

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SHENNETTA THEDFORD, BRIANNA)
KING, DECORELAN TOMPKINS, a)
minor, by and through his parent,)
SHERRY TOMPKINS, ALEXANDER)
DUBOSE, TALESHA WRENCH,)
SHANTERRICKA THEDFORD, a)
minor, by and through her parent,)
SHENNETTA THEDFORD, KRIBBE)
PERRYMAN, and all other similarly)
situated individuals,)**

CIVIL ACTION NO.:

Plaintiffs,

v.

COLLECTIVE ACTION

**DRIVE IN OF EVANSVILLE,)
INC., d/b/a SONIC DRIVE-IN)**

Defendant.

COMPLAINT

I. NATURE OF CLAIM

Plaintiffs assert claims under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. ("FLSA") for wrongfully withheld wages and overtime compensation, liquidated damages, reasonable expenses of litigation and attorneys' fees.

II. JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 29 U.S.C. § 216(b).
2. This Court has venue for all causes of action stated herein pursuant to 28 U.S.C § 1391(b)(2) as the acts alleged as a basis for the federal claims took place within this Court's jurisdictional boundaries.

3. Defendant is subject to the jurisdiction of this Court.

III. PARTIES

4. Plaintiffs are residents of the state of Alabama who are over the age of 19. Plaintiffs Shanterricka Thedford and Decorelan Tompkins, who are under the age of 19, bring suit by and through their respective parents and legal guardians, Shennetta Thedford and Sherry Tompkins.

5. Plaintiffs and the class of individuals they seek to represent are current and former employees of the Defendant who work/ed for Defendant from 2011 to the present. Plaintiffs have been systematically denied wages and overtime compensation and have been paid under minimum wage during the period of their employment with Defendant.

6. Defendant, Drive-In of Evansville, Inc. (hereinafter referred to as “Defendant” or “Sonic”), is a foreign corporation with at least 12 locations in the state of Alabama, and is subject to personal service upon its registered agent, CT Corporation System, at 2 North Jackson Street, Suite 605, Montgomery, Alabama 36104.

7. Defendant is an employer within the meaning of the FLSA, 42 U.S.C. § 203(d) and is not exempt under the Act.

IV. FACTUAL ALLEGATIONS

8. In early 2011, the Sonic Drive-In locations in the Alabama area were bought by the franchise, Drive-In of Evansville, Inc., located in Kansas.

9. Sonic schedules its employees to work either seven (7) or eight (8) hour shifts. However, the employees who are in high school are scheduled to work five (5) hour shifts.

10. There are three shifts: morning (a.m.), midday/interim and evening (p.m.). The morning shift is 5:30 or 6 am to 4 pm; the interim shift is 9 am or 10 am to 5 pm; and the evening shift is 4 pm to 11

pm Sunday through Thursday and 12 am on Fridays and Saturdays.

11. Sonic keeps all of the employees' weekly shift schedules in file cabinets at the Adamsville location.

12. Employees are paid on a bimonthly basis.

13. Sonic only pays its employees for work performed "on the clock."

14. Sonic opens at 6 am; however, employees who open on the a.m. shift are required to arrive at work at 5:30 a.m. to open the store.

15. The district manager, Mike Goodwin (who is in charge of seven locations in Alabama), requires the assistant managers and general managers to keep labor costs as low as possible. The General Managers and Assistant Managers are instructed by the District Manager to ensure that labor costs are no higher than 22 percent (%) of the daily sales.

16. Sonic instructs the employees that they are not allowed to clock into the time-keeping system (the time clock) until they are instructed to do so by a manager. The district manager requires the general managers and assistant managers to prohibit the crewmembers from clocking in until the store gets busy and makes a certain amount of money in sales for the day (at least \$40) in order to keep labor costs down.

17. Crewmembers on the a.m. shift work more than three hours *off the clock* before they are allowed to clock in.

18. The crewmembers are not compensated for the time they work that is off the clock.

19. Crewmember employees are not paid overtime compensation for the hours they work in excess of 40 hours per workweek.

20. If the assistant managers and/or general managers allow the employees to clock in when they

arrive at work and to work on the clock the entire time they work, then they [the assistant managers and/or general managers] will be terminated by the district manager because labor costs will be “too high.”

