

**Mountain Star, LLC**  
**DBA Hardees's**  
**244 N. Main**  
**Hiawassee GA 30546**  
**Case ID: 1682014**  
**706-896.0402**  
**Federal Tax ID Number: 20-8438021**

**FLSA NARRATIVE REPORT** Ex. 7(E)

**COVERAGE:**

The subject establishment above is a limited service restaurant covered under §3(s)(1)(A) of the FLSA. The business enterprise is engaged in the related activities of preparing and serving food (breakfast muffins, hamburgers, etc.) to the general public and meets and/or exceeds the criteria required under the Act of a Ex. 4 Annual Dollar Volume (ADV) and at least Ex. full-time employees handling goods in commerce. The ADV for the business enterprise is over Ex. 4 for 2010 to 2012. Thus, §3(s)(1)(A) coverage exists for the entire investigative period. [See Exhibit(s) C-1, 2, 3, 4]

**Enterprise Structure:**

The above establishment is a store owned by Mountain Star, LLC. The company was established in the state of Georgia on 5/11/2004. The franchise corporate offices/headquarters is located at 1420 Peachtree Street Suite 210, Atlanta, GA 30309. The telephone number is 404-888-9058.

The enterprise consists of Ex. locations operating in various states. The only store operating in the Georgia is the subject of the investigation. [See Exhibit C-3]

**Ownership:** Ex. 4

**MODO Instructions:** Ex. 7(E)

Ex. 7(E) . (See exhibit D-0)

Section 3(D) Employer:

Ex. 7(C), Ex. 6 , the store manager involved in the daily business operations for the establishment. . He runs the daily operations of the business, he hires, fires and supervises, and act in the direct interest of the corporation in relation to its employees. Therefore, he meets the definition of §3(d). (See Exhibit -1-7, B-5, C-1)

Investigative Period:

The investigation was for the period from the 2/12/11 to 2/11/13.

Limits: Ex. 7(E) .

**EXEMPTIONS:**

The Executive Exemptions were determined to be applicable to Ex. 7(C), Ex. 6 . He is paid more than \$455.00 per week on a salary basis. They primary duties are management. He hires and fires, manages, set schedules and supervised over Ex full and part time EE's. (See Exhibit B-5)

**STATUS OF COMPLIANCE:**

History:

There is no history for this company.

Investigation of the subject firm was initiated by a complaint dated 1/11/2013. Ex. 7(C), Ex. 6, Ex. 7(D)

That allegation was substantiated and the investigation also revealed minimum wage violations because of

break deductions of less than Ex minutes.

Backwages for him totaled were less than \$0.00. He has been notified of the results of the investigation.

***Section 206 (Minimum Wage-MW): Total Backwages computed \$11,838.60 for Ex employees***

There were Minimum wage violations. The investigation revealed that lunch and smoke breaks of less than Ex minutes are deducted. The manager also required employees to clock out during non busy time on and to clock back in once the restaurant got busy. This resulted in minimum wage violations because employees were not pay all hours and failed to make at least \$7.25 per hour. [See Exhibit(s) A-1-60, AA-1 – 5, E-1]

Some employees indicated in their interview that managers send them out to the parking lot when the restaurant is not busy and ask them back in when it gets busy. Some employees indicated that on average they out for about Ex minutes per day worked. Ex. 7(C), Ex. 6, acknowledged in his interview that he does it. They also stated that they have the option to take and usually take E or E breaks that last Ex or Ex minutes off the clock. A review of the punch time shows that employees clock in and out E to E time per day. [See Exhibit(s) B-1, 3, 4, 6, 7, 8, D-3]

***Section 207 (Overtime-OT): Total Backwages computed \$246.97 for Ex employees***

There were overtime violations. The time deducted for breaks and some time allowed for clock out time during the restaurant downtime caused some employees to go over Ex per week without overtime compensation. [See Exhibit(s) A-1-60, B-1-8]

***Section 211 (Recordkeeping):***

There were record keeping violations. The employer failed to comply with CFR 516, which requires that the employer maintain accurate time records. There were breaks deductions that rendered hours worked and paid on the payroll inaccurate.

***Section 212 (Child Labor):.***

No violation found. There were some workers less than Ex 4 year of age employed as cashiers. The Managers and other EE's interviews indicated that the minor work is in the front line as cashier all they do is cashiering duties and don't work in the kitchen. Ex. 7(C), Ex. 6, Ex. 7(E)  
(See Exhibits B-1-8, E-1)

Ex. 7(D) . Ex. 7(E), Ex. 7(D), Ex. 7(C),  
Ex. 6

(See Exhibits E-1)

**FMLA,**

The investigations were limited to the FLSA. There were no allegations of FMLA violations. The employer had Ex 4 workers at this location. This is the only location in GA.

