Upon information and belief, there are over 40 assistant store managers who have worked for defendant in Connecticut.

24. There are questions of law and fact common to the class, including whether the putative class members worked overtime but were not paid overtime in violation of Connecticut law.

25. The named plaintiff's claims are typical of those of the class members. Plaintiff's claims encompass the challenged practices and course of conduct of Defendant.

Furthermore, Plaintiff's legal claims are based on the same legal theories as the claims of the putative class members. The legal issues as to which federal and state laws are violated

by such conduct apply equally to Plaintiff and to the class.

26. The named Plaintiff will fairly and adequately protect the interests of the class. The Plaintiff's claims are not antagonistic to those of the putative class and he has hired counsel skilled in the prosecution of class actions.

27. Common questions of law and fact predominate over questions affecting only individuals, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. This proposed class action under Fed. R. Civ. P. 23 presents few management difficulties, conserves the resources of the parties and the court system, protects the rights of each class member and maximizes recovery to them.

28. As to Plaintiff's claims for injunctive relief, pursuant to Conn. Gen. Stat. Section 31-58 *et seq.*, he sues on behalf of himself and all other members of the above-defined class. Class certification for these state law claims is appropriate under Rule 23(a) for the reasons set forth in Paragraph 12 above. Class certification for these state law claims also is appropriate under Rule 23(b)(2), because all the requirements of the rule are met, in that Defendant has acted on grounds generally applicable to the class when it classified the positions of assistant store manager as exempt, so that it is appropriate to issue final injunctive relief to the class as a whole.

#### **STATEMENT OF FACTS**

29. At all relevant times, Plaintiff worked as an assistant store manager for PriceRite. There are hundreds of PriceRite assistant store managers in Defendant's stores who share a common job title and description. They report directly to a store manager, who is the real management authority of the store.

30. Plaintiff's schedule as an assistant store manager varied from week to week based in

part on business needs. However, his typical work schedule consisted of three day shifts (7 PM to 5 PM) and two late shifts (12 PM to 10 PM) and rotation on Sunday hours. Thus, Plaintiff routinely worked 50 hours a week, or more, though he was never paid overtime premiums.

31. In addition, Plaintiff was never assigned a “regular hourly rate” of pay as that term is defined in § 31-62-D4 of the Connecticut Regulations.

32. Upon information and belief, PriceRite’s corporate headquarters closely monitored each store in which Plaintiff worked.

33. Plaintiff’s performance, as well as the overall performance of each store, was closely monitored to ensure compliance with corporate directives. Assistant store managers are uniformly trained through training materials prepared by Defendant, and they all attend the same training as Store Managers at PriceRite’s Wethersfield, Connecticut location.

34. Job applicants apply for jobs in the various stores in the various states by completing an online job application which is processed in the corporate office.

35. PriceRite employees, including assistant store managers, are subject to performance measurement standards developed by the corporate office and carried out in the stores.

36. While plaintiffs and the class have been given the title of assistant store manager, in fact, based on their duties, their real and primary function is to perform non-exempt functions, including such tasks as unloading deliveries, sorting and processing the deliveries and stocking shelves. PriceRite profits from this business model to the extent that it does not pay for the hours worked by assistant store managers beyond forty in a week. In fact, Defendant mandates that its assistant store managers work at least 50 hours per week during most weeks, and a rotation of Sunday hours.

37. Defendant classifies all assistant store managers as exempt from the overtime requirements of the FLSA, regardless of store location, volume, or size.

38. The decision to classify assistant store managers as exempt was made by Defendant's corporate officers based on the general job description of the position and was carried out in each state, including Connecticut, by the issuance of paychecks which did not include the legally required overtime premiums for all hours over 40 in a week.

39. The primary duty of plaintiff and all other assistant store managers is not management and therefore PriceRite is not entitled to deny them overtime pay under the executive exemption or any other exemption.

#### **Time Spent on Exempt v. Non -Exempt Tasks**

40. Assistant Store Managers do not spend most of their time on exempt tasks. Instead, most of their time is spent performing non-exempt duties, such as unloading freight, stocking shelves, ensuring that the merchandise was arranged according to company standards, counting inventory, and organizing the store.