21. Crewmembers on the a.m. shift perform the following work off of the clock on a daily basis: turn on all the equipment (it needs to be on for at least 30 min before cooking); make onion rings from scratch; put out the trays and strawberries; cut up lemons and limes for drinks; hook up the drink station; make tea; fill ice container, set up ice cream station, clean the bathrooms; bring up all the fries, hot dogs, cheese sticks, etc. from the freezer to the front cooler for the day; cook the food; stuff bags with napkins, salt and pepper and peppermints; turn computers on; turn lights on; turn on cash registers; check the parking lot for trash on the ground and check to make sure the trash cans are not full.

22. All of the employees on the evening shift are required to clock out at 11 pm. After clocking out, crewmembers on the p.m. shift perform the following work off the clock on a daily basis: clean dishes, clean the grill, make sure the floors are clean, take the trash out, turn all of the equipment off, clean the bathrooms, make sure the trash is empty, and clean the parking lot.

23. All crewmember employees are supposed to get one 30-minute break to eat lunch/dinner. They are required to clock out for their break/meal periods. Though they clock out for this time, they are often required to work through their break periods and are not compensated for this time.

24. Crewmembers on the interim/midday and p.m. shifts are not allowed to clock in immediately when they arrive to work. Sonic requires them to work off the clock prior to clocking in for the day.

25. Not only are employees required to work off the clock for multiple hours per day for which they are not compensated, they are incorrectly paid for the time they work on the clock. Carhop

crewmembers make \$4.25 or \$4.50 per hour plus tips. However, the majority of the work the carhops perform is not service related. In fact, only approximately 2 hours out of their scheduled shifts (which are either 8, 7 or 5 hours) include work for which they could receive tips. Carhop crewmembers are wrongly classified as tipped employees.

26. The carhop crewmembers' actual tips, when combined with their hourly wage of \$4.25 - \$4.50, do not equal the minimum hourly wage. Sonic claims tip credits greater than the amount of tips actually received by the carhop crewmembers in order to meet the minimum wage requirements.

27. Additionally, Sonic deducts money from the carhop crewmembers' paychecks for tips that they do not actually receive.

28. At the end of every shift, the carhop crewmembers are required to meet with either the assistant manager or general manager (usually the assistant manager) so he/she can count and record their tips, which the carhops then take home with them.

29. The amount of compensation carhops receive in tips varies from day to day. On average, they make approximately \$5-\$10 per day in tips. Some days they make a few dollars more and other days they make less. And some days they make no money in tips at all.

30. The amount of tips received by the carhops is not sufficient to make up the difference between their wage payment (\$4.25 per hour) and minimum wage.

31. However, when the carhops receive their paychecks, the amount made in tips is falsely recorded as double and sometimes triple the amount that the carhops actually received in tips. Sonic falsely reports that the carhops make more than what they actually receive in tips to avoid having to make up the difference and pay the carhops minimum wage. Sonic deducts this overinflated tip amount from the carhop crewmembers' paychecks for tips that they do not actually receive. This is done as a

way for Sonic to keep down labor costs.

32. Every Monday, a report for the previous week is emailed to the corporate headquarters Drive-In of Evansville, Inc., which is based in Kansas. This franchise has at least 12 stores in the state of Alabama and many more locations in other states. The report contains a breakdown of the weekly sales, labor percentage, carhop tips and the weekly work schedules for the employees.

33. Assistant managers are nonexempt employees and are paid on an hourly basis. Assistant managers on the a.m. shift are required to be at work at 5:30 a.m. to get the store up and running and start cooking food. However, Assistant Managers are not allowed to clock in until enough business comes through the door, which usually takes multiple hours. Assistant Managers are required to clock out at 4 p.m.; however, they continue to work off the clock at the end of their shift.

34. Assistant managers work multiple hours off the clock each day.

35. Assistant managers perform the following work while off the clock on a daily basis: In the morning: assistant managers turn on all the equipment, which must be on for at least 30 minutes before cooking; make onion rings from scratch; set up everything for the employees - put out the trays, strawberries, cut up lemons and limes for drinks, hook up the drink station, make tea, fill ice containers, set up ice cream station, clean the bathrooms, make sure inventory is stocked and prepped (and bring up all the food from the freezer to the front cooler for the day); cook the food; stuff bags with napkins, salt and pepper and peppermints; turn computers on; turn lights on; turn on the cash registers; check the parking lot for trash on the ground and check to make sure the trash cans are not full.

