

Restaurant Management Corp.  
d/b/a Hardees  
230 Nissley St.  
Middletown, PA 17057  
717-267-0727  
EIN # 52-1621892

## **FLSA Narrative Report**

### **COVERAGE**

The subject firm is a fast food restaurant located at 230 Nissley St Middletown, PA 17057 (717) 267-0727. The firm is registered as a corporation in the state of PA and is operated by Restaurant Management Corporation. RMC is majority owned by Ex. 7(C), Ex. 6. Restaurant Management Corporation's main office is located at 22 North 6<sup>th</sup> St. Harrisburg, PA. 17201. There are 13 total locations. (See exhibit D-2-a). There are currently Ex. 4 employees at the Middletown location. The investigation was expanded to include all 13 locations.

All employees are covered on an enterprise basis under section 3(s)(1)(a) of the FLSA for SIP 07/31/2012 – 07/30/2014. According to information provided by the Ex. 7(C), Ex. 6 the ADV for 2013 was Ex. 4; in 2012 was Ex. 4; and in 2011 was Ex. 4. (See exhibit C-1-b).

Section 3(d) employer: Ex. 7(C), Ex. 6. He is the employer as defined by section 3(d) of the Act. He is responsible for hiring and firing employees; setting schedules; setting employees' pay rates; and is involved in the daily operations of the business.

### **Prior history:**

12/21/2010- FLSA 3(s)(1)(A) Ex. 7(C), Ex. 6, Ex. 4

CL CMP's for repeated CL violations computed, assessment

*recommended. File to DO for appropriate action.*

12/15/2005 - FLSA 3(s)(1)(a) Ex. 7(C), Ex. 6, Ex. 4

Future compliance agreed. CL CMP's computed \$23,595.00. File to DO for appropriate action. WH-1330 to firm.

**EXEMPTIONS:**

Section 13(b)(1) is claimed and applicable to the following employees

541.100-Executive-General Mgr. Assistant Manager - Paid a guaranteed salary of \$455 per week. Manages Ex. 4 with the authority to hire/fire set schedules and do performance evaluations. (See exhibits B-2, B-4, B-6 and B-7)

**STATUS OF COMPLIANCE:**

Reason for Investigation: Ex. 7(C), Ex. 6, Ex. 7(D)

as described in regulations 541.

A violation as described in 541.705. The findings below are specific to this location, case # 1730187.

**Findings:**

Section 6: A review of existing payroll records and employee interviews revealed no violations. (See exhibits B-1 to B-9).

Section 7A review of existing payroll records revealed two different overtime violations for E employees.

The first violation occurred because between the period of 01/05/2013 and 07/12/2014 the firm had a .10 cent per hour uniform deduction that the firm continued to deduct in overtime work weeks. This resulted in a violation because 1) the employees did not receive their full time and a half rate for overtime premium and 2) the deductions were more in overtime work weeks than non-overtime work weeks. (See exhibit B-1- B-9)

Back wages were calculated as follows for the uniform deductions:

1. .10 cents x OT Hours per week = BW Due
- a. .10 x 13.88 = \$1.38

A total of \$102.62 is due [REDACTED] employee. (See exhibits A-3-a to A-3-f)

[REDACTED] employees' back wages were de minimus

Back wages were calculated as follows for the salaried managers

$$\text{Salary} / \text{HW per week} \times .5 = \frac{1}{2} \text{ of Reg Rate} \times \text{OT Hours} = \text{BW Due}$$
$$\$650 / 45 \times 5 = \$7.20 \times 5 = \$36.11$$

A total of \$2,155.33 is due [REDACTED] employees. (See exhibits A-4-a)

*Section 11* [REDACTED] Ex. 7(C), Ex. 6

[REDACTED] the 541 exemption during the training period.

*Section 12:* No violations revealed in the investigation as only [REDACTED] Ex. 4. (See exhibits B-1 to B-9). Child labor bulletin 1330 was discussed and provided to the firm.

### **DISPOSITION:**

A final conference was held at the establishment on 08/05/2014. The attendees were [REDACTED] Ex. 7(C),  
[REDACTED] Ex. 6

Ex. 4 coverage was reviewed with the firm. Overtime and record keeping violations were discussed in detail. The firm agreed to Ex. 4 wide future compliance. The firm stated that the Ex. 4 was supposed to catch the uniform deductions in overtime work weeks and has corrected the error since the start of the investigation. The firm was also not aware of management not being eligible for the overtime exemption during training periods while they are not performing exempt duties. The firm has agreed to pay all non-exempt employees proper t ½ their regular rate for hours worked over 40 in a work week. As well as, keep a record of hours worked according to section 516.

Back Wage methodology was explained and the employer agreed to pay BWs by 08/25/2014. Ex. 7(C), Ex. 7(C), Ex. 6 and explained the back wage payment procedure.

The firm was advised that the investigation was being expanded to all other locations.

The Ex. 7(C), Ex. 6 was notified of the results of the investigation on 08/11/14 at 03:00 PM.

Publications provided: FS #28, #44, #77, HRG, Part 541, WH-1330.

Recommendations: I recommend this file be closed administratively upon receipt of back wages.

Ex. 7(C), Ex. 6

08/08/2014

Hardee's of Middletown Case ID: 1730187

## WHISARD Compliance Action Report

### U.S. Department of Labor

Wage and Hour Division

Case ID: **1730187** Originating District: **Wilkes Barre PA District Office**  
Local Filing Number: **2014-349-07302** Investigating District: **Wilkes Barre PA District Office**  
WHMIS Case Number: Lead Investigator: **Ex. 7(C), Ex. 6**  
Registration Date: **05/27/2014**  
Assignment Date: **05/27/2014**

#### Employer Information

Trade Name: **Hardee's of Middletown**

Legal Name: **Restaurant Management Corp**

Address: **230 Nissley Street**

EIN: **52-1621892**

County: **Dauphin**

NAICS Code: **722211**

**Middletown, PA 17057**

No. Of Employees: **E**

#### Investigation Information

Period Investigated From: **07/31/2012**  
To: **07/30/2014**  
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>08/25/2014</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 / Agree to Comply</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*
<i>Failure to pay proper overtime / Agree to Comply</i>	6	E	\$2,155.33	\$2,155.33	\$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>	6	E	\$2,155.33	\$2,155.33	\$0.00	\$0.00	
<b>Total Violations Under FLSA:</b>	7						\$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:	E	Unduplicated Employees Agreed:	E
Total Amount BWs Computed:	\$2,155.33	Total Amount BWs Agreed:	\$2,155.33
Total Amount LDs Computed:	\$0.00	Total Amount LDs Agreed:	\$0.00

### Conclusions & Recommendations:

**E#12008 FLSA/CL 43.25 Hours.** Ex. 7(C), Ex. 6 . However; 541 exemptions denied during training period. Did not meet duties test. Uniform deductions in OT W/W's. Sec 7/11 Viols. Ex. 7(C), Ex. 6 on 08/05/2014. Firm ATC/ATP. Bws due \$2,155.33 to E EE's by 08/25/2014. Pubs to firm: HRG, FS #28, #44, CL 101, Part 778. Recm. Admin close upon receipt of BW's.

## WHISARD Compliance Action Report

WHI Signature: \_\_\_\_\_ Date: 08/11/2014

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