

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

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Sandra Ellis,  
on behalf of herself and others similarly situated

Plaintiff,

v.

J.R.'s Country Stores, Inc.  
a Colorado corporation,

Defendant.

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**COMPLAINT**

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COMES NOW the Plaintiff, Sandra Ellis, by and through counsel, Cornish & Dell'Olio, P.C. and for her Complaint against the Defendant, states as follows:

**Introduction**

1. This is an action for wages brought pursuant to the federal Fair Labor Standards Act (29 U.S.C. § 201 *et. seq.*).

2. Plaintiff will move the Court for leave to send notice to the class and to pursue the action under authority of 29 U.S.C. § 216(b) as a collective action.

**Jurisdiction**

3. The Court has jurisdiction of this action pursuant to 28 U.S.C. §1331.

**Others are Similarly Situated**

4. Plaintiff will move to certify a collective class action under the Fair Labor Standards Act, 29 U.S.C. § 216(b).

5. Plaintiff seeks to certify a class of similarly situated employees composed of “all current and former General Store Managers of J.R.’s Country Stores, Inc., who were paid a purported salary but who were required by the Defendant to work not fewer than 50 hours in a single work week and whose pay was subject to reduction based on the quantity of work performed after July 23, 2009 and who worked more than 40 hours in a single work week and were not paid overtime.”

6. Plaintiff and those similarly situated were affected by a common compensation policy, plan or decision which was made by J.R.’s Country Stores, Inc.’s corporate management. Specifically a decision, plan or policy to require General Store Managers to record their hours worked and to require them to work no fewer than 50 hours in a single work week, to work no fewer than five days per week and to classify them as exempt employees. The compensation policy, plan or decision which was made by J.R.’s Country Stores, Inc. was to treat General Store Managers as nonexempt employees and ignore the requirements of 29 CFR § 541.602. The compensation policy, plan or decision which was made by J.R.’s Country Stores, Inc. was to vary the pay of General Store Managers depending on the quantity of work performed and to threaten to vary the pay of General Store Managers depending on the quantity of work performed in order to obtain the advantages to the company of having employees work as many as 70 hours a week without additional compensation and at the same time to

not allow General Store Managers the flexibility of a salary.

7. Plaintiff and those similarly situated as General Store Managers were subject to the same terms and conditions of employment with respect to their compensation. All were required to work no fewer than 50 hours in a single work week which caused them to come in early or stay late when they were required to take short periods of time off from work for example to attend medical appointments.

8. Plaintiff and those similarly situated as General Store Managers were subject to the same terms and conditions of employment with respect to their compensation. All were required to work no fewer than 50 hours in a single work week or face actual or threatened reductions in pay.

9. Plaintiff and all those similarly situated as General Store Managers shared the same job title and job duties, were subject to the same compensation policies, and were improperly classified as exempt because they were not treated and paid as salaried employees and were not paid one-and-one-half times their regular rate of pay for all hours worked over forty hours in a single work week.

### **Parties**

10. Sandra Ellis is a natural person who resides in Prowers County, Colorado. At all times relevant to the Complaint, she was employed by J.R.'s Country Store, Inc., as a General Store Manager.

11. J.R.'s Country Store, Inc., is a Colorado corporation.

12. At all times relevant to the Complaint the Defendant corporation was an

enterprise engaged in commerce within the meaning of the federal Fair Labor Standards Act (29 U.S.C. § 203 (s)(1)) with gross sales of more than \$500,000.00 per year.

### **Venue**

13. All acts giving rise to the cause of action occurred in the State of Colorado.

### **First Cause of Action (for violations of the federal Fair Labor Standards Act 29 U.S.C. § 207)**

14. Paragraphs 1 through 13 are incorporated herein by reference.

15. Sandra Ellis was at all times relevant to the Complaint a nonexempt employee under the federal Fair Labor Standards Act (29 U.S.C. § 201 *et. seq.*) because she was not paid on a salary basis.

16. Sandra Ellis was employed by Defendant J.R.'s Country Store, Inc., from 2008 until April 6, 2012.

17. Sandra Ellis was not paid overtime wages during her employment.

18. Defendant treated Plaintiff as an exempt employee when it was in Defendant's financial interests to do so by failing to pay her time-and-one-half for hours worked over forty.

19. Defendant treated Plaintiff as a nonexempt employee when it was in Defendant's financial interests to do so by monitoring her hours worked, threatening to lower her pay based on the quantity of work performed, reducing her pay based on the quantity of work performed, and requiring her to work a minimum of 50 hours a week

and requiring her to work five days a week.

20. Throughout her employment Plaintiff's was subject to a rule that she work a minimum of fifty hours a week and work five days per week.

21. Plaintiff's compensation was reduced when she did not work at least 50 hours in a single work week and was absent from work for less than a day's duration.

22. Plaintiff's compensation was subject to reduction and was reduced for failing to meet the fifty hour per week rule.

23. Plaintiff was not an exempt employee during her employment because she was not paid on a true salary basis.

24. Plaintiff's compensation was reduced for absences from work of less than a day's duration in violation of 29 C.F.R 541.603.

25. Defendant achieved the benefits of hourly compensation plan for itself by threatening to reduce Plaintiff's pay based on the quantity of work performed and thereby force her to work at least fifty hours a week and work five days a week.

26. During Plaintiff's employment with J.R.'s Country Store, Inc. she regularly worked in excess of forty hours in a single work week.

27. During Plaintiff's employment with J.R.'s Country Store, Inc., she frequently worked more than 60 hours per week and sometimes in excess of 70 hours in a single work week.

28. Defendant knew that Plaintiff, and other Store General Managers whose job duties were similar or identical to Plaintiff's, were working more than 40 hours in a

single work week.

29. Defendant required Plaintiff to clock in and out so that it could monitor her compliance with the fifty hour per week rule.

30. Defendant failed to pay plaintiff for all hours worked in excess of forty in a single work week at one-and-one-half times her regular hourly rate of pay.

31. Defendant's failure to pay Plaintiff one-and-one-half times her regular rate of pay for all hours worked in excess of forty hours in a single work week was in violation of the federal Fair Labor Standards Act (29 U.S.C. § 207).

32. Defendant's violations of the federal Fair Labor Standards Act were willful.

### **Prayer for Relief**

WHEREFORE, Plaintiff demands judgment against the Defendant corporation in an amount which will compensate her for all hours worked in excess of forty hours in a single work week at one-and-one-half times her regular hourly rate of pay, for liquidated damages as provided for by 29 U.S.C. 216 (b), and attorney's fees and costs as provided for by 29 U.S.C. 216 (b).

Respectfully submitted this 23<sup>rd</sup> day of July, 2012.

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