36. In the evenings, Assistant Managers perform the following work off of the clock on a daily basis: collect money from the carhops; close the carhops' bands out and bring the bands to a zero

balance; enter the money into the computer; take the money to the bank and drop it in the night drop box to be deposited.

37. Assistant Managers do not receive break periods. They are required to eat lunch/dinner while working.

38. The Assistant Managers do not receive overtime compensation for the hours they work in excess of 40 hours per workweek.

39. General Managers are wrongly classified as exempt employees. 80 to 90 percent (%) of the work they perform is not managerial, executive or administrative. The General Managers are paid approximately \$28,000 per year.

40. General managers perform the following work on a daily basis: in the morning they make the reports to send to corporate, which takes about 20 minutes; check the labor and manually clock employees in and out when the system is broken, which takes about 45 minutes total; pick up the deposit slips from the bank and verify them, scan them into the computer and email them to corporate, which takes about 30 minutes; and they address customer complaints, which takes about 20 minutes per day. The rest of the time (about 10 hours per day) General Managers work on the floor with the other employees, cooking, serving customers, making sure inventory is stocked, cleaning, and taking orders and helping to close the store at the end of the day.

41. General Managers do not have independent discretion or control over decisions. The District Manager ultimately makes the decisions regarding labor costs, budgets, inventory, and running the store. And the district manager controls hiring and firing of employees.

42. The General Managers are not paid overtime compensation for the hours they work in excess of 40 hours per workweek.

43. Sonic not only knows that its employees are not fully or accurately compensated for the hours they work, but Sonic requires this as a business model in order to keep labor costs down.

Shennetta Thedford:

44. Shennetta Thedford began working at Sonic Drive-In in Fairfield, AL in September 2010. She was transferred to the location in Adamsville, AL in December of 2010.

45. Thedford started out working as a crewmember working on the a.m. shift. Throughout the time that Drive-In of Evansville, Inc has owned Sonic, she was required to work off the clock on a daily basis for multiple hours, for which she was not compensated.

46. As a crewmember, Thedford made \$7.25 per hour. She was scheduled to work eight (8) hour shifts; however, she actually worked nine (9) to ten (10) hours per day. Though she was scheduled to work 8 hours (and actually worked over eight hours), she was not allowed to clock in for her entire shift.

47. Throughout her employment, Sonic did not pay Thedford overtime compensation for the hours she worked in excess of 40 hours per week.

48. Thedford was only compensated for the hours she worked on the clock. Thedford worked multiple hours per day for which she was not compensated.

49. Thedford also worked as a carhop. She was compensated at a rate of \$4.25 or \$4.50 per hour plus tips when she worked as a carhop. However, the majority of the work Thedford performed while working as a carhop was not service related. In fact, only approximately 2 hours out of her scheduled 8 hour shift included work for which she could receive tips. Thedford was wrongly classified as a tipped employee.

50. In addition to wrongly classifying Thedford as tipped employee, Sonic falsely reported that

Theford made more money in tips than she actually received to avoid having to make up the difference between her direct wage payment (\$4.25 to \$4.50 per hour) and minimum wage.

51. The amount she received in tips varied from day to day. On average she made about \$5 per day in tips. However, when Theford received her paycheck, the amount she made in tips was falsely recorded as double and sometimes triple the amount that she actually received in tips. This inflated tip amount was deducted from her paycheck. Thus, Sonic deducted money from her paychecks for tips that she did not actually receive.

52. As a crewmember, when she was not working as a carhop, Theford worked as a cook. She made \$7.25 per hour as a cook. However, she was not compensated for all the time she worked. She was forbidden from clocking in until the store made a certain amount of money for the day. As was the case with her work as a carhop, when she worked as a cook, she worked multiple hours per day off of the clock for which she was not compensated, and some of which was overtime.

53. Additionally, Sonic made her clock in as a carhop (at the rate of \$4.25 or \$4.50 per hour) when she was scheduled to work as a cook. This was done to avoid having to pay Theford minimum wage.

54. As a crewmember (both a carhop and cook) Theford worked over 40 hours per week; however, she was not compensated for all the hours she worked.

