

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

DAVID CZOPEK, CHRISTOPHER  
KNOTT, DAVID EASLICK and JONATHAN  
RED, Individually, and on behalf of All Others  
Similarly Situated Who Consent to Their  
Inclusion in a Collective Action;

Plaintiffs.

v.

CASE NO.

TBC RETAIL GROUP, INC. d/b/a  
TIRE KINGDOM,

Defendant.

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**PLAINTIFF'S AMENDED 216B COLLECTIVE ACTION AND RULE 23 CLASS  
ACTION COMPLAINT & DEMAND FOR JURY TRIAL**

Plaintiffs, DAVID CZOPEK, CHRISTOPHER KNOTT, DAVID EASLICK and JONATHAN RED (hereinafter referred to as "Plaintiffs") individually, and on behalf of all others similarly situated who consent to their inclusion in this collective action pursuant to Rule 216(b) for violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (the "FLSA") and in accordance with Federal Rule of Civil Procedure 23(a) for unjust enrichment, sues the above captioned Defendant, TBC RETAIL GROUP, INC. d/b/a TIRE KINGDOM (hereinafter referred to as "Defendant" or "Tire Kingdom") and state as follows:

**INTRODUCTION**

1. The Fair Labor Standards Act is our nation's foremost wage law. The overtime requirements of the Fair Labor Standards Act ("FLSA") were meant to apply financial pressure to spread employment to avoid the extra wage and to assure workers additional pay to compensate them for the burden of a workweek beyond the hours fixed in the act. See *In re*

*Novartis Wage & Hour Litig.* 611 F.3d 141, 150 (2d Cir. N.Y. 2010). It requires minimum wage and overtime pay for certain non-exempt employees. 29 U.S.C. § 213.

2. Plaintiffs bring this action for violation of federal wage and hour laws by and on behalf of all similarly situated current and former employees of Defendant and for unjust enrichment for those similarly situated employees who received debit cards as wage compensation.

3. Pursuant to policy and plan, Defendant violated the FLSA by: (a) requiring hourly employees to work off-the-clock; (b) shaving employees' time records; (c) failing to properly calculate overtime wages; (d) improperly using debit cards to pay wages; (e) improperly classifying mechanics as exempt from overtime compensation; and (f) failing to pay proper minimum wages to tire technicians.

4. Accordingly, Plaintiffs and similarly situated current and former employees were not properly paid minimum wage compensation for all hours worked, and were not compensated at a rate of one and one-half times their regular rate of pay for all hours worked over forty (40) in a work week.

5. Plaintiffs also bring corresponding state law claims for the unjust enrichment as a result of Defendant's pay scheme involving the use of debit cards to pay wages.

6. An employee's overtime rate is calculated by multiplying the employee's regular rate of pay by 1.5 for purposes of overtime computation. An employee's regular rate of pay includes any bonus received.

7. Defendant's failure to pay Plaintiffs, and similarly situated hourly employees, overtime compensation at a rate not less than one and one-half times their regular rate of pay for all hours of work performed beyond the forty (40) hour workweek is a violation of the FLSA, in particular 29 U.S.C. § 207.

8. Defendant's improper classification of Plaintiffs and similarly situated mechanics as exempt from overtime compensation is a violation of the FLSA, in particular 29 U.S.C. § 207.

9. Defendant's failure to pay Plaintiffs and similarly situated tire technicians the minimum wage required by the FLSA is a violation of the FLSA, in particular 29 U.S.C. §206.

10. Plaintiffs bring this collective action pursuant to 29 U.S.C. 216(b) on behalf of all hourly employees, who are or were employed by Defendant as service managers and sales associates to recover unpaid wages and unpaid overtime under the Fair Labor Standards Act.

11. Plaintiffs bring this collective action pursuant to 29 U.S.C. 216(b) on behalf of all employees, who are or were employed by Defendant as tire technicians to recover unpaid minimum wages and unpaid overtime compensation under the Fair Labor Standards Act.

12. Plaintiffs bring this collective action pursuant to 29 U.S.C. 216(b) on behalf of all employees, who are or were employed by Defendant as mechanics to recover unpaid wages and unpaid overtime compensation under the Fair Labor Standards Act.

13. Plaintiffs bring this collective action pursuant to 29 U.S.C. 216(b) on behalf of all employees, who are or were paid their wages through the use of a debit card and who were denied all or portions of their wages under the Fair Labor Standards Act.