**Klinghoffer Rule**

There were Minimum wage workers during the investigative period. In non overtime workweeks the Klinghoffer Rule applied to the other workers.

**Computations:**

The employer provided employee time records reports for the investigative period. (Exhibit D-3) This Ex. 7(C) reviewed, sorted and transcribed the records. The records were arranged on excel and hours worked and breaks were extracted. Daily breaks of less than Ex 4 minutes were added to come with weekly breaks totals for the E years investigative period. [See exhibits A-1-60 under the breaks column and D-3 daily breaks column]

The employees indicated and a manager confirmed, that the employer was requiring employees to clock in & out during their shift and stay in the premises. Ex. 6, Ex. 7(C)

Ex. 6, Ex. 7(C) [REDACTED] E [REDACTED]. The half hours were arrived to by taking in consideration employee's statement and a review of the records. [See Exhibit(s) A-1-60, B-1-8]

Minimum Wage

Total weekly breaks were added and converted to the decimal equivalent and then multiplied by the minimum wage to arrive at the amount due. Whereas employee's rate was more than \$ 7.25, a Klinghoffer analysis was done and only those weeks in which the rate fell below minimum wage was backwages computed.

Minimum wage was computed by adding the time deducted, then divided by total compensation = hourly rate. Then  $7.25 - RR = MW \text{ due } \times \text{ number of hours worked}$ .

Overtime

After the uncompensated hours were determined by adding the breaks not paid, that total was added to the weekly hours paid by the employer, if it resulted in more than Ex 4 hours per week. The breaks up to Ex 4 were computed at the regular rate and half time was computed for the overtime hours.

(See Exhibits A-1-60, AA-1-18)

CMP's none.

**DISPOSITION:**

On 2/13/2013 an initial conference was held with Ex. 7(C), Ex. 6 [REDACTED], represented the Company. Ex. 7(C), Ex. 6 [REDACTED] The meeting was held at the establishment, which is located at 244 N. Main, Hiawassee, GA 30546.

Ex. 7(C), Ex. 6, Ex. 7(E) [REDACTED]

On 2/13/2013 a final conference was held with Ex. 7(C), Ex. 6  
[REDACTED], represented the Company. Ex. 7(C), Ex. 6  
[REDACTED]. The meeting was held at the establishment, which is located at 244  
N. Main, Hiawassee, GA 30546.

Enterprise and Individual coverage, MW, OT, RK, Hours Worked, Child Labor, Employment Relationship, Independent Contractor and 541 exemptions were discussed in detail and instructions were given for future compliance.

Minimum Wage:

Ex. 7(C), Ex. 6 was told that because deductions of breaks Ex. 4 minutes or less from hours work were excluded and not paid, minimum wage violations occurred. She was told that any deductions from a minimum wage worker will result in a violation. Ex. 7(C), Ex. 6 indicated that he was not aware that breaks could not be deducted from hours work. She stated that some EE's did clock out for smoke breaks and others took short lunches. She stated that now that he is aware she will make sure that employees don't clock out for short breaks when they do they take Ex. 4 minutes. She indicated she will have a meeting with his employees to inform them of the requirements. Ex. 7(C), Ex. 6 explained Klinghoffer she indicated he understood and agreed to comply in the future.

Recordkeeping:

Ex. 7(C), Ex. 6 was told that the investigations revealed that the company did not keep accurate time records for the EE's as a result of the breaks deductions. The investigations also revealed that the managers sent out people on breaks to the parking lot whenever business was slow. Ex. 7(C), Ex. 6 again said that she was not aware of hours worked concerning breaks and that there was a manager that no longer works there that was let go for sending people out for breaks when the business was slow. She indicated that now that Ex. 7(C), Ex. 6 is in that is not longer happening and are complying with the law. Ex. 7(C), Ex. 6 explained the requirements of Reg. 516 that the employer keep accurate daily hours for each employee and that each day should reflect the hours employees worked. Ex. 7(C), Ex. 6 indicated she understood and agreed to comply in the future.