55. Theford was promoted to Assistant Manager in June 2012. She held this position for approximately one year. As an assistant manager, she made \$7.25 per hour for about six (6) months until she received a \$.75 raise to \$8 per hour. She was scheduled to work 8-hour shifts, 5 to 7 days per week.

56. As an Assistant Manager, Theford worked 50 to 60 hours per week. She worked 60 hours

per week when the general manager was out of town, which occurred numerous times throughout her employment.

57. As an assistant manager, Thedford worked on the a.m. shift and opened the store. She was required to be at work at 5:30 every morning to get the store up and running and start cooking food. However, as Assistant Manager, she was not allowed to clock in until enough business came through the door, which took multiple hours. She was required to clock out at 4 pm; however, she continued to work off the clock for at least an hour, sometimes more, per day at the end of her shift.

58. Some days Thedford was not able to clock in at all. She was not compensated at all for the days that she worked but was not able to clock in despite the fact that she was scheduled to work these days and did in fact work them.

59. As assistant manager, Thedford performed the following work while off the clock on a daily basis: In the morning: got all the equipment turned on (it needs to be on for at least 30 minutes before cooking); made onion rings from scratch; set up everything for the employees - put out the trays, strawberries, cut up lemons and limes for drinks, hooked up the drink station, made tea, filled ice container, set up ice cream station, cleaned the bathrooms, made sure inventory was stocked and prepped (brought up all the fries, hot dogs, cheese sticks, etc from the freezer to the front cooler for the day) cooked food, stuffed bags with napkins, salt and pepper and peppermints, turned computers on; turned lights on, turned on cash registers, checked the parking lot for trash on the ground and checked to make sure the trash cans were not full.

60. In the evenings, Thedford performed the following work off of the clock on a daily basis as Assistant Manager: collected money from the car hops, closed the carhops' bands out and brought the bands to a zero balance, entered the money into the computer, took the money to the bank and

dropped it in the night drop box to be deposited.

61. As assistant manager, she did not receive any break periods. She was not compensated for the time she worked off the clock. Additionally, she did not receive overtime compensation for the hours she worked in excess of 40 hours per work week.

62. In June 2013, Thedford began working as the general manager, though she did not technically get the promotion until July 2013.

63. As general manager, she was wrongly classified as an exempt employee. 80 to 90 percent of work she performed as general manager was not managerial, executive or administrative. Thedford's salary as general manager was \$28,000 per year.

64. As general manager, Thedford worked over 10 hours per day 6 days per week. At least 2 days per week she worked from opening until closing, 5:30 am to 12 am. She spent at most 2 hours per day doing administrative or managerial work. The rest of the time she spent doing non-managerial non-administrative work (the same work that the crew members and assistant managers did).

65. Also approximately two (2) times per week Thedford had to drive 45 minutes to Woodfrutticher warehouse in Trussville to pick up merchandize when the store ran out, which took at least 2 hours.

66. On November 8, 2013, Mike Goodwin, the district manager, informed Thedford that she had to terminate Alexander Dubose, an assistant manager, because Goodwin said Dubose let the employees work on the clock too long and his labor percentage was too high.

67. Goodwin then terminated Thedford the following Monday, November 11, 2013. Goodwin said Thedford was terminated because he did not "see any progress" with her, which meant she was not getting sales high enough or keeping labor low enough.

68. While working as the General Manager, Goodwin instructed Thedford to make sure labor was no higher than 22 percent (%) of the daily sales. She was instructed to schedule the employees each day based on Sonic's forecasted sales from the previous year. Thedford did not make independent decisions regarding scheduling employees based on her own discretion or judgment. Sonic determines how many employees to schedule each day based on the amount of money made in sales for that day the previous year.

Alexander Dubose

69. Alexander Dubose worked for Sonic at the Adamsville location from October 2012 to November 2013. From October 2012 to November 2012 Dubose worked as a crewmember. He made \$7.25 per hour. However, he was not paid for the hours he worked off the clock.

70. Dubose was promoted to Assistant Manager in November 2012, and he held this position until he was terminated in November 2013. Dubose made \$8 per hour as an Assistant Manager.

