

## **FLSA NARRATIVE**

### **Hardee's of Citronelle**

19765 North 3<sup>rd</sup> Street  
Citronelle, AL 36522  
Telephone: (251) 648-9400

Corporate Office  
C & C Food Systems, Inc.  
903 Azalea Drive  
Waynesboro, MS 39367  
(601) 410-3113  
Fax: (601) 735-4028

## **COVERAGE**

C & C Food Systems, Inc. d/b/a Hardees operates 14 Hardee's fast food restaurants, which includes 12 restaurants in Mississippi, 1 restaurant in Alabama and 1 restaurant in Louisiana (see Exhibits C-1-c and C-1-d). The firm was incorporated in the state of Mississippi on 7/3/1984. The firm is owned by John Frank Clark, President ((b)(6)%) and Roy Cravey, secretary/treasurer ((b)(6) %). The corporate office is located at 903 Azalea Drive, Waynesboro, MS 39367. (Exhibits C-1-a and E-4)

The president, Mr. John Frank Clark is the 3(d) employer for this enterprise. He is ultimately responsible for all decisions made and actions taken by the company. Mr. Clark makes the day-to-day decisions regarding hiring, firing, rates of pay, and scheduling of employees. (Exhibit

C-1-a).

The subject firm employs approximately 278 employees. 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. None of the employees subject to this investigation had individual coverage as they were not engaged in interstate commerce or doing work or production of goods for interstate commerce. (Exhibit C-1-b)

The firm's annual dollar volume (ADV) for the last three years was as follows:

2010: \$1	(b) (4)	
2011: \$	(b) (4)	
2012:	(b) (4)	
2013 (YTD): \$	(b) (4)	(Exhibit C-1-c)

Period of Investigation and Limitations: The case was a full investigation with no limitations. The investigation period was 2/2/2011 through 1/23/2013.

MODO: The Jackson District Office is the MODO. MODO instructions were requested from Jackson District Office on 1/25/2013 and response was to handle locally and contact MODO prior to final conference if violations are systemic. The case was associated on 1/25/2013. (Exhibits D-1-a through D-1-f)

FMLA: This employer is covered under FMLA as the firm reports there are over 200 employees who are working within a 75 mile radius or have worked for the enterprise in the previous years. As such, it easily meets the 50 employees/20 workweeks test for coverage. (See Exhibits C-1-c

and D-2-a through D-2-f).

## **EXEMPTIONS**

541.100 – Shelby Johnson, General Manager – Salary \$(b) (4) bi-weekly; Hires and fires and supervises employees.

541.100 – Robin Danley, Assistant Manager – Salary (b) (4) bi-weekly; Hires and fires and supervises employees.

541.100 – Mornique Gulley, Assistant General Manager – Salary \$(b) (4) bi-weekly; Hires and fires and supervises employees.

No other exemptions claimed or applicable. (Exhibit C-1-b)

## **STATUS OF COMPLIANCE**

Reason for Investigation: This investigation was a full investigation based on (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) was not being paid for all hours (b) (6), (b) (7)(C) worked because the former manager, Michelle Desi Wilson would shave hours each day she worked. (b) (6), (b) (7)(C) that this manager shaved hours for all employees in order to receive bonuses. (b) (6), (b) (7)(C) was substantiated. (b) (6), (b) (7)(C) also (b) (6), (b) (7)(C) that 5 minors drove and picked up supplies for the store. (b) (6), (b) (7)(C) was not substantiated. The current manager at this store said no minors drive for any supplies or for any reason whatsoever as part of their job. On 2/7/2013 (b) (6), (b) (7)(C) was notified by phone that results of the investigation substantiated (b) (6), (b) (7)(C) of being owed wages for hours worked and not paid, and the employer agreed to pay gross wages due totaling \$890.38 due to her. (b) (6), (b) (7)(C)

History: The subject firm did not have any prior history.

Section 6, Minimum Wage: Minimum wage violations resulted from the employer's failure to pay employees for all hours worked and from deductions made for uniforms causing employees to fall below minimum wage.