14. Plaintiffs also bring this class action pursuant to Federal Rule of Civil Procedure 23 on behalf of all employees who worked for Defendant in the last 4 years, or who currently work for Defendant and receive wage compensation in the form of debit cards.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction over this action, pursuant to 28 U.S.C. §§ 1331 and 1337 and 29 U.S.C. §§ 216(b) and 217 because this action involves a federal question under the Fair Labor Standards Act.

16. Additionally, this court has supplemental jurisdiction over the state law claim because this case involves sums over \$5 million dollars pursuant to CAFA, 8 U.S.C. Sections 1332(d), 1453, and 1711–1715. And because the use of Debit Cards by the Defendant affects citizens of multiple states.

17. This Court has original and personal jurisdiction over this action because the Defendant is engaged in business within the State of Florida, and the actions complained of occurred in Florida.

18. Venue is appropriate in the Tampa Division of the Middle District of Florida pursuant to 28 U.S.C. 1391(b) because the Defendant owns and operates facilities in Tampa, Florida and the unlawful conduct occurred within the Tampa Division of this Court.

## **THE PARTIES**

### **The Representative Plaintiffs**

19. **DAVID CZOPEK (“Czopek”)**. At all times relevant to this action, the Representative Plaintiff, David Czopek resided in the State of Florida.

20. Plaintiff, David Czopek, was employed by Defendants from April 2011 through the present as an Hourly Retail Manager (“Service Manager”<sup>1</sup>) at many of Defendant’s retail store locations, including but not limited to the Dale Mabry; Henderson Blvd.; North Palmetto; Pinellas Park; Lutz; Wesley Chapel; Holiday; Plant City and Highway 301 branch locations.

21. Czopek was paid an hourly rate of \$12.00 per hour in addition to non-discretionary incentive awards including but not limited to SPIFFs, sales commissions and monthly bonuses.

22. Czopek regularly worked 60 to 80 hours per week.

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<sup>1</sup> In this pleading, the term “Service Manager” means any Plaintiff and all similarly situated hourly employees who have been, are, or in the future will be employed by Defendant under the title Hourly Retail Manager or any other position where employees perform substantially the same work as employees with those titles (discovery may reveal additional job titles and employees that should be included).

23. Czopek was subjected to time shaving, and was regularly required to work off-the-clock and through lunches without additional compensation.

24. Czopek was paid in part or in full through the Defendants' use of a debit card system, for which he was subjected to fees, surcharges and limitations on his ability to use the wages.

25. For purposes of this collective action and the proposed classes, Czopek hereby consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b).

26. At all times relevant to this action, Czopek, and all other members of the proposed FLSA collective action, were employees of Tire Kingdom within the meaning of 29 U.S.C. § 203(e)(1).

27. **CHRISTOPHER KNOTT (“Knott”)**. At all times relevant to this action, the Representative Plaintiff, Knott resided in the State of Florida.

28. Plaintiff, Knott, was employed by Defendant from September 2011 through August 2013 as a Flat Rate Technician (a.k.a. “Mechanic”) at Defendant’s Plant City store branch.

29. Knott was paid in part or in full through the Defendants' use of a debit card system, for which he was subjected to fees, surcharges and limitations on his ability to use the wages.

30. During the period of times when Defendants utilized a debit card system, Knott was not given the choice to receive his wages in direct deposit to a bank account of his choosing, or in the form of a physical paycheck.

31. Further, Knott was unable to fully access his wages free and clear at his demand.

32. For purposes of this collective action and the proposed classes, Knott hereby consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b).

33. At all times relevant to this action, Knott, and all other members of the proposed FLSA collective action, were employees of Tire Kingdom within the meaning of 29 U.S.C. § 203(e)(1).

34. **DAVID EASLICK (“Easlick”)**. At all times relevant to this action, the Representative Plaintiff, Easlick resided in the State of Florida.

35. Easlick, was employed by Defendant from May 2012 through December 2012 as a Tire Technician (a.k.a “Tire Tech”<sup>2</sup>). Easlick was then promoted to an Hourly Salesperson (“Sales Associate”) until September 3, 2013.

36. As a Tire Tech, Easlick was paid \$6.40 per hour, plus flat rate payments for certain activities (“SPIFFS”).

37. Easlick was paid \$9.60 per hour for overtime.

38. As a Sales Associate, Easlick was paid approximately \$8.00 per hour plus commissions on the sales of service to Tire Kingdom’s customers.

39. At all times during his employment Easlick was subjected to time shaving, and was regularly required to work off-the-clock and through lunches without additional compensation.