#### **Relative Importance of Exempt Tasks to Non -Exempt Tasks**

41. The non-exempt duties that assistant store managers perform are more important to the PriceRite business model than the exempt duties that they are required to perform. Moreover, few if any of these duties qualify as administrative tasks under the regulations because they do not relate to the management or general business operations. Instead they consist of carrying out the day to day affairs of the company and do not require the exercise of discretion and independent judgment on matters of significance.

42. Even as to these few exempt tasks that they perform, PriceRite's various operations manuals strictly prescribe the manner in which these tasks are carried out, and the store

managers closely scrutinize assistant store managers' compliance with the manuals and other corporate directives. Assistant store managers are not allowed to perform any of these tasks outside of the strict limitations established by the various PriceRite operations manuals, company directives or their store manager's supervision.

43. It is a key to PriceRite's business model that the assistant store manager performs significant amounts of manual labor and other non-exempt functions given each stores' limited payroll budget. If the assistant store managers did not perform these manual labor and non-exempt functions, PriceRite would have to employ more people, including stock persons.

#### **Relative Freedom from Supervision**

44. Assistant store managers are rarely free from the close supervision and micromanagement of PriceRite's management, which controls virtually every aspect of the stores' day-to-day operations. PriceRite, through its store operations manuals and company directives, micro-manages many of the details of the operations of these stores.

#### **Relationship between Assistant Store Manager's' Salary and the Wages of Other Non-Exempt Workers**

45. The assistant store manager's salary is comparable to that of their non-exempt store associate, especially when the overtime that they spend on the job is considered.

46. PriceRite's violations have been willful and intentional in that it has known all along what the law requires and that the primary duty of its assistant store managers has been to perform non-exempt work.

47. As a result of PriceRite's willful violations of the FLSA, Plaintiff and all other similarly situated assistant store managers have suffered damages in that they have not received proper compensation.

## LEGAL CLAIMS

### **COUNT ONE VIOLATION OF THE FAIR LABOR STANDARDS ACT**

48. Based on the foregoing, PriceRite's conduct in this regard was a willful violation of the Fair Labor Standards Act, 29 U.S.C. Sections 201 *et seq.*

49. Plaintiff and all other similarly situated Assistant Store Managers who opt into this litigation are entitled to compensation for all overtime hours worked, liquidated damages, attorneys' fees and court costs.

### **COUNT TWO VIOLATION OF THE CONNECTICUT MINIMUM WAGE ACT**

50. Based on the foregoing, PriceRite's conduct in this regard was a willful violation of the Connecticut Minimum Wage Act, Conn. Gen. Stat. Section 31-58, *et seq.*

51. Defendant's conduct in violation this law was unreasonable, arbitrary and/or in bad faith.

52. Accordingly, Plaintiff and all other similarly situated assistant store managers who opt into this litigation are entitled to compensation for all overtime hours worked, penalty damages, attorneys' fees and court costs.

## DEMAND FOR RELIEF

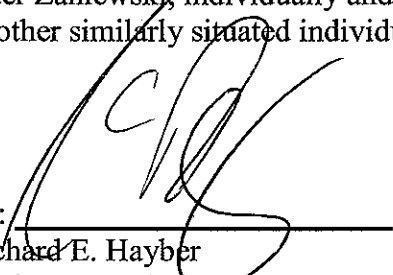
Plaintiff claims:

- a. Certification of the Connecticut court as class action pursuant to Fed. R. Civ. P. 23(b)(2) and (3) and the appointment of Plaintiff and his counsel to represent those classes;
- b. An award of unpaid overtime wages under the Fair Labor Standards Act,
- c. An award of unpaid overtime wages under the Connecticut Minimum Wage Act;
- d. An award of liquidated damages under the Fair Labor Standards Act,
- e. An award of penalty damages under Connecticut Minimum Wage Act;
- f. Interest and costs;
- g. Attorneys' fees under the Fair Labor Standards Act, and the Connecticut Minimum Wage Act;
- h. Injunctive relief in the form of an order directing Defendant to comply with the Connecticut Minimum Wage Act;
- i. Such other relief as in law or equity may pertain.

## JURY DEMAND

Plaintiff demands a trial by jury by all issues so triable.

Peter Zaniewski, individually and on behalf  
of other similarly situated individuals

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