64 employees were found due minimum wage for hours worked that a former manager removed from their clock in and out time sheets. (Exhibits A-1 thru A-11, B-1 thru B-6)

21 employees were found due minimum wage for illegal deductions made to pay for uniforms which brought them below minimum wage.  
(Exhibits A-1 through A-11, B-5-a, B-6)

Method of Computation: Back wages were computed by WHI using weekly payroll records to show how many hours were posted as work. To these hours, each employee was allotted an additional hour worked for each week of work under < 20 hours in a week. If the employee worked 20 > or more hours in each work week an additional 2 hours were allotted for hours worked each week:

Example: 17 Weeks @ < 20 Hrs per week = 17 hours x Pay Rate = \$ Wages Due  
 $17 \times 7.25 = \$123.25$  Due

Example: 11 Weeks @ > 20 Hrs per week = 22 hours x Pay Rate = \$ Wages Due  
 $22 \times 7.25 = \$159.50$  Due

For uniform deductions, the dollar amount deducted for uniforms from each employee was computed as back wages due.

**Total Minimum Wage Back Wages: \$16,125.95 due 64 employees**

Section 7, Overtime: Overtime violations occurred when the additional hours that had been shaved from employee's time were added back to the work week thus causing the employee's work week to go over 40 hours in a week. (See Exhibits A-1 through A-11)

Method of Computation: Hrs worked over 40 x 1/2T of RR = Total Overtime Wages due

**Total Overtime Back Wages: \$197.66 due 9 employees**

**Grand Total Back Wages Due: \$16,323.61 due 64 employees**

Section 11, Record keeping: Record keeping violations resulted from the employer's failure to keep complete and accurate records of hours worked and for all employees. The employer clocked out employees unbeknownst to the employees who continued to work. This did not provide accurate records of hours worked by employees causing them to not be paid for all hours worked.

Section 12, Child Labor: There were no child labor violations found during this investigation. (See exhibits B-1 through B-6)

## **DISPOSITION**

A copy of the FLSA Handy Reference Guide (HRG) was given to the Operations Director and representative for C & C Food Systems, Inc., Mr. Mark Lelli, during the initial conference at the Hardee's of Citronelle location.

A final conference was held on February 6, 2013 with Mr. Mark Lelli, Director of Operations for Hardees, and Acting District Manager Denise Rook. WHI Terry Truett and ADD Patricia Chambers represented the Department of Labor. The various provisions of the FLSA were discussed in detail including Minimum Wage, Overtime, Record Keeping, Child Labor, coverage, exemptions, hours worked, regular pay and uniform deductions.

The 541 exemption was discussed and it was noted that the General Manager, the Assistant General Manager and Assistant Manager 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 punched out by the employer and they were actually still working. The firm did not maintain an accurate record of hours worked. Mr. Lelli stated he recently found out that this happened when a former manager was there.

He stated that the managers now are complying and ensuring that all employees' times are recorded correctly so they will be paid for all hours worked.

The Family Medical Leave Act (FMLA) was discussed with Mr. Lelli. FMLA leave entitlement does apply to the company as it employees over 50 employees who are working within a 75 mile radius or have worked for the enterprise in the previous years. It meets the 50 employees/20 workweeks test for coverage. An FMLA policy is in place regarding leave, wages and similar matters that impact FMLA leave entitlements. The employer is in compliance with the FMLA provisions.

Hours worked were discussed in detail. Employees must be paid for all hours work. Employees who are not working must clock out and not continue to work. The employer was informed that the firm was not in compliance with minimum wage provisions of the FLSA, due to not being paid for all hours worked when former Manager Desi Wilson clocked out employees who were still working.

Deductions for uniform costs were discussed in detail. It was pointed out that employees were having deductions made from their paychecks to pay for uniforms, thus bringing them below minimum wage. Mr. Lelli was told that employees cannot have deductions which bring them below minimum wage. It was clarified that if an employee wants additional uniforms or jackets above and beyond what they normally must have to do their job, then the firm may receive a signed, written request from the employee requesting the items and the cost be deducted from their paycheck.

It was pointed out that the firm was not in compliance with overtime provisions due to wages due

for hours worked over 40 in a work week. It was explained that additional hours added back to hours actually worked by the employee brought the employee into an overtime status in some weeks. Mr. Lelli understood how this came about and agreed to comply in payment of the overtime due.

Mr. Lelli was informed that the firm was in compliance with the Child Labor provisions of the FLSA.