40. For purposes of this collective action and the proposed classes, Easlick hereby consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b).

41. Easlick was paid in part or in full through the Defendants’ use of a debit card system, for which he was subjected to fees, surcharges and limitations on his ability to use the wages.

42. At all times relevant to this action, Easlick, and all other members of the proposed FLSA collective action, were employees of Tire Kingdom within the meaning of 29 U.S.C. § 203(e)(1).

43. **JONATHAN RED (“Red”)**. At all times relevant to this action, the Representative Plaintiff, Jonathan Red resided in the State of Florida.

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<sup>2</sup> In this pleading, the term “Tire Technician” or “Tire Tech” means any Plaintiff and all similarly situated hourly employees who have been, are, or in the future will be employed by Defendant under the title Tire Tech, or any other position where employees perform substantially the same work as employees with those titles (discovery may reveal additional job titles and employees that should be included).

44. Plaintiff, Jonathan Red, was employed by Defendants from February 2006 through September 2013 as an Hourly Salesperson (“Sales Associate”<sup>3</sup>) at five (5) different retail store locations.

45. Red was paid an approximate hourly rate of \$8.00 per hour in addition to non-discretionary incentive awards including but not limited to SPIFFs, sales commissions and monthly bonuses.

46. Red regularly worked 60 hours per week.

47. Red was subjected to time shaving, and was regularly required to work off-the-clock and through lunches without additional compensation.

48. Red was paid in part or in full through the Defendants’ use of a debit card system, for which he was subjected to fees, surcharges and limitations on his ability to use the wages.

49. For purposes of this collective action and the proposed classes, Red hereby consents in writing to be a party to this action pursuant to 29 U.S.C. § 216(b).

50. At all times relevant to this action, Red, and all other members of the proposed FLSA collective action, were employees of Tire Kingdom within the meaning of 29 U.S.C. § 203(e)(1).

### **Defendant**

51. Defendant, TBC RETAIL GROUP, INC. d/b/a TIRE KINGDOM, is a for profit Florida corporation with its principal place of business located at 4280 Professional Center Dr., Suite 400, Palm Beach Gardens, Florida 33410. Its registered agent is Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301-2525.

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<sup>3</sup> In this pleading, the term “Sales Associate” means any Plaintiff and all similarly situated hourly employees who have been, are, or in the future will be employed by Defendant under the title Hourly Salesperson, or any other position where employees perform substantially the same work as employees with those titles (discovery may reveal additional job titles and employees that should be included).

52. Tire Kingdom operates a chain of retail automotive service and repair centers throughout Florida, North Carolina, South Carolina, Louisiana, Georgia, Vermont and New Hampshire. Their current website boasts 1200 stores in 41 states, a substantial portion of which are Tire Kingdom stores.

53. Tire Kingdom currently operates 210 or more stores in the state of Florida, and Plaintiffs reasonably estimate that the total class members in Florida alone to be upwards of 5000 employees during the relevant class period.

54. Upon information and belief, Defendant is an enterprise engaged in interstate commerce with gross sales in excess of \$500,000.00.

55. Defendant is an “employer” of Plaintiffs, and similarly situated employees, within the meaning of the FLSA, 29 U.S.C. § 203 and F.S. 448.101(3).

#### **GENERAL ALLEGATIONS**

56. Plaintiffs bring this collective action for Defendant’s FLSA violations including but not limited the following: (a) requiring hourly employees to work off-the-clock; (b) shaving employees’ time records; (c) failing to properly calculate overtime wages; (d) improperly taking deductions from employee’s wages through the use of debit cards; (e) improperly classifying mechanics as exempt from overtime compensation; and (f) failing to pay proper minimum wage and overtime compensation to tire technicians.

57. Plaintiffs also bring this class action pursuant to Federal Rule of Civil Procedure 23 for unjust enrichment on behalf of all employees who work or have worked for Defendant in the last 3 years and receive wage compensation in the form of debit cards.

58. Tire Kingdom knowingly required Plaintiffs and other similarly situated hourly employees to work off the clock during lunch breaks.