71. Dubose worked on the a.m. shift and opened the store as a crewmember and as Assistant Manager. Dubose arrived to work at 5:30 a.m.; however, he was not allowed to clock in until the store made a certain amount of money in sales for the day. He worked multiple hours off the clock each day as a crew member and assistant manager.

72. The District Manager instructed Dubose that he was not allowed to clock in until some business came through the door. If Dubose clocked in immediately when he got to work and worked on the clock for the entire time he worked, he would have been terminated.

73. Sonic paid Dubose below minimum wage throughout his employment as a crew member and assistant manager.

74. While he worked as Assistant Manager, he did not receive a break. He was required to eat

lunch while working.

75. Additionally, Dubose worked over 40 hours per week while he was a crewmember and assistant manager; however, he did not receive overtime compensation during his employment.

76. As a crewmember, Dubose worked approximately 9-10 hours per day and worked 5-7 days per week. Sonic did not allow him to work on the clock the entire time. He worked multiple hours off the clock on a daily basis.

77. As an Assistant Manager, Dubose was scheduled to work 8-hour shifts and he worked 5-7 days per week. Dubose actually worked approximately 10-12 hours per day as assistant manager.

78. As part of his job as Assistant Manager, Sonic required Dubose to keep labor costs as low as possible. In order to do that, Sonic, and in particular the District Manager Mike Goodwin, instructed Dubose that he had to make sure the employees did not clock into time clock until the store got busy and made a certain amount of money in sales for the day, which was about \$40 in sales. This usually took more than 3 hours from the time the store opened at 6 am.

79. Throughout Dubose's employment, the time clock was broken at the Adamsville location. Therefore, the Assistant Managers and General Manager had to manually clock the employees in and out of the time clock. The district manager, Mike Goodwin, knew the time clock was broken because Dubose and Thedford informed him that it was broken and requested that Sonic fix or replace it; however, Sonic refused to do so.

Talesha Wrench

80. Talesha Wrench worked for Sonic at the Adamsville location as a carhop crewmember from February 2013 until November 2013.

81. Wrench worked on the a.m. shift. Her scheduled shift was from 7 am to 4 pm. However, she

was not allowed to clock in for her entire shift. She was instructed to work off the clock when she arrived at work. She worked off the clock on a daily basis for multiple hours each day.

82. Wrench performed the following work while off the clock: made drinks, bagged food, answered the speakerphone and took orders, and took courtesy trays to customers with extra supplies.

83. Additionally, Wrench worked over 40 hours per week during the summer; however, she was not paid overtime compensation.

84. At the end of every shift, Wrench met with either the assistant manager or general manager so he/she could count and record her tips, which Wrench then took home with her.

85. The amount of compensation Wrench received in tips varied from day to day. On average, she made approximately \$5-\$10 per day in tips. And some days she made no money in tips at all.

86. The amount of money Wrench actually made in tips was not enough, when combined with her hourly wage of \$4.50, to equal the minimum hourly wage rate of \$7.25 per hour.

87. The assistant manager or general manager would record how much Wrench made in tips each day. However, when she received her paycheck, the amount made in tips was falsely recorded as double and sometimes triple the amount that she actually received in tips. This was done so that Sonic would not have to pay Wrench and the other carhops \$7.25 per hour, and thus Sonic could keep down labor costs.

88. Sonic deducted money from her paychecks for tips that she did not actually receive.

Shanterricka Thedford

89. Shanterricka Thedford worked for Sonic at the Adamsville location from September 2012 through November 2013 as a carhop crewmember. She made \$4.50 per hour.

90. Throughout her employment she worked all three shifts—a.m., interim and p.m. When she

arrived at work, she was not allowed to clock in. She worked off the clock for multiple hours on a daily basis. She performed the following work off the clock: made drinks; bagged food and put food on trays to go to the cars; delivered the food to cars and brought the money back; picked up trash and took it to the dumpster; cleaned the bathrooms; took orders; unloaded inventory trucks and put the inventory up where it belongs; made courtesy trays; checked on customers; brought customers condiments; performed "lot sweeps" surveying the whole building for trash, etc.

91. Shanterricka worked 5 days per week throughout her employment. During the summer, she worked the early morning shift, and arrived to work at 5:30 am, 3 times per week. She was not allowed to clock in until around 8 am, when the store made enough money in sales for the day.