Overtime:

Ex. 7(C), Ex. [REDACTED] was told that the investigations revealed that the company failed to pay overtime because when the breaks and the uncompensated time was added to the weekly hours of some employees they in some weeks were more than Ex. [REDACTED] hours without overtime compensation. Ex. 7(C), Ex. [REDACTED] again that she never thought that those deductions would cause overtime violation and that company have always paid overtime when it occurred. Ex. 7(C), Ex. [REDACTED] indicated that she would make sure that the employees are pay for all their hours and if they do happen to work more than Ex. [REDACTED] hours they will be pay overtime. Ex. 7(C) [REDACTED] indicated she understood and agreed to comply in the future. 7(C)

Ex. 7(C), Ex. [REDACTED] indicated that she was not allowed to sign the Ex. [REDACTED] because of the amount of it. She stated that she would forward that information to the corporate office and ask for copies of the Ex. [REDACTED] for review. Ex. 7(C), Ex. 6, Ex. 7(E) [REDACTED]

Ex. 7(C), Ex. 6, Ex. 7(E) [REDACTED]

Ex. 7(C), Ex. [REDACTED] was told that no CMP's will be recommended. However, if in the future he is found to be in non compliance for the same violations CMP's may be assessed. She was told that backwages amounts were less than \$20.00 one some individuals and was provided with the names and amount of the amount due to employees and told to pay them in the next paycheck. She indicated that she would comply.

Ex. 7(E) [REDACTED]

**Other Law(s) violated:**

No violations(s) found.

**Publication(s):**

The following publications were faxed to the employer:

*ESA Fact Sheets:*

Hardee's Restaurant Case ID: 1682012

#44, Visit to Employers, #21 Records Keeping, #22 Hours Work, #23 Overtime, CMP

Future correspondence should be sent to:

Ex. 6, Ex. 7(C)  
**Mountain Star, LLC**  
**DBA Hardees's**  
**244 N. Main**  
**Hiawasse GA 30546**  
**336-404-3351**

Ex. 7(E)

Ex. 7(C), Ex. 6

3/19/2013



## WHISARD Compliance Action Report

### U.S. Department of Labor Wage and Hour Division

Case ID: **1682012**      Originating District: **Atlanta GA District Office**  
Local Filing Number: **2013-111-22488**      Investigating District: **Atlanta GA District Office**  
WHMIS Case Number:      Lead Investigator: **Ex. 7(C), Ex. 6**  
Registration Date: **01/18/2013**  
Assignment Date: **02/07/2013**

#### Employer Information

Trade Name: **Hardee's Restaurant**  
Address: **244 N. Main Street**  
  
**Hiawassee, GA30546**

Legal Name: **Mountain Star LLC**  
EIN: **20-8438021**  
County: **Towns**  
NAICS Code: **722211**  
No. Of Employees: **E**

#### Investigation Information

Period Investigated From: **02/12/2011**  
To: **02/11/2013**  
Investigation Type: **Ex. 7(E)**  
Investigation Tool: **Full Investigation**  
Compliance Status: **Agree to Comply**

BNPI:      ☐  
Reinvestigation:      ☐  
Recurring Violation:      ☐  
Future Compliance Agreed:      ☐  
Involved in AG:      ☐

#### Recommended Action:

BWFS:	<input type="checkbox"/>	RO/NO Review:	<input type="checkbox"/>
CMP:	<input type="checkbox"/>	Follow Up Investigation:	<input type="checkbox"/>
Litigation:	<input type="checkbox"/>	Other Action:	<input type="checkbox"/>
Civil Action:	<input type="checkbox"/>	Denial of Future Certificate:	<input type="checkbox"/>
Criminal Action:	<input type="checkbox"/>	BW Payment Deadline:	<b>03/31/2013</b>
Submit For Opinion:	<input type="checkbox"/>	Trailer forms attached:	<input type="checkbox"/>

#### CL

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

## WHISARD Compliance Action Report

### FLSA

Violation / Compliance Status	Violations	EEs ATP	BWs Computed	BWs Agreed	LDs Computed	LDs Agreed	CMPs*
<b>Failure to pay Minimum Wage / Agree to Comply</b>	60	E	\$11,838.60	\$11,838.60	\$0.00	\$0.00	
<b>Failure to pay proper overtime / Agree to Comply</b>	14	E	\$246.97	\$246.97	\$0.00	\$0.00	
<b>Failure to keep accurate records / Agree to Comply</b>	1	0	\$0.00	\$0.00	\$0.00	\$0.00	
<b>FLSA Totals:</b>	60	E	\$12,085.57	\$12,085.57	\$0.00	\$0.00	
<b>Total Violations Under FLSA :</b>	75						\$0.00

\* CMPs computed do not necessarily indicate CMPs assessed.

Unduplicated Employees Found:	E	Unduplicated Employees Agreed:	E
Total Amount BWs Computed:	\$12,085.57	Total Amount BWs Agreed:	\$12,085.57
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

### Conclusions & Recommendations:

**54.25 hrs. Enterprise coverage Minimum Wage, Overtime and record Keeping violations due to Uncompmsated time and breaks deductions of less than E minutes. ER ATC/ATP and paid the backwages to E EE's.**  
 Ex. 7(E)

WHI Signature: \_\_\_\_\_ Date: **03/22/2013**

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