59. Tire Kingdom knowingly required Plaintiffs and other similarly situated hourly employees to work off the clock before and after their scheduled shift time.
60. Tire Kingdom shaved Plaintiffs' and other similarly situated hourly employees' time records to reduce payroll costs.
61. Tire Kingdom failed and/or refused to pay Plaintiffs' and similarly situated employees' regular rate of pay for any and all hours shaved or worked off-the-clock.
62. Defendant failed to include the payment of non-discretionary incentive payments in the calculation of Plaintiffs' and similarly situated hourly employees' overtime compensation.
63. Tire Kingdom failed to comply with the FLSA by impermissibly paying Plaintiffs' and similarly situated employees' wages (including minimum wages and overtime compensation) via a debit card ("Pay Card"). The Pay Cards charged fees to access the money, had restrictions on how much money could be withdrawn and contained restrictions on withdrawing the remaining balance below a certain amount.
64. Upon information and belief, Defendant passed the cost of payroll down to its employees.
65. Defendant gave its payroll company a percentage of the fees employees were charged to use their debit cards.
66. In exchange, Defendant's payroll company discounted the costs to Defendant for payroll services.
67. Therefore, Defendant was able to subsidize its payroll costs by trickling those costs down to the employee through the use of debit cards as wage compensation.
68. Upon information and belief these debit cards are used throughout Florida and in other states as an improper method of compensation that effectually subsidizes the cost of Payroll to the benefit of Defendant and at the detriment of Plaintiffs.

69. Employees who received debit cards as wage compensation were not given a choice in the matter and were forced to use the debit cards to access their wages.

70. The debit cards contained fee provisions in which a user was charged fees in excess of \$2.95 in order to gain access to their money.

71. Tire Kingdom failed to comply with the FLSA with respect to both the minimum wage requirements and overtime requirements paid to tire technicians. Tire Kingdom paid its tire technicians an hourly rate of \$6.40, below the federally required minimum wage (\$7.25), and failed to calculate tire technicians' overtime rate properly (ie. overtime was paid at 1.5 times \$6.40 or \$9.60 when the federal minimum wage overtime rate was \$10.88).

72. Similarly, Tire Kingdom violated the FLSA minimum wage requirements by requiring tire technicians to supply their own tools for use in the performance of their jobs.

73. The FLSA provides that, with certain exceptions, employers must pay employees overtime of at least one and one-half times their regular rate of pay for any hours over forty worked in a week. 29 U.S.C. S 207(a)(1). The Act exempts certain employees from the overtime requirements. However, an "employer who claims an exemption from the FLSA has the burden of showing that the exemption applies" *see Donovan v. Nekton, Inc.*, 703 F.2d 1148, 1151 (9th Cir. 1983).

74. Although the FLSA provides for certain exemptions to the mandates of paying overtime compensation, no exemption applies in the instant matter.

75. Unless proven to be exempt from the protection of overtime laws, all employees are entitled to full and proper payment of their minimum wages and premium overtime pay for work in excess of forty (40) hours per week.

76. Further evidence reflecting the precise number of off-the-clock and overtime hours worked by Plaintiff and every other member of the putative classes (as defined below), as well as the applicable compensation rates, is in the possession of the Defendant. If these records are unavailable, Plaintiff and members of the Classes may establish the hours they worked solely by their testimony, and the burden of overcoming such testimony shifts to the employer. *See Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

### **COLLECTIVE ACTION ALLEGATIONS**

77. Plaintiffs bring this action as a collective action pursuant to the Fair Labor Standards Act §216(b), on behalf of themselves and the following Classes of person:

- a. **The “Customer Service Class.”** All Service Managers and Sales Associates, who are presently employed or were employed by Defendant within the past three years preceding this lawsuit in the State of Florida who not paid at a rate of one and one-half times their regular rate of pay for all hours worked over forty (40) in a work week and elect to opt-in to this action pursuant to FLSA, 29 U.S.C. § 216(b).
- b. **The “Tire Tech Class.”** All Tire Technicians who are presently employed or were employed by Defendant in the State of Florida within the past three years preceding this lawsuit who were paid an hourly rate of less than the federal minimum wage and who were denied proper overtime compensation for all hours worked over forty (40) in a work week and elect to opt-in to this action pursuant to FLSA, 29 U.S.C. § 216(b).
- c. **The “Debit Card Class”.** All employees working for Tire Kingdom who are presently employed or who were employed within the past three years in the State of Florida, and who received debit cards as wage compensation and who were required to use debit cards to access their earned wages.

78. The collective claims of the Representative Plaintiffs are typical of the claims of the members of the Classes.

79. The number of proposed members of the Collective Classes is so numerous that a joinder of all members is impractical, estimated to be upwards of 5000 employees, although the precise number of class individuals is presently in the sole possession of the Defendant. With over 200 stores in Florida and an estimated 20 or more employees in the classes at each location, the class in Florida alone during the relevant three year period is estimated at 600 or more.