When asked by the WHI how did these violations occur, Mr. Lelli stated that this was something that the former manager had done and he was not aware that she had been doing this. When she was relieved of her position, they found a separate set of books. Mr. Lelli said she no longer works for the firm and the new managers are complying by keeping accurate records and paying employees their correct wages including overtime as applicable.

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. Mr. Lelli further stated that he will get with the payroll company to ensure all records they receive are correct and correspond with all the hours to be paid for all employees. Mr. Lelli also stated that employees will no longer have uniforms deducted from paychecks, causing employees to fall below minimum wage.

The employer was provided a WH-56 and BCDS letter, which was signed and agreed to pay all wages due totaling \$15,323.61 by March 6, 2013.

The employer was advised of the possibility of civil money penalty assessment as a result of violations and future violations. He stated that there are no pending 16(b) lawsuits or bankruptcies.

Publications: The following publications were provided to Mr. Lelli: Handy Reference Guide; Posters – FLSA and EPPA; FMLA Fact Sheet 28D, FLSA, Fact Sheets 13, 14, 16, 21, 22, 23, 30, 17a, 17C. Reg Part 785, 778, 516, Reg Part 541, Reg Part 791, CL Bulletin 101, WH Publication 1325.

**RECOMMENDATION**

It is recommended this file be administratively closed upon receipt of proof of payment of back wages.

Future correspondence should be sent to: C & C Food Systems, Inc., Attn: Mr. Mark Lelli  
903 Azalea Drive, Waynesboro, MS 39367

Terry Truett  
Wage & Hour Investigator  
2/7//2013



**ADDENDUM  
FLSA NARRATIVE**

**Hardee's of Citronelle**

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Citronelle, AL 36522  
Telephone: (251) 648-9400

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903 Azalea Drive  
Waynesboro, MS 39367  
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Fax: (601) 735-4028

**COVERAGE**

Hardee's of Citronelle employees 23 employees. The enterprise employs approximately 329 employees. 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 such as food and supplies (produce, frozen meats, flour, dairy products, paper towels, detergents and other cleaning fluid) which traveled by interstate commerce from La Grange, GA. None of the employees subject to this investigation had individual coverage as they were not engaged in interstate commerce or doing work or production of goods for interstate commerce. (Exhibit C-1-a)

The annual dollar volume (ADV) for Hardee's at Citronelle for the last three years and year-to-date is as follows:

2010: \$1,571,231.66  
2011: \$1,161,014.32  
2012: \$1,172,381.89  
2013 (YTD): \$ 66,056.94 (Exhibit C-1-b)

The annual dollar volume (ADV) for the enterprise, C&C Foods Systems for the last three years and year-to-date is as follows:

2010: \$13,454,816.22  
2011: \$13,055,891.66  
2012: \$13,735,285.75  
2013 (YTD): \$ 759,253.16 (Exhibit C-1-b)

## **DISPOSITION**

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A final conference was held on February 6, 2013 with Mr. Mark Lelli, Director of Operations for C&C Food Systems, Hardee's of Citronelle branch and Acting District Manager Denise Rook also of C&C Foods Systems, Hardee's of Citronelle branch. WHI Terry Truett and ADD Patricia Chambers represented the Department of Labor. The various provisions of the FLSA were discussed in detail including Minimum Wage, Overtime, Record Keeping, Child Labor, coverage, exemptions, hours worked, regular pay and uniform deductions.

The 541 exemption was discussed and it was noted that the General Manager, the Assistant General Manager and Assistant Manager 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 punched out by the employer and they were actually still working. The firm did not maintain an accurate record of hours worked. Mr. Lelli stated he recently found out that this happened when a former manager was there. He stated that the managers now are complying and ensuring that all employees' times are recorded correctly so they will be paid for all hours worked.

The Family Medical Leave Act (FMLA) was discussed with Mr. Lelli. FMLA leave entitlement does apply to the company as it employees over 50 employees who are working within a 75 mile radius or have worked for the enterprise in the previous years. It meets the 50 employees/20 workweeks test for coverage. An FMLA policy is in place regarding leave, wages and similar matters that impact FMLA leave entitlements. The employer is in compliance with the FMLA provisions.