92. When her shift started at 9 am, Shanterricka was not allowed to clock in until hours later.

93. At the end of every shift, Shanterricka met with either the assistant manager or general manager so he/she could count and record her tips, which she then took home with her.

94. The amount of compensation Shanterricka received in tips varied from day to day. On average, she made approximately \$5-\$10 per day in tips. And some days she made no money in tips at all.

95. The amount of money Shanterricka actually made in tips was not enough, when combined with her hourly wage of \$4.50, to equal the minimum hourly wage rate of \$7.25 per hour.

96. The assistant manager or general manager would record how much Shanterricka made in tips each day. However, when she received her paycheck, the amount made in tips was falsely recorded as double and sometimes triple the amount that she actually received in tips. This was done so that Sonic would not have to pay Shanterricka and the other carhops \$7.25 per hour, and thus Sonic could keep down labor costs.

97. Sonic deducted money from her paychecks for tips that she did not actually receive.

Decorelan Tompkins

98. Tompkins worked as a carhop crewmember at the Adamsville location from June 2013 through November 2013. During his employment, he worked both the interim and pm shifts.

99. During the summer, he worked 4-5 days per week. When he was in school he worked 3-4 days per week on the evening shift.

100. His shift in the summer was from 9 am to 4 pm. However, he was not allowed to clock in until hours after he arrived to work.

101. He was required to clock out at 4 pm; however, he had to continue working off the clock for another hour after he clocked out.

102. When he got to work, he performed the following work off the clock on a daily basis: made drinks; bagged food and put food on trays to go to the cars; delivered the food to cars and brought the money back; picked up trash and took it to the dumpster; cleaned the bathrooms; took orders; unloaded inventory trucks and put the inventory up where it belongs; made courtesy trays; checked on customers; brought customers condiments; performed "lot sweeps" surveying the whole building for trash, etc.

103. After clocking out at 4 pm, he performed the following work off the clock on a daily basis: helped wrap up happy hour; put cups up; got ice from the back and made sure ice buckets were filled; stocked the ice cream machines; made sure the trash cans were empty; cut up lemons and limes for drinks; refilled the cherry containers; and met with a manager so he/she could count and record his tips for the day; he had to turn in his wrist band and have it "counted down" by the manager who would count the money from his band, which was scanned into a computer system; gave money to

manager and turned in his smock.

104. Throughout his employment, he was not paid for the hours he worked off the clock.

105. Tompkins only made approximately \$5-\$10 in tips each day. Sometimes he made less.

106. The amount of money Tompkins actually made in tips was not enough, when combined with his hourly wage of \$4.50, to equal the minimum hourly wage rate of \$7.25 per hour.

107. The assistant manager or general manager would record how much Tompkins made in tips each day. However, when he received his paycheck, the amount made in tips was falsely recorded as double and sometimes triple the amount that he actually received in tips. This was done so that Sonic would not have to pay Tompkins and the other carhops \$7.25 per hour, and thus Sonic could keep down labor costs.

108. Sonic deducted money from his paychecks for tips that he did not actually receive.

Kribbe Perryman

109. Perryman worked at the Adamsville location from April 2013 through November 2013 as a cook on the evening shift. His shift was from 5 pm to close, which was 11 pm Sunday through Thursday and 12 am on Fridays and Saturdays.

110. He arrived at work at 5 pm, but was not allowed to clock in until sometime between 6 -8 pm. He was required to clock out at 11 pm or 12 am; however, he had to work until at least 1 am.

111. He worked multiple hours off the clock every day.

112. His pay rate was supposed to be \$7.25 per hour. However, three out of four days a week, Sonic made Perryman clock in as a carhop, and thus paid him at the carhop rate of \$4.25 per hour, despite the fact that he did not actually work as a carhop.

113. Perryman always worked in the kitchen as a cook. However, Sonic required him to

clock in as a carhop and thus paid him the rate of a carhop (\$4.25 per hour) 3 out of 4 days a week to keep labor costs down.

114. Perryman never received any tips.

115. For three (3) days, Perryman worked 8 hour shifts off the clock and Sonic never paid him for this time.

116. From the time he got to work until the time he was allowed to clock in, he performed the following work off the clock on a daily basis: stocked the freezer in the kitchen; stocked the back cooler; stocked the meat freezer; stocked the condiment area; took the trash out to the dumpster.