80. Plaintiffs will fairly and adequately protect the interests of the proposed members of the Collective Classes and has retained counsel that is experienced and competent in class/collective actions along with employment litigation. There is no conflict between Plaintiffs and the members of the Collective Classes.

81. Common questions of law and fact exist as to the proposed Collective Classes that predominate over any questions only affecting them individually and include, but are not limited to, the following:

- a. Whether Defendants required Customer Service Class members to work off-the clock;
- b. Whether Defendants shaved the time records of members of the Customer Service Class members;
- c. Whether Defendants failed to properly include non-discretionary incentive awards in the computation of overtime paid to members of the Customer Service Class;
- d. Whether Defendants failed to pay proper minimum and overtime pay to members of the Tire Tech Class;
- e. Whether Defendants failed to properly include non-discretionary payments in the computation of overtime paid to members of the Tire Tech Class;
- f. Whether Defendants shaved the time records of members of the Tire Tech Class members;
- g. Whether Defendants' use of payroll debit cards in lieu of paychecks violated the FLSA;

- h. Whether Defendant's policies of failing to pay workers the applicable federal minimum wage and proper overtime compensation has been willfully instituted or with reckless disregard of the law; AND
- i. The nature and extent of class-wide injury and the measure of damages for those injuries.

82. A collective action suit, such as the instant one, is superior to other available means for fair and efficient adjudication of the controversy for a number of reasons including, but not limited to, the following: this case challenges the policy of a large employer and many employees may be reluctant to bring claims individually for fear of retaliation; some members of the Classes may have only worked for the Defendant for a short period of time and their individual damages would not be substantial enough to be worth the cost and effort of bringing individual claims; many members of the Classes will not have the resources to bring their claims individually; and it would be highly inefficient to require each employee affected by the practices challenged herein to bring his or her own individual claim.

### **CLASS ACTION ALLEGATIONS**

83. Pursuant to Fed. R. Civ. P. 23(a), the named Plaintiffs seek class certification of the class of similarly situated present and former employees comprised of the following Class they seek to represent:

- a. All employees working for Tire Kingdom throughout the U.S. in the past four years, or who currently work for Tire Kingdom, and who received debit cards as wage compensation and who were required to use those debit cards to access their earned wages.

84. This action is properly maintainable pursuant to Fed. R. Civ. P. 23(b)(1)(a) because prosecuting separate actions by or against individual class members would create a risk of: (a) inconsistent or varying adjudications with respect to individual class members that would

establish incompatible standards of conduct for the party opposing the class; and (b) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

85. This action is also properly maintainable pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) because the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Furthermore, the questions of law or fact common to the Class members predominate over any question of law or fact affecting only individual members of the Class. The predominant questions of law or fact are clear, precise, well-defined, and applicable to each named Plaintiff as well as every absent member of the proposed Class.

86. Class representation is also superior to other available methods for the fair and efficient adjudication of the controversy for a number of reasons, including, but not limited to, the following: (1) class members do not have the resources to bring their claims individually; (2) prosecution of separate claims by individual members of the Class would create a risk of inconsistent adjudications which would establish incompatible standards of conduct for Defendants; and (3) it would be an inefficient use of scarce judicial resources to require each student affected by the practices challenged herein to bring his or her own individual claim.

87. Numerosity: This action satisfies numerosity. The class defined in paragraph 66 is sufficiently numerous that separate joinder of each member is impracticable as the class will be comprised of up to 10,000 or more absent Class members given the high turnover and large number of stores maintained by Tire Kingdom.

88. Commonality: The named Plaintiffs' claims raise questions of law and fact common to each member of the Class, which include, but are not limited to:

- a. Whether Defendant required members of the Class to use debit cards with fees to access their earned wages;
- b. Whether Defendant's use of Pay Cards in lieu of paychecks to members of the Class unjustly enriched Defendant.

89. Typicality: The claims of the named Plaintiffs are typical of the claims of the Class members because the Plaintiffs were employees of Defendant who received their earned wages via debit cards which contained fees to gain access.

90. Adequacy: The named Plaintiffs will vigorously pursue the claims alleged herein on behalf of himself and other employees similarly situated. The named Plaintiffs' claims have no adverse interests to the proposed absent Class members because he asserts the same claims and seeks the same relief as would the absent Class members if each were to bring a similar action individually. The named Plaintiffs will adequately protect and represent the interests of each absent Class member. Counsel who brings this action for the named Plaintiffs and proposed Class are experienced in class action practice and procedure.