Hours worked were discussed in detail. Employees must be paid for all hours work. Employees who are not working must clock out and not continue to work. The employer was informed that the firm was not in compliance with minimum wage provisions of the FLSA, due to not being paid for all hours worked when former Manager Desi Wilson clocked out employees who were still working.

Deductions for uniform costs were discussed in detail. It was pointed out that employees were having deductions made from their paychecks to pay for uniforms, thus bringing them below minimum wage. Mr. Lelli was told that employees cannot have deductions which bring them below minimum wage. It was clarified that if an employee wants additional uniforms or jackets above and beyond what they normally must have to do their job, then the firm may receive a signed, written request from the employee requesting the items and the cost be deducted from their paycheck.

It was pointed out that the firm was not in compliance with overtime provisions due to wages due for hours worked over 40 in a work week. It was explained that additional hours added back to hours actually worked by the employee brought the employee into an overtime status in some weeks. Mr. Lelli understood how this came about and agreed to comply in payment of the overtime due.

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that the former manager had done and he was not aware that she had been doing this. When she was relieved of her position, they found a separate set of books. Mr. Lelli said she no longer works for the firm and the new managers are complying by keeping accurate records and paying employees their correct wages including overtime as applicable.

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(b) (6), (b) (7)

Wage & Hour Investigator

## WHISARD Compliance Action Report

### U.S. Department of Labor

Wage and Hour Division

Case ID: **1674124** Originating District: **Birmingham AL District Office**  
Local Filing Number: **2013-125-10010** Investigating District: **Birmingham AL District Office**  
WHMIS Case Number: Lead Investigator: **(b) (6), (b) (7)**  
Registration Date: **10/29/2012**  
Assignment Date: **01/07/2013**

#### Employer Information

Trade Name: **Hardee's Restaurant - Citronelle** Legal Name: **C & C Food Systems, Inc.**  
Address: **19765 N 3rd Street** EIN: **64-0700659**  
County: **Mobile**  
NAICS Code: **722211**  
Citronelle, AL36522 No. Of Employees: **(b)**

#### Investigation Information

Period Investigated From: **02/02/2011** BNPI:  
To: **01/23/2013** Reinvestigation: ☐  
Investigation Type: **(b) (7)(E)** Recurring Violation: ☐  
Investigation Tool: **Full Investigation** Future Compliance Agreed: ☒  
Compliance Status: **Agree to Comply** Involved in AG: ☐

#### Recommended Action:

BWFS: ☒ RO/NO Review: ☐  
CMP: ☐ Follow Up Investigation: ☐  
Litigation: ☐ Other Action: ☐  
Civil Action: ☐ Denial of Future Certificate: ☐  
Criminal Action: ☐ BW Payment Deadline: **03/06/2013**  
Submit For Opinion: ☐ Trailer forms attached: ☐

#### CL

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

## 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>	64	64	\$16,125.95	\$16,125.95	\$0.00	\$0.00	
<i>Failure to pay proper overtime / Agree to Comply</i>	9	9	\$197.66	\$197.66	\$0.00	\$0.00	
<i>Failure to keep accurate records / Agree to Comply</i>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
<b>FLSA Totals:</b>	64	64	\$16,323.61	\$16,323.61	\$0.00	\$0.00	
<b>Total Violations Under FLSA :</b>	74						\$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	
<b>FMLA Totals:</b>	0	0	\$0.00	\$0.00	\$0.00	\$0.00	

\* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	64	Unduplicated Employees Agreed:	64
Total Amount BWs Computed:	\$16,323.61	Total Amount BWs Agreed:	\$16,323.61
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

## WHISARD Compliance Action Report

### Conclusions & Recommendations:

*68 Hrs. Investigation resulted from (b) (6), (b) . Enterprise coverage under 3(s)(1)(a) applied. MW, OT, RK vios found. No CL vios. Invest found ER shaving hrs wkd by ee's & not paid. OT bws due after reinstating shaved hrs. RK vios due to not recording all hrs wkd. At FC ER ATP/ATC. \$16,323.61. to 64 EEs. Pubs provided HRG, FLSA, Regs 516, 778, 785,791, CL 101,FS 13,14,16,21,22,23,30, 17a,17c, 28D. Mark Lelli (601)735-4028.*

WHI Signature: \_\_\_\_\_ Date: 02/08/2013

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_