Brianna L. King

117. King worked for the Adamsville location from November 2009 to June 2013 as a crewmember. She worked as a carhop and was paid \$4.50 per hour throughout her employment.

118. While in high school, from 2009 to 2011, she worked from 4 pm to 9 pm 3 days per week and worked longer shifts on the weekends.

119. After graduating high school in 2011 and continuing throughout the rest of her employment, she worked full time. Her scheduled shift was from 6 am to 2 or 3 pm. She worked 5 days per week.

120. Though she was scheduled to work from 6 am to 2 or 3 pm, Sonic did not allow her to clock in when she arrived at work. Instead, Sonic required her to work off the clock for multiple hours in the morning, before allowing her to clock in. Sonic did not compensate King for the hours she worked off the clock.

121. Sonic required King to work off the clock on a regular basis because “labor costs were too high.”

122. King worked over 40 hours a week on a regular basis. However, Sonic refused to pay her overtime compensation for the hours she worked in excess of 40 hours per week.

123. At the end of every shift, King met with either the assistant manager or general manager so he/she could count and record her tips, which King then took home with her.

124. The amount of tips King received varied from day to day. On average, she made approximately \$5-\$10 per day in tips. Some days she made more and some days she made less. And some days she made no money in tips at all.

125. The amount of money King actually made in tips was not enough, when combined with her hourly wage of \$4.50, to equal the minimum hourly wage rate of \$7.25 per hour.

126. The assistant manager or general manager would record how much King made in tips each day. However, when she received her paycheck, the amount made in tips was falsely recorded as double and sometimes triple the amount that she actually received in tips. This was done so that Sonic would not have to pay King and the other carhops \$7.25 per hour, and thus Sonic could keep down labor costs.

127. Sonic deducted money from her paychecks for tips that she did not actually receive.

128. King did not work as a carhop every day. However, Sonic required her to clock in as a carhop and paid her the hourly wage rate of a carhop (\$4.50 per hour) even when she was not working as a carhop and did not receive any tips. Though she did not actually receive tips, Sonic falsely recorded that she received tips so that Sonic would not have to pay her \$7.25 per hour, and thus Sonic could keep down labor costs.

V. CLAIMS.

Violation of Fair Labor Standards Act

129. Plaintiffs reallege paragraphs 1 through 129 above and incorporate them by reference as if fully set forth herein.

130. By engaging in the above described conduct, Defendant knowingly, intentionally and willfully violated the FLSA with respect to Plaintiffs and other similarly situated individuals who have worked as carhop crewmembers, crewmembers, assistant managers and/or general managers for locations owned by Drive-In of Evansville, Inc.

131. As a direct and proximate result of the above-described conduct, Plaintiffs have lost wages.

132. Said violations give rise to claims for relief under the FLSA for Plaintiffs for unpaid wages and overtime compensation for three years prior to the filing of this Complaint, liquidated damages in an amount equal to the unpaid compensation, declaratory and injunctive relief and reasonable attorneys fees and expenses of litigation, pursuant to 29 U.S.C. § 216.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court do the following:

- a. Require Defendant to pay Plaintiffs and all other similarly situated individuals damages for lost overtime compensation calculated at one and one-half times the proper normal rate that Plaintiffs would have received but for unlawful conduct going back three (3) years from the date this Complaint was filed;
- b. Require Defendant to pay Plaintiffs and other similarly situated individuals damages for unpaid wages that Plaintiffs would have received but for unlawful conduct going back three (3) years from the date this Complaint was filed;
- c. Require Defendant to pay Plaintiffs liquidated damages as provided for under the Fair Labor

Standards Act;

- d. Issue a declaratory judgment that Defendant has engaged in unlawful employment practices in violation of the FLSA with respect to Plaintiffs and all other similarly situated individuals;
- e. Award Plaintiffs their reasonable attorneys' fees and costs and expenses of suit; and
- f. Provide such other and further relief as the Court may deem just and proper.

Plaintiffs demand a jury on all issues triable by jury.

/s/Courtney L. Calhoun
Courtney L. Calhoun

/s/Roderick T. Cooks
Roderick T. Cooks

/s/Lee D. Winston
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