91. Plaintiffs and members of the Class received their wages via debit cards that contained conditions, restrictions, and fees in order to access the money deposited on the card.

92. Defendant's payment scheme using the debit cards was mandatory and Plaintiffs and members of the Class had no choice as to how to receive their pay.

93. Plaintiffs and members of the Class were required to pay a \$5 fee in order to obtain the debit card which contained the wages they earned, and up to \$10 for any replacement card.

94. Plaintiffs and members of the Class were required to pay a \$2.95 transaction fee to the payroll company, ComData, in order to access the wages they earned, plus any additional ATM fees.

95. Plaintiffs and members of the Class could not withdraw all their money at one time at their discretion, and Defendants failed to comply with F.S. Chapter 532. The Plaintiffs and the class were not provided alternative options to receive their paychecks in other forms, and were not provided any means to obtain the full wages without charges or at any location.

**COUNT I**  
**VIOLATION OF OVERTIME REQUIREMENTS**  
**On Behalf Of The Customer Service Class**

96. Plaintiffs re-allege and incorporate paragraphs one (1) through ninety-five (95) *supra*, as if fully set out herein.

97. Tire Kingdom has a de facto policy, practice and/or custom of requiring/coercing Plaintiffs and members of the Customer Service Class to work off-the-clock during lunch breaks, before store opening, and after they were clocked out.

98. Tire Kingdom management was aware that Plaintiffs and members of the Customer Service Class worked off-the-clock, and failed to ensure that Plaintiffs and members of the Customer Service Class were properly paid for all hours worked.

99. Defendants' Managers instructed employees to work through lunches and at other times while clocked out, and this de facto policy comes from the highest corporate levels.

100. Tire Kingdom senior management reviewed the time records and work records (ie. estimates, work orders and invoices) generated by Plaintiffs and members of the Customer Service Class, and failed to ensure that Plaintiffs and members of the Customer Service Class were paid for all hours worked.

101. In order to save payroll costs, Tire Kingdom instituted a practice and custom of shaving Plaintiffs' and members of the Customer Service Class' time records, for which Plaintiffs and members of the Customer Service Class were not paid.

102. Tire Kingdom instituted a practice and custom of failing to include non-discretionary bonuses and payments in the calculation of Plaintiffs' and members of the Customer Service Class' overtime compensation in violation of 29 C.F.R. §778.117 and 29 C.F.R. §778.208.

103. As a result of Tire Kingdom's failure to compensate Plaintiffs and members of the Customer Service Class for hours worked off-the-clock, and failure to include non-discretionary payments in the calculation of overtime, Plaintiffs and members of the Hourly Employee Collective Class were denied proper overtime payment for all hours worked in excess of forty (40) during any given week, in violation of 29 U.S.C. §207.

104. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

105. Due to the Defendant's FLSA violations, Plaintiffs and the members of the Customer Service Class have suffered damages, and are entitled to recover from the Defendant the unpaid overtime compensation, and an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

**COUNT II**  
**VIOLATION OF MINIMUM WAGES AND OVERTIME REQUIREMENTS**  
**On Behalf Of The Tire Tech Class**

106. Plaintiffs re-allege and incorporate paragraphs one (1) through ninety-five (95) *supra*, as if fully set out herein.

107. Tire Kingdom paid Plaintiffs and members of the Tire Tech Class an hourly rate less than the applicable minimum wage under the FLSA.

108. Tire Kingdom paid non-discretionary SPIFFs (a flat rate dollar amount) to Plaintiffs and members of the Tire Tech Class based upon the sale of a certain item or services.

109. Tire Kingdom failed to ensure that Plaintiffs and members of the Tire Tech Class earned compensation each week to equal the minimum wage requirements of the FLSA (as applicable).

110. Tire Kingdom failed to properly calculate Plaintiffs' and members of the Tire Tech Class' overtime compensation – thus reducing the overtime rate to below the overtime rate for minimum wage.

111. Tire Kingdom shaved, reduced and cut the time records of members of the Customer Service Class members in order to avoid overtime compensation.

112. Accordingly, the Defendants have failed to pay Plaintiffs and members of the Tire Tech Collective Class the full and proper minimum wage and overtime compensation pursuant to the FLSA §§ 206 and 207.

113. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

114. Due to the Defendant's FLSA violations, Plaintiffs and the members of the Tire Tech Collective Class have suffered damages, and are entitled to recover from the Defendant the unpaid minimum wages and overtime compensation, an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

**COUNT III**  
**USE OF PAY CARDS VIOLATES THE FLSA**  
**On Behalf Of The Debit Card Class**

115. Plaintiffs re-allege and incorporate paragraphs one (1) through ninety-five (95) as if fully set out herein.

116. Tire Kingdom used debit cards (a.k.a. Pay Cards) to pay Plaintiffs and members of the Debit Card Class their wages during some or all the weeks within the preceding 3 years, and is currently using the same debit card system.

117. The Pay Cards had associated fees, surcharges and restrictions on the use of the funds, such as fees to access the money; restrictions on how much money could be withdrawn and restrictions on withdrawing the remaining balance below a certain amount.

118. As a result of the use of Pay Cards in lieu of paychecks, Plaintiffs and members of the Hourly Employee Class were not paid the entirety of their minimum wages and overtime compensation pursuant to 29 U.S.C. §§206 and 207.

119. The use of Pay Cards in lieu of paychecks violates 29 C.F.R. § 531.27 which requires that wages be paid via negotiable instruments without additional fees, surcharges or penalties.<sup>4</sup>

120. The use of Pay Cards in lieu of paychecks violates 29 C.F.R. § 531.35 which prohibits kick-backs to the employer.<sup>5</sup>

121. Upon information and belief, after making payroll payments via the Pay Cards, Tire Kingdom still maintained possession, custody and control over the funds contained in the Pay Card, and thus “floated” the funds for the benefit of Tire Kingdom.

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<sup>4</sup> Payment by use of debit cards which include fees and charges violates 29 C.F.R. § 531.27 which states in pertinent part “ (a) Standing alone, sections 6 and 7 of the Act require payments of the prescribed wages, including overtime compensation, in cash or negotiable instrument payable at par.” Because the debit card includes fees, penalties and surcharges, it is not a negotiable instrument payable at par.

<sup>5</sup> 29 C.F.R. § 531.35 states in pertinent part that “wages cannot be considered to have been paid by the employer and received by the employee unless they are paid finally and unconditionally or “free and clear.” The wage requirements of the Act will not be met where the employee “kicks-back” directly or indirectly to the employer or to another person for the employer's benefit the whole or part of the wage delivered to the employee. This is true whether the “kick-back” is made in cash or in other than cash.”

122. Upon information and belief, the use of Pay Cards indirectly benefitted Tire Kingdom by benefitting the Pay Card issuing company with whom Tire Kingdom maintained a close, mutually beneficial relationship.

123. Accordingly, the Defendant's conduct in using Pay Cards in lieu of pay checks violates the FLSA, 29 U.S.C. § 201, *et seq.*, and particularly the minimum wage and overtime requirements of § 206 and § 207.

124. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

125. Due to the Defendant's FLSA violations, Plaintiffs and the members of the Hourly Employee Collective Class have suffered damages, and are entitled to recover from the Defendant the unpaid compensation, and an additional amount equal as liquidated damages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. §216(b).

**COUNT IV**  
**UNJUST ENRICHMENT CLASS ACTION CLAIM FOR DAMAGES**  
**UNDER FEDERAL RULE 23**

126. Plaintiffs re-allege and incorporate paragraphs one (1) through ninety-five (95) *supra*, as if fully set out herein.

127. Defendant required Plaintiffs and members of the Class to obtain their earned wages through use of a debit card. Upon information and belief, this Debit Card system for distributing wages earned by Defendant's employees occurred nationally, in all stores where the Defendants operate.

128. The debit cards had associated fees, surcharges and restrictions on the use of the funds, such as fees to access the money; restrictions on how much money could be withdrawn and restrictions on withdrawing the remaining balance below a certain amount.

129. As a result of the use of Pay Cards in lieu of paychecks, Plaintiffs and members of the Class were not paid the entirety of their earned wages.

130. Plaintiffs and members of the Class conferred a benefit upon the Defendant in the form of subsidizing their payroll costs. Upon information and belief, Tire Kingdom's charges per employee from the payroll company or companies (ComData), were lessened of what they would have been had employees received actual paychecks or direct deposits.

131. In other words, since Comdata receives transaction charges, this company reduces the costs or negotiated a lesser cost to Tire Kingdom for handling payroll.

132. Alternatively, the payroll company and the Defendant may have some sharing in the transaction charges or such charges are applied as a credit against the payroll costs, in either way resulting in a benefit financially and enrichment to Tire Kingdom by requiring employees to use the debit cards in lieu of direct deposit or physical paychecks.

133. Plaintiffs and members of the Class have provided services for Defendant to which no value has been paid; the fact of which is inequitable.

134. Plaintiffs and members of the Class performed substantial sums of work for Defendant and received compensation via debit cards that required fees to access, maintain and use.

135. Upon information and belief, those fees were then given to Defendant's payroll company as kickbacks for a lesser charge in payroll services.

136. Ultimately, Defendant was unjust enriched at the expense of its employees who could not freely access the wages they earned.

137. Plaintiffs and the members of the Class have been damaged by not receiving all the wages they earned.

138. Defendant's use of the Debit Cards similarly violates Florida Statutes Chapter 532, as employees were not given choices on receiving pay in other forms, could not receive the entire checks and earnings on demand, and were charged fees just to obtain their paychecks or use the card for transactions which they would not otherwise have incurred if the Defendants had provided the Class their physical paychecks or provided direct deposit to the employee's own accounts.

139. Defendant was unjustly enriched at the expense and to the detriment of the employees who received their wages through this debit card system, as the charges incurred by employees resulted in a lower charge or cost to Defendant by the payroll company for their payroll services.

140. Defendant's conduct was willful, and deliberate as a means to pass of payroll company costs to the employees and lessen their own costs to the detriment of the class. As a direct and proximate result of Defendant's conduct, Plaintiff and other similarly situated employees have suffered damages and are entitled to recover from the Defendant all incurred fees and charges, plus interest.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for:

- a. An order designating this action as a collective action and issuance of notice pursuant to 29 U.S.C. § 216(b) to all similarly situated individuals with instructions to permit them to assert timely FLSA claims in this action by filing individual Consents to Sue pursuant to §216(b), and that this notice be sent to all past and present employees of the Defendant at any time during the three year period immediately preceding the

- filing of this suit, through and including the date of this Court's issuance of the Court Supervised Notice.
- b. An order appointing Plaintiff Czopek and Red and their counsel to represent the Customer Service Class.
  - c. An order appointing Plaintiffs Easlick and Knott and the undersigned counsel to represent the Tire Tech Class.
  - d. An order appointing Czopek (or all named Plaintiffs) and his counsel to represent Debit Card Class of the FLSA claims.
  - e. That the Court finds Defendant in violation of the FLSA and issue a judgment in Plaintiffs' favor.
  - f. That the Court find that the Defendant's violations of the FLSA were and are willful and in bad faith.
  - g. That the Court award the Plaintiffs, and all similarly situated employees of the Customer Service Class compensation for all the previous hours worked off-the-clock and compensation for all previous hours worked over forty (40) hours that they did not receive at least one and one-half times the regular rate of compensation for, in any given week during the past three years; AND liquidated damages of an equal amount of the minimum compensation; in addition to penalties and interest on said award pursuant to § 216 of the FLSA.
  - h. That the Court award the Plaintiffs, and all similarly situated employees of the Tire Tech Class compensation for all the previous hours worked that they did not receive at least minimum wage for any given week during the past three years and compensation for all the previous hours worked over forty (40) hours that they did not

- receive at least one and one-half times the regular rate of compensation for, in any given week during the past three years; AND liquidated damages of an equal amount of the minimum compensation; in addition to penalties and interest on said award pursuant to § 216 of the FLSA.
- i. That the Court award the Plaintiffs, and all similarly situated employees of the Debit Card Class compensation for damages, losses and fees incurred by way of the Defendant's use of Pay Cards AND liquidated damages of an equal amount of the minimum compensation; in addition to penalties and interest on said award pursuant to § 216 of the FLSA.
  - j. That the Court Certify the Rule 23 Class on a national basis, appoint the Plaintiffs as class representatives and Plaintiff's counsel as Class counsel, and award judgment for Plaintiff and the Class against Defendant who was unjustly enriched and provide Plaintiff and the Class compensation for damages, losses, charges, fees, and ATM fees, incurred by way of Defendant's use of Pay Cards, and pre-judgment interest.
  - k. An order awarding attorneys' fees and costs pursuant to § 216 of the FLSA.
  - l. That the Court award Plaintiffs a collective action representative incentive fee for Plaintiffs' efforts and time dedicated to bringing justice through this action and the extra efforts they put in for leading this litigation; AND
  - m. That the Court award any other legal and equitable relief as this Court may deem appropriate and the law allows.

### **DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial

by jury on all questions of fact raised by this Complaint and on all other issues so triable.

Dated this \_\_\_\_ day of August, 2014, submitted by:

/s/ Benjamin L. Williams

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